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**REPORT TO: MORAY LICENSING BOARD ON 30 SEPTEMBER 2020**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PREMISES LICENCE  
REVIEW HEARING (REFERENCE NUMBER 2 OF 2020)**

**BY: CLERK TO THE BOARD**

**1. REASON FOR REPORT**

1.1 The Licensing (Scotland) Act 2005 at section 36 provides that anyone can request a review of a premises licence.

1.2 The report is to notify the Board:

- i) That an application for a review of a particular premises licence has been submitted by the Chief Constable's representative. A copy of the application for review has been circulated to members separately.
- ii) The Board may reject a review application if the Board considers the application:
  - a) Is frivolous or vexatious; or
  - b) Does not disclose any matter relevant to any ground for review
- iii) That, where the application is not rejected, section 38(1) of the Licensing (Scotland) Act 2005 requires the Board to hold a review hearing to consider and determine the review application.
- iv) That, if satisfied at the hearing that a ground for review is established, The Board is to proceed to determine whether any further steps should be taken in respect of the premises licence.
- v) That if during the course of the premises licence review, the Board makes a finding that a personal licence holder, who is or was working in the premises, acted in a manner inconsistent with the licensing objectives then the Board must also hold a hearing to review the personal licence.

## **2. RECOMMENDATION**

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

- i) note the application for review by the Chief Constable and the initial requirement for the Board to determine if it considers the review application to be frivolous or vexatious or does not disclose any matter relevant to a ground for review;
- ii) note the requirement in section 38 to hold a review hearing, following the application by the Chief Constable, if the Board determines that any matter relevant to a ground for review is disclosed;
- iii) note that details of the premises licence review application have been passed to the licence holder and the Licensing Standards Officer (LSO) and the LSO has reported on the same. A copy of the LSO's report has been circulated separately in case it is required;
- iv) if necessary, hear from the parties, note any recommendations from the Chief Constable, take the LSO's report into account, consider the matter and determine whether a ground for review is established and, if so, determine whether one of the possible steps set out in paragraph 3.9 is necessary; and
- v) note the requirement that if during the course of the premises licence review, the Board makes a finding that a personal licence holder, who is or was working in the premises, acted in a manner inconsistent with the licensing objectives then the Board must also hold a further hearing to review his/her personal licence.

## **3. BACKGROUND**

- 3.1 A request for review from the Chief Constable has been received dated 3 August 2020. The Chief Constable states that the grounds for review established are: relevant to sections 36(3)(b) and the licensing objectives of protecting and improving public health; and section 36(3)(za) that having regard to the licensing objectives the licence holder is not a fit and proper person to be the holder of a premises licence.
- 3.2 A copy of the Chief Constables request is attached at **Appendix 1**.
- 3.3 The full grounds for review, as set out in the Licensing (Scotland) Act 2005 at section 36(3), are as follows:
  - i) (za) That having regard to the licensing objectives the licence holder is not a fit and proper person to be the holder of a premises licence.
  - ii) (a) That one or more of the conditions to which the premises licence is subject has been breached; or
  - iii) (b) Any other ground relevant to one or more of the licensing objectives.

- 3.3 It should be noted that in this case the Chief Constable has included a recommendation that, if the Board finds that ground(s) for review are established, then the Board should proceed to take such steps as it considers necessary and appropriate having regard to all options available.
- 3.4 It should also be noted that if a ground for review is established in terms of s.36(3)(za) i.e. the licence holder is not fit and proper then because of section 39(2A), the Board would be obliged to revoke the licence. The licence holder in this case is the individual Steven Taylor.
- 3.5 Section 36(6) provides that the Board may reject a premises licence review application if it considers the application to be frivolous or vexatious or if it does not disclose any matter relevant to a ground for review. That is the first test for the Board to consider.
- 3.6 By virtue of section 38(1), if the review application is not rejected, then the Board must hold a hearing for the purposes of considering and determining the review application.
- 3.7 Where a hearing of a review application is to be held the Board must give notice of the hearing to the applicant, the licence holder and the Licensing Standards officer (LSO). As a matter of course, notices were issued to all. In particular notice was issued to the applicant on the 22 September 2020. In relation to the licence holder and LSO, notices were accompanied by a copy of the review application.
- 3.8 The LSO is required to prepare and submit a report to any hearing and a copy of that report is attached at **Appendix 2**. The Board must take the report into account at any hearing.
- 3.9 The Board may also obtain further information from such persons, and in such manner, as the Board thinks fit, and take the information into account. The Board may also take into account any information relevant to any ground for review even though it is not relevant to any circumstances alleged in the review application under consideration.
- 3.10 At any hearing the Licensing Board may, after giving the parties an opportunity to be heard and having regard to both the recommendation contained in the Chief Constable's application and the report of the LSO and if satisfied that a ground for review is established take such of the following steps that the Board considers necessary or appropriate for the purposes of any of the licensing objectives:
- i) Issue a written warning to the licence holder
  - ii) Make a variation of the licence, which may be permanent or for such period as the Board may determine;
  - iii) Suspend the licence for such period as the Board may determine;
  - iv) Revoke the licence
- 3.11 Any steps taken must also be reasonable and proportionate, having regard to all the circumstances of the case, as well as necessary or appropriate for the purposes of the licensing objectives.

- 3.12 The licensing objectives are set in out in paragraph 4(a).
- 3.13 Where the Board has made a variation or suspended the licence the Board may, on the application of the licence holder, and if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary, revoke the variation or suspension.
- 3.14 In accordance with section 84 where, in the course of a review hearing in respect of any premises licence, a Licensing Board makes a finding that any personal licence holder who is or was working in the licensed premises acted in a manner which was inconsistent with any of the licensing objectives the Board must hold a further hearing to review the personal licence.
- 3.15 The premises manager, also Mr Steven Taylor who is a personal licence holder, has been invited to attend this meeting to respond to the premises licence review. According to the Chief Constable's request, other members of staff were possibly present but were not identified and it is not known if there was another personal licence holder present. If relevant, the personal licence holder should be given the opportunity to listen to the evidence presented in the review of the premises licence and the Board should then hear from the personal licence holder before making any finding as referred to in paragraph 3.13.
- 3.16 The Chief Constable has actually submitted a separate request for review of the premises manager's personal licence so this will be dealt with under a separate Agenda item.
- 3.17 Should the Board then make such a finding as referred to above then the Board must hold a further hearing to review the personal licence.
- 3.18 At a hearing to review the personal licence, after giving the licence holder and such other persons as the Board considers appropriate an opportunity to be heard, and if satisfied that it is necessary to do so for the purposes of any of the licensing objectives, The Board may make one of the following orders:
- i) An order revoking the personal licence;
  - ii) An order suspending the personal licence for such period, not exceeding 6 months, as the Board considers appropriate; or
  - iii) An order endorsing the personal licence.
- 3.19 Any order made must be reasonable and proportionate, having regard to all the circumstances of the case, as well as necessary for the purposes of the licensing objectives.
- 3.20 The endorsing of personal licences is system within the Licensing (Scotland) Act 2005 akin to driving licence endorsements whereby an endorsement will remain on the licence for 5 years from the date of endorsement. If at any time a licence holder amasses 3 endorsements then the Board must hold a further hearing to determine whether to suspend or revoke the licence.

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

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

In the exercise of functions under the Licensing (Scotland) Act 2005 the Licensing Board is to have regard to and promote the licensing objectives which are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

The licensing objectives closely reflect some of the objectives of the Community Plan and are intended to promote community involvement and prevent the consumption of alcohol from being the source of nuisance, anti-social behaviour and harm. This is also true of the social inclusion and environmental aspects of the Corporate Plan.

**(b) Policy and Legal**

Legal implications have been explained above.

**(c) Financial Implications**

None.

**(d) Risk Implications**

Taking account of allegations made, the Board is to have regard to all the circumstances and decide whether any of the licensing objectives have been compromised and whether any potential risk identified then justifies further intervention as necessary and appropriate for the purpose of the objectives.

**(e) Staffing Implications**

None.

**(f) Property**

None.

**(g) Equalities/Socio Economic Impact**

In considering this matter the Board should have regard to the subject's rights under the European Convention on Human Rights (and the Human Rights Act 1998).

**(h) Consultations**

Consultation is not required.

#### **5. CONCLUSION**

**5.1 It is proposed that the Board note the application for review by the Chief Constable and determine if it considers the application to be frivolous or**

**vexatious or does not disclose any matter relevant to a ground for review;**

- 5.2 It is proposed that the Board hold a review hearing if the application is not rejected, hear from the parties, take account of the LSO's report and the recommendation by the Chief Constable, consider the matter and determine whether a ground for review is established and, if so, determine whether one of the possible steps set out in paragraph 3.9 is necessary for any of the licensing objectives, reasonable and proportionate.**
- 5.3 It is proposed that if during the course of the premises licence review, the Board makes a finding that a personal licence holder, who is or was working in the premises, acted in a manner inconsistent with the licensing objectives then the Board hold a further hearing to review his/her personal licence. The Board should then hear from the parties, take account of any recommendation by the Chief Constable and determine if one of the orders in paragraph 3.16 is necessary for the purpose of any of the licensing objectives, reasonable and proportionate.**

<b>Author of Report:</b>	<b>Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board</b>
<b>Background Papers:</b>	
<b>Ref:</b>	<b>SAH</b>