



---

## **Licensing Board**

Thursday, 05 September 2019

**NOTICE IS HEREBY GIVEN** that a Meeting of the **Licensing Board** is to be held at **Council Chambers, Council Office, High Street, Elgin, IV30 1BX** on **Thursday, 05 September 2019 at 10:00.**

### **BUSINESS**

1. **Sederunt**
2. **Declaration of Group Decisions and Members Interests \***
3. **Minute of Meeting on 13 June 2019** **5 - 10**
4. **Application List** **11 - 20**
5. **Personal Licence Application Hearing for Relevant Conviction** **21 - 24**
6. **Chief Constable - Annual Report** **25 - 36**
7. **Social Responsibility - verbal update**

**Any person attending the meeting who requires access assistance should contact customer services on 01343 563217 in advance of the meeting.**

\* **Declaration of Group Decisions and Members Interests** - The Chair of the meeting shall seek declarations from any individual or political group at the beginning of a meeting whether any prior decision has been reached on how the individual or members of the group will vote on any item(s) of business on the Agenda, and if so on which item(s). A prior decision shall be one that the individual or the group deems to be mandatory on the individual or the group members such that the individual or the group members will be subject to sanctions should they not vote in accordance with the prior decision. Any such prior decisions will be recorded in the Minute of the meeting.

\*\* **Written Questions** - Any Member can put one written question about any relevant and competent business within the specified remits not already on the agenda, to the Chair provided it is received by the Proper Officer or Committee Services by 12 noon two working days prior to the day of the meeting. A copy of any written answer provided by the Chair will be tabled at the start of the relevant section of the meeting. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than 10 minutes after the Council has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he or she can submit it in writing to the Proper Officer who will arrange for a written answer to be provided within 7 working days.

\*\*\* **Question Time** - At each ordinary meeting of the Committee ten minutes will be allowed for Members questions when any Member of the Committee can put a question to the Chair on any business within the remit of that Section of the Committee. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than ten minutes after the Committee has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he/she can submit it in writing to the proper officer who will arrange for a written answer to be provided within seven working days.

Clerk Name: Alasdair McEachan

Clerk Telephone: 01343 563080

Clerk Email: [alasdair.mceachan@moray.gov.uk](mailto:alasdair.mceachan@moray.gov.uk)

# **THE MORAY COUNCIL**

## **Licensing Board**

### **SEDERUNT**

Councillor Gordon Cowie (Chair)  
Councillor James Allan (Member)  
Councillor David Bremner (Member)  
Councillor Frank Brown (Member)  
Councillor Paula Coy (Member)  
Councillor Ryan Edwards (Member)  
Councillor Louise Laing (Member)  
Councillor Maria McLean (Member)  
Councillor Amy Taylor (Member)

Clerk Name: Alasdair McEachan  
Clerk Telephone: 01343 563080  
Clerk Email: [alasdair.mceachan@moray.gov.uk](mailto:alasdair.mceachan@moray.gov.uk)



**THE MORAY LICENSING BOARD**

**MINUTE OF THE MEETING OF THE MORAY LICENSING BOARD**

The Moray Council Chambers, Council Headquarters, High Street, Elgin on  
Thursday 13 June 2019

**1. SEDERUNT**

**PRESENT**

Councillors: J Allan  
G Cowie  
D Bremner  
P Coy  
L Laing  
M McLean  
A Taylor

**APOLOGIES**

Apologies were intimated on behalf of Councillors Brown and Edwards

**IN ATTENDANCE**

Sean Hoath, Depute Clerk to the Licensing Board  
Rhoda Banfro, Solicitor  
Emma Rapley, Licensing Standards Officer

**2. PRIOR MINUTES**

- (i) The Minutes of the Meeting held on 4 April 2019 were submitted and approved
- (ii) The Minutes of the Special Meetings held on 6 June 2019 and 12 June 2019 were submitted and approved

There were no declarations of interest.

**3. APPLICATIONS**

**(i) New Premises Licence – Town Hall Elgin**

The Applicant was present and/or represented by Mr D Squair. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant's representative introduced the application and answered any questions. Cllr Laing proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

**(ii) New Premises Licence – Seafeld Hotel Cullen**

The Applicant was present and/or represented by Mr C Milne. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. Mr Milne introduced the application and answered any questions. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

(iii) **New Premises Licence – Speyside Whisky Auctions**

The Applicant was present and/or represented by Mr G Russell. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. Mr Russell introduced the application and answered any questions. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

(iv) **New Premises Licence – Spey Valley Brewery Keith**

The Applicant was present and/or represented by Ms M Newbould. The Depute Clerk introduced the application and advised that all the paperwork was in order apart from relevant section 50 certificates for building standards and environmental health to enable the Board to grant a full licence. There were no objections or representations had been received. Ms Newbould introduced the application and answered any questions. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application as a provisional licence.

(v) **New Premises Licence – Time Restaurant Buckie**

The Applicant was present and/or represented by Mr M Coull. The Depute Clerk introduced the application and advised that all the paperwork was in order and that one objections had been received from Mr G Duncan who was also present. The Depute Clerk also advised that there had been a representation from environmental health but comments had been incorporated into the operating plan willingly by the applicant thus obviating the need for a representation. Mr D Caldwell from environmental health was present. The Board heard from the parties and the parties answered questions. After discussions the Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application as applied for. The applicant agreed to apply for a major variation to the licence at a later date in order to use the rear room, described as a storeroom on the layout plan, for functions.

(vi) **New Premises Licence – Moray Sports Centre Elgin**

The Applicant was present and/or represented by Ms G Cleaver. The Depute Clerk introduced the application and advised that all the paperwork was in order apart from relevant section 50 certificates for building standards and environmental health to enable the Board to grant a full licence. There were no objections or representations had been received. Ms Cleaver introduced the application and answered any questions. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application as a provisional licence.

(vii) **Major Variation on Transfer – Diceys Elgin**

The Applicant was present and represented by Mr R Anderson of Messrs Grigor and Young, solicitors. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. Mr Anderson introduced the application and answered questions. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

(viii) **Major Variation – Gordon Castle Fochabers**

The Applicant was present and/or represented by Mr R Jones. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. Mr Jones introduced the application and answered questions. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

(ix) **Major Variation – Linkwood Lodge Elgin**

The Applicant was present and represented by Messrs John Gaunt & Partners, solicitors. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The Applicant's representative introduced the application. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

(x) **Major Variation – Phoenix Café Findhorn**

The Applicant was present and represented by Mr D Hammond. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. Mr Hammond introduced the application and answered questions. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

**4. Licensing (Scotland) Act 2005 – Application for Personal Licence**

There was a report to the Board confirming that the Chief Constable had confirmed a relevant conviction in respect of an Applicant for a personal licence case number 2 of 2019. As a result the Board could opt to hold a hearing to consider and determine the personal licence application. The applicant was present to represent himself. The Chief Constable's representative was present. The Board made an initial determination to hold a hearing. The Board then heard from the parties and the parties responded to questions. After consideration of all the evidence Cllr Bremner proposed granting the licence and there being no-one otherwise minded it was agreed to grant the application.

The Convenor called for a ten minute adjournment at this point.

## **5. Annual Functions Report**

There was a report to the Board regarding the Board's duty to publish an annual report as to how the Board had exercised its functions under the Licensing (S) Act 2005 so as to promote the licensing objectives. The report included a draft functions report. The report was introduced by the Depute Clerk and explained by Ms Banfro. The Board noted and approved the draft functions report for publication.

## **6. Annual Financial Report**

There was a report to the Board regarding the Board's duty to publish an annual financial report pursuant to its functions under the Licensing (S) Act 2005. The report included a draft financial report. The report was introduced by the Depute Clerk. The Board noted and approved the draft financial report for publication and decided not to review alcohol licence fees at this time.

NB. Cllr Edwards joined the meeting at this point.

## **7. Scottish Government Consultation on Occasional Licence Fees**

There was a report to the Board regarding the ongoing consultation by the Scottish Government about possible changes to the statutory fee for occasional licences as well as the desirability of imposing a limit on the number of occasional licence applications. The report was introduced by the Depute Clerk and explained by Ms Banfro. The Board noted the consultation, noted the Clerk may comment on the same and agreed to feed comments into the consultation namely: that occasional licence fees should be set by Boards subject to an overall maximum; and that an increase in fees would act as a market limiter itself so setting a cap on application numbers would not be helpful.

## **8. Verbal Update on Social Responsibility**

Ms Banfro provided the Board with a verbal update on the development of a social responsibility guide to assist licence holders in discharging their duty under the Board's statement of policy to develop their own social responsibility policy. The Board noted the position.

## **9. Licensing (Scotland) Act 2005 – Review Of Premises Licences**

The Depute Clerk delivered a verbal update to the Board confirming that at the meeting on the 7 February 2019 a premises licence for Whisky Advisors of Dufftown was immediately suspended with the further specifications that in the event of payment of the fee the suspension would be automatically lifted and in the event the fee remained unpaid then the matter should be brought back before the Board for further review at the first available meeting after 3 months from today's date. The matter was therefore due for review. The fee remained unpaid and there had been no contact from the licence holder. The Convenor proposed the revocation of the licence on the basis that continuing grounds for review existed and that it was necessary, appropriate and proportionate to revoke the licence. There being no-one otherwise minded it was agreed that the licence would be revoked.







# MORAY LICENSING BOARD

MEETING, 5 September 2019 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

## Licensing (Scotland) Act 2005

Type	Premises	Applicant	Date received	Comments
Major Variation	Royal Oak Hotel 34 Castle Terrace Seatown Cullen AB56 4SD	Archie Paul MacLellan	30 July 2019	Major variation to add function room and garden area and to provide off sales Paperwork outstanding No objections or representations
Major Variation	Old Mill Inn Burnbank Brodie Forres IV36 2TD	David McLean	8 April 2019	Major Variation to add activities including hosting live music on occasion, sport and hold a quiz evening Paperwork satisfactory No objections or representation
New Premises	The Gables Whisky B&B The Gables, Lettoch Dufftown AB55 4BU	Anne Jan Zandstra	1 May 2019	New Premises application for guest house with possibility of tastings and pairings without guests having to drive afterwards Paperwork outstanding No objections or representation



## Key to Colour Coding of Applications within Appendices to the Agenda of Business for the Moray Licensing Board

All matters are to be heard by the Moray Licensing Board and the Moray Licensing Board has the final decision. However, in accordance with Government Guidance and locally agreed procedure, applications may be submitted to the Board with a general recommendation.

Please note that colour coding may be subject to change given the nature of the licensing procedure. Documents may be received and/or negotiations resolved following publication of the agenda.

RED

Indicates that the application will normally require to be heard, whether by virtue of general procedural rules or as a result of problems arising. This should apply to all new premises/provisional licence applications. There may be ongoing negotiations to resolve problems.

YELLOW

Indicates changing circumstances with the application. It is not ready to be granted at the time of publication but there are not normally major problems e.g. procedural issues or ongoing negotiations. Applications will normally be submitted with recommendation for grant or deferral.

GREEN

Indicates that all is in order with the application. All documents have been received and checked. All procedures have been followed. There are unlikely to be any representations, objections or problems or the same have been resolved. It is being submitted with a recommendation for grant but members are free to make enquiries as they see fit.



# **Licensing (Scotland) Act 2005**

## **Licensing Objectives**

Section 4 sets out the licensing objectives:

“(1) For the purposes of this Act, the licensing objectives are—

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting children and young persons from harm.”

## **Applications for a Premises Licence or Provisional Premises Licence**

### **Section 20 Application**

By section 20 any person (over 18) may apply to the appropriate Licensing Board for a premises licence in respect of any premises.

An application under subsection must—

- (a) contain a description of the subject premises, and
- (b) be accompanied by—
  - (i) an operating plan for the subject premises,
  - (ii) a “layout plan” of the subject premises, and
  - (iii) the certificates required by section 50(1).

### **Notice of Application**

Notice of the application has been given to—

- (a) each person having a notifiable interest in neighbouring land *i.e. neighbours within 4 metres of the boundary of the premises*
- (b) the community council within whose area the premises are situated,
- (d) the chief constable, and
- (e) the fire service
- (f) the NHS

### **Objections / Representations**

By section 22 any person may, by notice to the Licensing Board—

- (a) object to the application on any ground relevant to one of the grounds for refusal (detailed below)
- (b) make representations to the Board—
  - (i) in support of the application,
  - (ii) as to modifications which the person considers should be made to the operating plan accompanying the application, or
  - (iii) as to conditions which the person considers should be imposed.

A representation is not an objection to a licence being granted. It means the representer would like to see a changes or changes to the licence or conditions on the licence before it is granted.

Where a Licensing Board receives a notice of objection or representation the Board must—

- (a) give a copy of the notice to the applicant, and
- (b) have regard to the objection or representation in determining the application,

unless the Board rejects the notice as being frivolous or vexatious.

Where a Licensing Board rejects a notice of objection or representation as frivolous or vexatious, the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

### **Consideration and determination of a Premises Licence Application**

Section 23(4) states that:

“(4) The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies and—

- (a) if none of them applies, the Board must grant the application, or
- (b) if any of them applies, the Board must refuse the application.”

### **Possible Courses of Action**

1. Grant the licence as applied for;
2. Grant the licence with a condition(s) under s.27(6). Determine the licensing objective and how the situation can be improved and the exact terms of a condition.
3. Grant the licence with a modification to the operating plan under s.23(7) which states that  
“(7) Where the Licensing Board considers that—
  - (a) they would refuse the application as made, but
  - (b) if a modification proposed by them were made to the operating plan for the subject premises accompanying the application, they would be able to grant the application,the Board must, if the applicant accepts the proposed modification, grant the application as modified.”
4. Refuse - In section 23(5) of Act:  
(5) The grounds for refusal are—
  - (a) that the subject premises are excluded premises,
  - (b) that the application must be refused under section 25(2) (*licence refused within the last year*), 64(2) (*licence sought for 24 hours continuous*) or 65(3) (*off sale hours outside 10am to 10pm*),
  - (ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of the premises licence,



- (c) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
  - (d) that, having regard to—
    - (i) the nature of the activities proposed to be carried on in the subject premises,
    - (ii) the location, character and condition of the premises, and
    - (iii) the persons likely to frequent the premises,the Board considers that the premises are unsuitable for use for the sale of alcohol,
  - (e) that, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises, in the locality.
5. Defer – if for example the Board wanted to arrange a further site visit.

### **Consequences of Refusal**

Section 25 says that where a Licensing Board has refused a premises licence application the Board must refuse any subsequent premises licence application in respect of the same premises before the expiry of the period of one year beginning with the date of the earlier refusal UNLESS at the time of the earlier refusal the Board directed that this provision would not apply or the Board is satisfied that there has been a material change of circumstances.

## **Applications to Vary a Licence**

### **Section 29 Application**

By section 29(1) a premises licence holder may apply to the appropriate licensing Board for a variation of the licence. Such an application must be accompanied by

- (a) the premises licence to which the application relates, or
- (b) if that is not practicable, a statement of the reasons for failure to produce the licence.

### **Meaning of Variation**

Section 29(5) defines a variation as meaning any variation (which includes addition deletion or other modification) of:

- (a) any of the conditions to which the licence is subject (*other than those to which the licence is subject by virtue of section 27(1) which are Schedule 3 mandatory conditions and cannot be changed*);
- (b) any of the information contained in the operating plan contained in the licence;
- (c) the layout plan contained in the licence; or
- (d) any other information contained or referred to in the licence.

Generally a variation that involves a change to the information contained within the operating plan is not a minor variation and it requires to be determined by the Licensing Board.

Any variation that involves:

- (i) a change to the layout plan that does not affect the operating plan
- (ii) a restriction on the access for children/young persons
- (iii) a change of premises manager
- (iv) reduction in the alcohol display area or capacity
- (v) reduction in the core hours

can be considered to be a minor variation which must be granted and so is dealt with under delegated powers.

### **Notice of Application**

Notice of the application has been given to—

- (a) each person having a notifiable interest in neighbouring land *i.e. neighbours within 4 metres of the boundary of the premises*
- (b) the community council within whose area the premises are situated,
- (d) the chief constable, and
- (e) the fire service
- (f) the NHS

Section 22 applies the same as it does to a premises licence application and so any person may, by notice to the Licensing Board object to the application on any ground relevant to one of the grounds for refusal or make representations to the Board concerning the application.

### **Determination of the Variation Application**

Section 30(3) provides that the Licensing Board must hold a hearing for the purpose of considering and determining the application. The Board must consider whether any of the grounds for refusal applies and:

- (a) if none of them applies, the Board must grant the application;
- (b) if any of them applies, the Board must refuse the application;

Section 30(5) provides that the grounds for refusal are:

- (a) that the application must be refused under section 32(2) (*licence refused within the last year*), 64(2) (*licence sought for 24 hours continuous*) or 65(3) (*off sale hours outside 10am to 10pm*);
- (b) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives;
- (c) that, having regard to the nature of the activities carried on or proposed to be carried on in the subject premises, the location, character and condition of the premises, and the persons likely to frequent the premises,

the Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation;  
(d) that the Board considers that if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises (taking account of the variation), in the locality.

Where the Licensing Board grants the application, the Board may make a variation of the conditions to which the licence is subject.

Where the Licensing Board refuses the application the Board must specify the ground for refusal, and where relevant the Board must specify the licensing objective or objectives in question.

### **Subsequent Applications Following Refusal**

Section 32 says that where a Licensing Board has refused a premises licence variation application the Board must refuse any subsequent premises licence variation application in respect of the same premises licence, and seeking the same variation made before the expiry of the period of one year beginning with the date of the earlier refusal UNLESS at the time of the earlier refusal the Board directed that this provision would not apply or the Board is satisfied that there has been a material change of circumstances.





---

**REPORT TO: MORAY LICENSING BOARD 5 SEPTEMBER 2019**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE APPLICATION HEARING FOLLOWING DISCLOSURE OF RELEVANT CONVICTION ON APPLICATION (REFERENCE CASE NUMBER 2 OF 2019)**

**BY: CLERK TO THE BOARD**

**1. REASON FOR THE REPORT**

- 1.1 This report is to notify the Board That notice of a relevant conviction has been disclosed on an application for a personal licence.
- 1.2 The Chief Constable has confirmed to the Clerk that the applicant (reference case number 2 of 2019) has been convicted of relevant offence and the Chief Constable has made no recommendation in respect of the application;
- 1.3 That, as a result, s.74(5A) of the Licensing (Scotland) Act 2005 states the Board may hold a hearing to consider and determine whether the licence should be granted or refused.

**2. RECOMMENDATIONS**

**2.1 It is recommended that the Board:-**

- i) **consider and note the existence of a relevant conviction and the fact the Board may hold a hearing following confirmation of relevant conviction by the Chief Constable;**
- ii) **consider whether to hold a hearing and, if so;**
- iii) **hear from the parties, consider the matter and determine whether to grant or refuse the personal licence having regard to any of the licensing objectives;**

### **3. BACKGROUND**

- 3.1 On 28 May 2019 the applicant's application for a personal licence was validated by licensing staff. Within the application, applicants are asked to confirm whether they have been convicted of any relevant offence(s).
- 3.2 The applicant in this case disclosed an offence which had also previously been disclosed following conviction. A copy of the application form from the applicant has been circulated separately to members.
- 3.3 The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007 No. 513) prescribe which offences are relevant offences for the purposes of the Licensing (Scotland) Act 2005.
- 3.4 The Licensing (Scotland) Act 2005 requires the Board to notify the Chief Constable of the receipt of an application for a personal licence. The Chief Constable then has up to 21 days to respond to the notice of application with notice as to whether the applicant has been convicted of a relevant or foreign offence.
- 3.5 The Chief Constable has confirmed to the Clerk that the licence applicant (reference case number 1 of 2018) has been convicted of a relevant offence and a copy of the Chief Constable's letter has been circulated separately to members.
- 3.6 No recommendation, on behalf of the Chief Constable, has been provided in relation to the application.
- 3.7 This report is to notify the Board that under s.74(5A) of the Licensing (Scotland) Act 2005 may hold a hearing to determine the application as a result of receipt of the Chief Constable's notice. There is no other mechanism to deal with the matter.
- 3.8 The Board's scheme of delegation requires that an application for a personal licence where the applicant has been convicted of a relevant offence must be determined by the Board.
- 3.9 The Board should first determine whether to hold a hearing.
- 3.10 If a hearing is to proceed then at the hearing the Licensing Board must, after having regard to the Chief Constable's notice and after giving the licence holder concerned and the Chief Constable an opportunity to be heard:
  - i) If satisfied that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence refuse the application; or
  - ii) If satisfied that it is otherwise necessary for the purposes of any of the licensing objectives, refuse the application; or
  - iii) If not so satisfied grant the application.

3.11 The licensing objectives are:

- i) Preventing crime and disorder
- ii) Securing public safety
- iii) Preventing public nuisance
- iv) Protecting and improving public health
- v) Protecting children and young persons from harm

#### **4. IMPLICATIONS**

**(a) Moray 2023 A Plan for the Future/Service Plan**

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan (Moray 2023) in relation to healthier citizens, a growing and diverse economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

**(b) Policy and Legal**

Legal implications have been explained above.

**(c) Financial Implications**

None

**(d) Risk Implications**

The Board is to have regard to any of the licensing objectives, particularly the crime prevention objective and decide whether the risk justifies intervention on such grounds.

**(e) Staffing Implications**

None.

**(f) Property**

None.

**(g) Equalities**

There are no issues in this case.

**(h) Consultations**

Consultation is not required.

#### **5. CONCLUSION**

- 5.1 It is proposed that the Board note the existence of a relevant conviction and the possibility of holding a hearing following confirmation of the conviction by the Chief Constable;**

- 5.2 It is proposed that the Board, having regard to the notice from the Chief Constable, determine whether to hold a hearing and, if so, hear from the parties, consider the matter and determine whether to grant or refuse the licence for the purposes of any of the licensing objectives.**

Author of Report: Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board

Background Papers: There are no background papers

Ref: SAH





---

**REPORT TO: MORAY LICENSING BOARD 5 SEPTEMBER 2019**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – CHIEF CONSTABLE’S REPORT UNDER SECTION 12A**

**BY: CLERK TO THE BOARD**

**1. REASON FOR THE REPORT**

- 1.1 This report is to place before the Board a report from the Chief Constable, who has a responsibility to report certain matters to the Board on an annual basis.

**2. RECOMMENDATIONS**

- 2.1 It is recommended that the Board notes the contents of the report attached at Appendix 1.

**3. BACKGROUND**

- 3.1 The Chief Constable on 16 July 2019, submitted a report under section 12A of the Licensing (Scotland) Act 2005. This section provides that he should send a report to the Licensing Board at the end of each financial year that sets out the following information.

3.1.1 His views about matters relating to policing in the Licensing Board’s area during that year and the following year, in connection with the operation of the Licensing (Scotland) Act 2005; and

3.1.2 Any steps taken during the year, or intended to be taken in the following year, to prevent the sale or supply of alcohol to children or young people in the Board’s area.

- 3.2 The Chief Constable’s report for 2018 to 2019 is attached at **Appendix I**.

#### **4. SUMMARY OF IMPLICATIONS**

**(a) Moray 2023 A Plan for the Future/Service Plan**

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan (Moray 2023) in relation to healthier citizens, a growing and diverse economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

**(b) Policy and Legal**

Matters raised in the Chief Constable's report may be relevant to Licensing Board policy.

**(c) Financial implications**

None.

**(d) Risk Implications**

None

**(e) Staffing Implications**

None.

**(f) Property**

None.

**(g) Equalities**

None.

**(g) Consultations**

None.

#### **5. CONCLUSION**

**5.1 It is proposed that the Board note the report from the Chief Constable.**

Author of Report: Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board

Background Papers:None

Ref: SH



**POLICE  
SCOTLAND**

Keeping people safe

CHIEF CONSTABLE'S REPORT TO THE  
MORAY LICENSING BOARD  
FOR THE PERIOD  
1<sup>ST</sup> APRIL 2018 to 31<sup>ST</sup> MARCH 2019

## **Foreword**

It gives me great pleasure to provide the Annual Licensing Report for 2018/19, in accordance with Section 12(A) Licensing (Scotland) Act 2005. During this year the Minimum Unit Pricing of Alcohol was introduced in Scotland. We will work through the Evaluation Advisory Group to assess the impact of this legislation.

Working in partnership is key to effective regulation in liquor licensing. Police Scotland remains committed to working closely with partners in the 32 Local Authorities across Scotland to ensure a fair and consistent approach. Preventing alcohol fuelled violence, disorder and antisocial behaviour is a priority and I believe that working together to achieve effective early intervention and enforcement is vital to this.

I would like to acknowledge the many active local partnerships that provide continued support, enabling Police Scotland and partners to drive improvement in licensing. I will ensure that all officers and staff continue to recognise the importance of working closely with key partners, including the Licensed Trade, to improve licensing standards nationally utilising the range of options available to them.

I am confident that through strong partnerships and collaborative working, we will meet any challenges that may arise and will continue to improve licensing standards for the communities of Scotland.

Mr Iain Livingstone QPM

Chief Constable

Police Service of Scotland

## **Police Scotland Licensing Overview**

The Violence Prevention and Licensing Co-ordination Unit (VPLCU) sits within Safer Communities based at Dalmarnock Police Station, Glasgow.

The VPLCU upholds the two tier structure for licensing which supports both national and local priorities through service delivery. They have overall responsibility for determining and delivering national licensing strategy and policy, by providing advice, guidance and support to divisional licensing teams as well as undertaking other specialist functions.

The Violence Prevention and Licensing Co-ordination Unit is a specialist department which consists of a small team of officers, based in Glasgow. The officers within the unit work with divisional licensing teams and partner agencies to help shape policy and strategy around the police licensing function. They provide practical and tactical advice to police licensing practitioners, operational officers, supervisors and policing commanders.

The VPLCU seek to ensure that legislation governing the sale and supply of alcohol is applied consistently across the country and all opportunities are taken to stop the illegal or irresponsible sale, supply or consumption of alcohol with the intention of preventing and reducing crime and disorder.

During 2018/2019, from a licensing perspective, our particular focus will be on the following;

- Scrutiny of the serious incidents of violence, disorder and antisocial behaviour linked to licensed premises.
- Continuous professional development training and guidance for staff to harmonise licensing practice across the country.
- Working closely with statutory partners within a National Licensing Trade Forum to identify licensing related issues and prevent/reduce associated crimes.
- Governance and ongoing development of the National ICT Licensing System, known as “Inn Keeper”, to increase the efficiency and effectiveness of liquor and civic licensing administration and management.
- The implementation and ongoing development of the Licensing Admin tool provides divisional licensing officers with a single ICT product negating the need to research police systems independently. Through accurate recording, the licensing admin tool assists Police Scotland in deploying our resources to the right places and the right time to keep people safe.

Each of the 13 Local Policing Divisions have a licensing team responsible for the day to day management of licensing administration, complying with statutory requirements as well as addressing any issues that may arise within licensed premises in their local area.

## **LICENSING BOARD AREA**

The Moray Licensing Board area is policed by North East Division.

Chief Superintendent Campbell Thomson is the Local Police Commander who has the responsibility for all day-to-day policing functions.

### **Local Policing Priorities**

Following our public consultation process, the policing priorities for North East Division, as set out in our Local Policing Plan are as follows:

- Antisocial Behaviour, Violence and Disorder;
- Acquisitive Crime;
- Road Safety and Road Crime;
- Protecting People at Risk of Harm;
- Serious Organised Crime;
- Counter Terrorism and Domestic Extremism.

### **OPERATION OF THE LICENSING (SCOTLAND) ACT 2005**

The North East Division Licensing Team is located across the Division in Elgin, Inverurie, Aberdeen and Stonehaven. All staff have a division wide remit and a working knowledge of all the areas covered.

The North East Division Licensing Team, supported by Community Policing Officers, has promoted the Police Service of Scotland's force priorities alongside the five licensing objectives, the overarching principles and aims of the Licensing (Scotland) Act 2005.

In the reporting period, as statutory consultees, the team responded to the Board regarding 438 applications for occasional licences or extended hours, 12 premises or provisional premises applications, 207 personal licence holder applications and 38 premises variations or premises licence transfer applications.

Where any query arises from any such application, a member of the team will seek to discuss the application with the applicant to ensure that responses to the Board by means of representation or objection are considered, reasonable and proportionate.

The team enjoys a strong working relationship with the Local Authority Licensing Standards Officers. Information is shared on a regular basis and joint visits to licensed premises are conducted, on both a pro-active and reactive basis.

The North East Division Licensing Team is represented on the Local Licensing Forum and Moray Alcohol and Drug Partnership and works alongside the following groups and organisations to jointly improve local licensing issues:

- Licensed Trade Association;

## NOT PROTECTIVELY MARKED

- Community Safety Partnership;
- Licensing Standards Officers;
- Local Security Industry companies;
- Best Bar None;
- Street Pastors.

Reviewing incidents on, or connected to, licensed premises is a key part of our day-to-day business.

Community based Police Officers are encouraged and expected to routinely visit licensed premises within their area. Moray benefits from a dedicated Weekend Policing Plan to support the night time economy.

Within the reporting period, there were 3305 inspections (visits) to licensed premises within Moray recorded on the InnKeeper system.

Any Police Officer who attends an incident at any licensed premises is expected to submit a concise report via the InnKeeper system, particularly when the incident involves violence, disorder, anti-social behaviour, drunkenness, drug misuse, underage drinking, breaches of licensing legislation or any other matter that might impact on public safety.

Within the reporting period, there were 212 incidents connected to licensed premises within Moray recorded on the InnKeeper system. This is a significant reduction from 261 the previous reporting year, which we view positively.

The information obtained may show a causal link between the operation of the premises and the incident. An incremental intervention process allows for issues to be addressed quickly and effectively at an early stage. This includes a low level 'interaction' which may involve a discussion between the Police and the premises management and/or licence holder. The level of engagement from within the Moray licensed trade is very good and in many instances, this approach reduces recurrence or escalation.

Premises may become 'monitored' with closer attention being paid to any incidents occurring there. This is often undertaken in conjunction with tasked, supportive visits to the premises by uniformed Police Officers.

However, where necessary, the staged process allows for more formal intervention to support premises where the need for support has been identified. A premises licence holder and the premises management may be asked to attend a meeting with the Police, where concerns will be discussed. This will often involve an agreed Action Plan being put in place, with a reasonable time scale for completion. The most common example of an agreed 'action' is refresher training of staff covering their responsibilities including the sale of alcohol to underage or intoxicated persons, 'Challenge 25' and the general terms and conditions of the licence held.

Should the intervention stage not bring about the necessary changes, or be otherwise unsuccessful, the next stage is the submission of a premises licence review application for the consideration of the Licensing Board.

## **NOT PROTECTIVELY MARKED**

Over the reporting period there have been three licensed premises in Moray subject to a period of monitoring or intervention, a reduction from four the previous year. The issues that were addressed ranged from sale of alcohol outwith licensed hours, highly intoxicated patrons and sale of alcohol to persons under 18 years of age.

Partnership working between the Police, the Licensing Standards Officers and the premises licence holders and premises' management teams continues to hopefully fully resolve the issues and prevent bringing the matters to the Licensing Board by premises licence review application.

In the reporting period there was one premises licence review application submitted to the Board.

The North East Division Licensing Team also has a system in place which monitors certain conduct of Personal Licence holders. Should such a licence holder be charged with any offence, this is brought to the attention of the team. Should the circumstances appear to be inconsistent with any of the five licensing objectives, consideration will be given to bringing this to the attention of the Board by way of a personal licence review. In addition, should an individual be convicted of a relevant offence, this will undergo the same scrutiny.

During the reporting period the North East Division Licensing Team was actively engaged in the consultation process for the Boards' new Statement of Licensing Policy.

We are very pleased to see the inclusion into the new Statement of Licensing Policy of a condition relating to vulnerability through intoxication training and a duty of care policy, following a request for this measure by the North East Division Licensing Team. The team will continue to work alongside the LSOs to assist premises complying with this new condition.

The team will be happy to report back to Board at any stage in the future any impact on policing which may relate to any change in the Board's policy.

### **PREVENTING THE SALE OR SUPPLY OF ALCOHOL TO CHILDREN OR YOUNG PEOPLE**

Moray attracts a relatively low number of reports of underage drinking or youth congregation involving alcohol when considering other towns and cities across Scotland.

Where a person under 18 years of age is found to be either under the influence of alcohol, drinking alcohol in a public place or in possession of alcohol, the Police Officer involved will take all appropriate steps to ascertain the source of the alcohol.



## NOT PROTECTIVELY MARKED

Where information that cannot be fully evidenced is received regarding the sale of alcohol to children and young persons, in accordance with the national guidance contained within the 'Alcohol Toolkit', letters will be sent to licensed premises in the area reminding them of their responsibilities and requesting extra vigilance.

If such concerns were to continue in respect of specific premises, then other operational strategies would be considered.

One way in which North East Division delivers our commitment to the community is through our School Liaison Officers and School Based Officers. These Officers attend schools and other educational establishments seeking to equip our young people with the appropriate information and understanding that will allow them to make better informed decisions in key areas of their lives, both now and in the future. To this end they deliver lessons, linked to the Curriculum for Excellence, on a range of subjects including alcohol, controlled drugs and anti-social behaviour – particularly alcohol fuelled anti-social behaviour and the potential for related safety issues and consequences.

In support to the Protection of Children from Harm licensing objective, applications for premises licences and variations to premises licences come under close scrutiny often resulting in the submission of letters of objection, or more commonly, of representation, in which the imposition of conditions in respect of on sales, with regard to the times and terms in which children can be on such premises, will be recommended by the Chief Constable.

During the reporting period, the team was actively engaged in promoting the national 'You're Asking for It' campaign aimed at deterring proxy sales of alcohol for supply to children and young persons.

The following offences were recorded under the Licensing (Scotland) Act 2005 during the reporting period, in respect of sale or supply of alcohol to children or young persons:

Section 102(1)	On sale of alcohol to young person	1
Section 104A(1)(a)	Buy alcohol for a child (on sales)	1
	Buy alcohol for a child (off sales)	1
Section 104B91)(a)	Buy alcohol for a young person (off sales)	1
Section 106(2)	Responsible person allow consumption of alcohol by a child or young person (on sales)	1

In respect of the offences which occurred in off sales premises, the persons responsible for purchasing the alcohol were charged accordingly and reported to the Crown Office and Procurator Fiscal Service. No action was taken against the staff members responsible, as they had shown due diligence.

## **NOT PROTECTIVELY MARKED**

In respect of the other offences, Police enquiries are ongoing. However the licensed premises involved have been subject to an intervention.

### **TACKLING SERIOUS AND ORGANISED CRIME**

Many of the processes and procedures involved in licensing applications are carried out to guard against Serious Organised Crime Groups (SOCG) infiltrating the licensed trade in any way. This scrutiny is further enhanced with the nation-wide InnKeeper system. This database contains details of all liquor and civic licences for every Division in Scotland, and enhances our information sharing in respect of premises and people in the licensed trade as they move about the country and work in multiple venues.

If such an SOCG were able to gain a foothold in licensed premises this would afford the criminal group a seemingly legitimate income stream, which could be no more than a veneer for other criminal activities such as money laundering, tax evasion, drug and people trafficking and other dishonest activities.

Many of the procedures currently carried out by the North East Divisional Licensing Team, particularly in relation to new premises licences and the transfer of premises licences are done to ensure complete financial transparency and to ensure there are no business related irregularities which may be indicative of SOCG involvement.

Frequent and directed Police attendance and contact with licensed premises also increases the opportunity for irregularities to be identified or reported.

As part of this, the North East Divisional Licensing Team regularly liaise with Police Interventions staff who are aware of SOCG activity within the Division to ensure that applicants are not affiliated in any way to such groups, before responding to the Licensing Board.

This consistent high profile approach and interaction with licensed premises in direct correlation with the aforementioned close scrutiny in the application process should reinforce the work carried out to maintain this position.

### **PROPOSED ACTIVITY FOR THE YEAR AHEAD**

Over the forthcoming year, North East Division Licensing Team, in conjunction with Community Policing Teams, will work alongside licensed premises, to ensure that these premises are adhering to the spirit of the legislation and operate in a manner that supports the five licensing objectives. We aspire to maintain our number of supportive visits to licensed premises and hope to see a continued reduction in the number of incidents taking place on licensed premises.

It is intended that our involvement and participation in public safety campaigns will continue, such as the 'Ask for Angela' personal safety campaign and the 'One

## **NOT PROTECTIVELY MARKED**

Punch' campaign which highlights consequences for both victims and perpetrators of spontaneous acts of violence.

Working with established partnerships but particularly with the licensed trade, we hope to continue to see a reduction in alcohol-related crime, particularly violence, whether perpetrated within licensed premises, public places or private spaces.

To conclude we would like to thank you for your continued support and stress the importance of this collaborative problem solving approach. This ensures that police, licence holders and licensed premises staff have a better understanding of their responsibilities. We look forward to furthering this partnership over the coming year.

