



REPORT TO: THE MORAY LICENSING BOARD 30 SEPTEMBER 2020

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

BY: CLERK TO THE BOARD

1. REASON FOR THE REPORT

- 1.1 This report is 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, to make predictions in respect of likely future income and expenditure and determine whether the Board wishes to undertake a review of licensing fees as a result.

2. RECOMMENDATIONS

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 data at Appendix 2;
- iii) agree to publish the financial report;
- 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 nominate and instruct the policy sub group to consider proposals for change as the Board sees fit;
- v) note the table of business conducted for the last financial year as well as the first half of this calendar year for comparison attached at Appendix 3; and
- vi) note that the annual functions report will be brought to the next meeting of the Board on the 2 December;

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 11 August 2016 (paragraph 4 of the minute refers).
- 3.3 The current scale sets the premises licence **application** 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 The current scale sets the premises licence **annual** fees at 20% below the maximum level prescribed by the Scottish Government, which means that those fees can either be increased by up to 20% or reduced.
- 3.5 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.
- 3.6 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 departments of 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 department, the Clerk has now collated income and expenditure figures for the financial year 1 April 2019 to 31 March 2020.
- 4.3 The figures and calculations are summarised at **Appendix 2**.
- 4.4 The figures reveal the following indications:
 - There was a notional surplus of £12933.00 for the last financial year.
 - This has been the first full financial year reflecting a number of staff changes including the filling of the Licensing Standards Officer post.
 - Legal Services has been through a number of changes and the regulatory and licensing section now has a full complement of staff

including senior solicitor, solicitor, two LSOs and administrative support.

- The financial year 2019/2020 also saw the implementation of the mobile ICT system for LSOs, previously delayed by the supplier, so the expenditure for that has now been incurred.

Publication of the Financial Report

- 4.5 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. There is a separate agenda item relating to the functions report that includes details of the licensing applications processed.
- 4.6 The Board is asked to note and agree to publication of the financial report on the Board's web pages.
- 4.7 The Board is also asked to note that attached at Appendix 3 is a review of business transacted. This is not a full functions report as referred to in paragraph 4.5 above and that functions report will be brought back to the Board at the next meeting on the 2 December.

5. FUTURE FEES

- 5.1 As income is primarily made up of annual fees and as the number of premises licences is largely stable, overall income is quite consistent. It is therefore hoped that the income for 2020/2021 will be of a similar level.
- 5.2 The normal review has been delayed by the COVID pandemic. Annual fees fall due on the 1st October each year in advance for the year. The Board is obliged to send a reminder to licensed premises for the payment of annual fees and those reminders (invoices) have already gone out as normal. So the fees for the period 1/10/20 to 30/9/21 have remained unchanged as it has not been possible to carry out the review before fees became due.
- 5.3 Unfortunately licensed premises have suffered as a result of COVID. Discussions were held between SOLAR Licensing (the national body for licensing clerks) and the Scottish Government about whether annual fees would still be due. In the end the Scottish Government did not intervene with the process of payment of annual fees and the law did not change. Therefore fees were legally due as normal. The Licensing Board is fully financed by the Moray Council and fee income is passed to the Council to cover the cost to the Council of providing the licensing function. That cost to the Council did not go away and annual fees represent the vast majority of the licensing budget. Therefore it was just not possible to waive annual fees by absorbing a cost of over £110,000.00. It would have left no budget going forward. The Clerk has checked with colleagues around the country and the position is the same throughout Scotland with licensing clerks issuing annual fee reminders as normal.

- 5.4 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...”.
- 5.5 Fee setting is not an exact science. However it seems likely that keeping things as they are will continue to result in income being broadly equivalent to expenditure. This means that despite missing the usual timescale for review, the recommendation is for the Board to keep the current fee structure in any event.
- 5.6 There is a relatively small surplus but it should also be borne in mind that overall numbers of applications, particularly major variations and personal licences are reducing as time goes on. Application numbers have also been severely hit by COVID so overall income from applications has been well below normal for quarters 1 and 2 of 2020. The Clerk has not yet had any definite indications about whether a number of licensed premises will not recover at all from the pandemic (and so not re-open and not pay their fees). So there are several unknown factors that may even leave a shortfall in the next financial year.
- 5.7 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. However, there is no comparison for such a novel set of circumstances as COVID.
- 5.8 Alternatively the Board may choose to revise fees now. 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.
- 5.9 In case the Board does choose to take the option of a review now, members are invited to give any guidance or remit as appropriate and appoint and instruct the Policy Sub Group to:
- Work with Officers on the task of balancing income and expenditure more closely;
 - Settle on proposals for a revised fee structure;
 - Decide whether and how the same should be issued for consultation;
 - Proceed with and consider the results of any consultation and revise proposals if required;
 - Bring final draft proposals back to the Board for approval and implementation.
- 5.10 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 11 August 2016, they can be varied again at any time. However, as the reminders have already been issued for 1/10/20 to 30/9/21, the clear

recommendation would be not to implement any change unless and until the next set of fee reminders would be due.

- 5.11 If all goes to plan then the next fee review will be June 2021, which will reveal more about the ongoing financial year. That review will be in good time before the next reminders are issued at the end of August 2021.
- 5.12 Finally, it has been noted before that the Scottish Government is reviewing licensing fees and exploring options for a possible change to the fee structure. In particular the Scottish Government has already consulted 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. It is totally unknown as to when further statutory changes might be seen. Recommendations in this report proceed on the assumption of the statutory fee structure remaining the same. However, depending on the outcome of the Scottish Government review, if a further review of fees becomes necessary the matter may be brought back before the Board.

6 SUMMARY OF IMPLICATIONS

(a) Moray 2026 A Plan for the Future/ Service Plan

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

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.

(f) Property
None.

(g) Equalities

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) Consultations

As far as possible, the figures within this report have been prepared in consultation with Alistair Milne, Accountant.

7 CONCLUSION

7.1 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: SH