



REPORT TO: THE MORAY LICENSING BOARD 15 NOVEMBER 2023

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – ANNUAL REVIEW OF LICENSING FEES

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 To update the Board on the overall income versus expenditure for alcohol licensing for the last financial year by way of an annual financial report;
- 1.2 Make predictions in respect of likely future income and expenditure; and
- 1.3 Determine whether the Board wishes to undertake a review of licensing fees as a result.

2. RECOMMENDATION

2.1 It is recommended that the Board:-

- i) Note the current fees attached at Appendix 1;**
- ii) Note the financial report on income and expenditure at Appendix 2;**
- iii) Agree to publish the financial report; and**
- iv) Consider future fees i.e. whether the Board wishes to keep the current fee structure or revise the same and in the latter case proceed to consider proposals for change as the Board sees fit.**

3. BACKGROUND

Current Fees

- 3.1 The Licensing (Fees) (Scotland) Regulations of 2007 (referred to here as the “Fees Regulations”) were made in accordance with the Licensing (Scotland) Act 2005 (“the Act”). The Fees Regulations require each Licensing Board to set certain fees in respect of various applications under the Act. This includes application and annual premises licence fees that are set by Boards but within overall maxima prescribed by the Scottish Government.

- 3.2 The current fee scale is attached at **Appendix 1**. It was agreed by the Board at the meeting on the 7 September 2022 (paragraph 5 of the minute refers).
- 3.3 The current scale sets the premises licence application and annual fees at the maximum level prescribed by the Scottish Government, which means that those fees cannot be increased but they could be reduced.
- 3.4 In accordance with the Fees Regulations, the fee structure is designed around the principle that licensing is to be, as far as possible, self funding and that each Board was to broadly recover, through licensing fees, the overall cost to the Council and Board of providing licensing functions.
- 3.5 The expenses to be recovered are not limited to Licensing Board expenses. Expenses must include all those incurred by both the Board and the Moray Council in administering the Act in general. This includes expenses for all Board and Council licensing administration including that from other services within the Council contributing to the licensing procedure.

4. FINANCIAL REPORT ON INCOME AND EXPENDITURE

- 4.1 A review of licensing fees is undertaken annually.
- 4.2 With the assistance of officers in the Finance service, the Clerk has now collated income and expenditure figures for the financial year 1 April 2022 to 31 March 2023.
- 4.3 The figures and calculations are summarised at **Appendix 2**.
- 4.4 The figures reveal the following indications:
 - 4.4.1 There was a notional surplus of £23,015.00 for the last financial year. However this surplus should be viewed in the light of the loss (that exceeded £26,000) from the previous year.
 - 4.4.2 Income is fairly fixed. The majority of income arises from premises licence annual fees and the numbers of premises are fairly consistent.
 - 4.4.3 In terms of expenditure, changes have come about in previous years mostly as a result of the calculation of internal recharges and so the cost to the Council of providing the licensing function. Legal Services time has reduced. Legal resources are stretched and it is not possible to devote as much time to alcohol licensing. The Licensing and Regulatory section experienced the loss of a solicitor some time ago but it has not proved possible to recruit despite several attempts. It is also at a time when the new civic government licence type of short term lets has demanded a great deal of licensing time.

5. PUBLICATION OF THE FINANCIAL REPORT

- 5.1 It should also be noted that The Air Weapons and Licensing (Scotland) Act 2015 introduced requirement for Boards to publish both a functions report (relating to the objectives, decisions etc) and a financial report (relating to income and expenditure) no later than three months after the end of each

financial year i.e. by the end of June each year. The financial information detailed in this report serves as the required financial report. The report has been produced later than the time specified in the Act as it is difficult to obtain financial information in time.

- 5.2 A separate report was submitted to the meeting of the 21 June 2023 (para 6 of the minute refers) relating to the required functions including details of the licensing applications processed.
- 5.3 The Board is asked to note and agree to publication of this financial report on the Board's web pages.

6. FUTURE FEES

- 6.1 As income is primarily made up of annual fees and as the number of premises licences is largely stable, overall income going forward is predicted to be quite consistent. It is encouraging that premises licence numbers have remained stable and that income has recovered to the extent of not falling short of expenditure.
- 6.2 Annual fees were increased to the maximum levels following the last financial review.
- 6.3 As stated, expenditure can fluctuate more than income. So this needs to be monitored going forward.
- 6.4 In addition, at the start of the current financial year, many premises were subject to a re-evaluation for business rates by the Scottish Assessor's Office. This resulted in some premises changing the rateable value banding as so their annual fee category. The fee banding for many premises has increased for the fees due on 1 October 2023 however there are also just as many premises that have reduced their rating and so fee.
- 6.5 As a result of these factors it is not recommended that the fee scale is changed as a result of this report. Instead it is recommended that the current fee scale remains in place pending the next review in 2024.
- 6.6 The overarching legal requirement is for the Board to "have regard to the desirability of ensuring that the total fees payable under these Regulations to that Board in respect of any period are likely to be broadly equivalent to the expenses incurred by that Board, and the council for the area of that Board, in administering the Act generally...".
- 6.7 Prior to the change last year fees were a full 20% below the statutory maximums and among the lowest, if not the lowest, fees in Scotland for many years.
- 6.8 Fee setting is not an exact science. It should be noted that figures for both projected income and expenditure can only ever be estimates and may not be a true reflection of actual amounts. The estimates are based on historical data about income, expenditure and transactions.

- 6.9 In respect of any review it should be noted that where, in accordance with legislation, fees are set by the Board there is no requirement to consult upon those fees before any variation is brought into effect. Nevertheless there will always be pressure from the licensed trade not to place any increased financial burden on them.
- 6.10 There is a requirement that fees may not be varied so that the variation comes into effect less than a year after the date with effect from which the fee in question was first determined or last varied. As the fees were last varied on 7 September 2022, they can be varied again at any time.
- 6.11 Finally, it has been noted before that the Scottish Government was reviewing licensing fees and exploring options for a possible change to the fee structure. In particular the Scottish Government consulted some time ago on the statutory fee for occasional licences. Any major change to the cost of an occasional licence may radically alter the income and expenditure balance and necessitate a further fee review. However, from information currently available to officers, including attendance at a national group organised by the Scottish Government, it appears unlikely that legislation will be brought forward to amend occasional licence fees any time soon. Recommendations in this report therefore proceed on the assumption of the statutory fee structure remaining the same.

7. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan 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

The Policy and Legal implications have been explained above.

(c) Financial implications

Financial implications relating to fee levels have been explained above.

(d) Risk Implications

As explained above, the projected figures for future income are only estimates. Accordingly there is a risk that the actual income differs from the projected income. The risk in connection with the setting of fees is that if fees are set too low then the cost of administering the licensing system may not be recouped. Conversely if fees continue to produce a

surplus then the Board's decisions in respect of fees may be open to judicial review.

(e) Staffing Implications

Preparation of fee projections has involved considerable staff time and fees are reviewed annually. No additional resources are required. It is anticipated that going forward fee income will ensure full cost recovery in terms of providing the licensing function. There will be some staff time in amending invoice amounts on the system if the fees are increased.

(f) Property

None.

(g) Equalities/Socio Economic Impact

In considering this matter the Board should have regard to issues of equality and the subject's (licence holders) rights under the European Convention on Human Rights (and the Human Rights Act 1998). It is not considered necessary to undertake an equalities and human rights impact assessment in connection with this report.

The Board should have regard to all the circumstances.

(h) Climate Change and Biodiversity Impacts

None.

(i) Consultations

As far as possible, the figures within this report have been prepared in consultation with Alistair Milne, Accountant of the Council's Finance Service.

8. CONCLUSION

8.1 It is proposed that the Board note the contents of this report and determine what further action is required.

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

Background Papers:

Ref: