



Licensing Board

Wednesday, 25 August 2021

NOTICE IS HEREBY GIVEN that a Meeting of the **Licensing Board** is to be held at remote locations via video conference, on **Wednesday, 25 August 2021** at **14:00**.

BUSINESS

1. **Sederunt**
2. **Minute of the Meeting of the Board 9 June 2021** **5 - 8**
3. **Licensing (Scotland) Act 2005 - Annual Review of Licensing Fees** **9 - 18**
- Report by Clerk to the Board
4. **Licensing Scotland (Act) 2005 - Annual Functions Report** **19 - 32**
- Report by Clerk to the Board
5. **Licensing (Scotland) Act 2005 – Personal Licence Hearing Following Disclosure of Relevant Conviction by Licence Holder (Case Number 1 of 2021)**
6. **Application List 25 August 2021**
7. **21-00964-PRELIC Orrin - Application Form**
8. **21-00846-PREVMA Lidl Forres - Application Form**
9. **21-00844-PREVMA Lidl Buckie - Application Form**
10. **21-00841-PREVMA Lidl Elgin - Application Form**
11. **21-00953-PREVMA Scotmid - Application Form**

12. **21-01085-PREVMA Spar Shop West Road Service Station - Application Form**
13. **21-00805-PREVMA Pinz Bowling - Application Form**
14. **Application for a Major Variation Under the Licensing (Scotland) Act 2005 - Pinz**
15. **Review of Open Ended Occassional Licences**

Moray Council Committee meetings are currently being held virtually due to Covid-19. If you wish to watch the webcast of the meeting please go to:
http://www.moray.gov.uk/moray_standard/page_43661.html
to watch the meeting live.

* **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.

THE MORAY COUNCIL

Licensing Board

SEDERUNT

Councillor Gordon Cowie (Chair)
Councillor James Allan (Depute Chair)

Councillor David Bremner (Member)
Councillor Frank Brown (Member)
Councillor Paula Coy (Member)
Councillor Ryan Edwards (Member)
Councillor Maria McLean (Member)
Councillor Louise Nicol (Member)
Councillor Amy Taylor (Member)

Clerk Name:	Lindsey Robinson
Clerk Telephone:	07966 120593
Clerk Email:	committee.services@moray.gov.uk

Minute of Meeting of the Licensing Board

Wednesday, 09 June 2021

remote locations via video conference,

PRESENT

Councillor James Allan, Councillor David Bremner, Councillor Frank Brown, Councillor Gordon Cowie, Councillor Paula Coy, Councillor Ryan Edwards, Councillor Maria McLean, Councillor Louise Nicol, Councillor Amy Taylor

IN ATTENDANCE

Also in attendance at the above meeting were Sergeant Gill Flett, Police Scotland, Sean Hoath, Senior Solicitor and Tracey Sutherland, Committee Services Officer.

1. Chair

The meeting was chaired by Councillor Cowie.

2. Minute of the Meeting of the Board 14 April 2021

The minute of the meeting of the Licensing Board on 14 April 2021 was submitted and approved.

3. Application List - 9 June 2021

i) Provisional Premises - Andersons Butcher, Buckie

The Depute Clerk introduced the application and advised that all the paperwork was in order and no objections had been received. The applicant introduced the application and answered questions from the Board. Councillor Cowie proposed granting the provisional licence and there being no-one otherwise minded it was agreed to grant the provisional licence.

ii) Provisional Premises - Pinefield Service Station, Elgin

The Depute Clerk introduced the application and advised that all the paperwork was in order and no objections had been received. The applicant's representative introduced the application and answered questions from the Board. Councillor Cowie proposed granting the

provisional licence and there being no-one otherwise minded it was agreed to grant the provisional licence.

iii) New Premises - McKays Mini Market, Portgordon

The Depute Clerk introduced the application and advised that all the paperwork was in order and no objections had been received. The applicant introduced the application and answered questions from the Board. Councillor Cowie proposed granting the new premises licence and there being no-one otherwise minded it was agreed to grant the new premises licence.

iv) New Premises - Emma's Cakes and Cocktails, Elgin

The Depute Clerk introduced the application and advised that Section 50 certificates were still awaited from Building Standards and Environmental Health. In addition the site notice had not yet expired. The applicant introduced the application and answered questions from the Board. The Depute Clerk sought agreement from the Board to grant a provisional licence in principle, subject to there being no further objection or representation and to delegate issuing the provisional licence to the Clerk as and when all paperwork had been received with the full licence to be granted and issued under delegated powers once all paperwork is in order. Councillor Cowie proposed granting the new premises licence in principle and there being no-one otherwise minded it was agreed to grant the new premises licence.

v) New Premises - Café Kombucha, Elgin

The Depute Clerk introduced the application and advised that a Section 50 was still awaited from Environmental Health and advised the Board that it was within their powers to grant a provisional licence until all paperwork had been received and the full licence granted under delegated powers once all paperwork is in order. The applicant introduced the application and answered questions from the Board. Councillor Cowie proposed granting the provisional new premises licence and there being no-one otherwise minded it was agreed to grant the new provisional premises licence.

vi) New Premises - Planta Café, Elgin

The Depute Clerk introduced the application and advised that all the paperwork was in order and no objections had been received. The applicant introduced the application and answered questions from the Board. Councillor Cowie proposed granting the new premises licence and there being no-one otherwise minded it was agreed to grant the new premises licence.

vii) Major Variation - 156 Bar and Grill, Elgin

The Depute Clerk introduced the application and advised that all the paperwork was in order and no objections had been received. The applicant had agreed to police conditions on permitted children entry times. The applicant introduced the application and answered questions from the Board. Councillor Cowie proposed granting the Major Variation

licence and there being no-one otherwise minded it was agreed to grant the Major variation licence.

viii) Major Variation - Glenrinnies Distillery, Dufftown

The Depute Clerk introduced the application and advised that all the paperwork was in order and no objections had been received. The applicant had agreed to police conditions on the outdoor area. The applicant introduced the application and answered questions from the Board. Councillor Cowie proposed granting the Major Variation licence and there being no-one otherwise minded it was agreed to grant the Major variation licence.

ix) Major Variation - Harbour Bar, Buckie

The Depute Clerk introduced the application and advised the applicant had agreed to police conditions on children needing to be supervised by a responsible adult. The applicant introduced the application and answered questions from the Board. The Depute Clerk further advised that the site notice had not yet expired so he sought agreement from the Board to grant the variation in principle, if they were so minded and subject to there being no further objection or representation, and to delegate the power to the Clerk to issue the varied licence as and when all paperwork had been received. Councillor Cowie proposed granting the Major Variation licence and there being no-one otherwise minded it was agreed to grant the Major variation licence.



REPORT TO: THE MORAY LICENSING BOARD 25 AUGUST 2021

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

BY: CLERK TO THE BOARD

1. REASON FOR 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;
- 1.2 Make predictions in respect of likely future income and expenditure;
- 1.3 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; 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 nominate and instruct the policy sub group 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 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 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 Section, the Clerk has now collated income and expenditure figures for the financial year 1 April 2020 to 31 March 2021.
- 4.3 The figures and calculations are summarised at **Appendix 2**.
- 4.4 The figures reveal the following indications:
 - There was a notional loss of £58303.00 for the last financial year. The loss more than offset notional surpluses in recent years.
 - Income is fairly fixed. It is correct that overall application numbers, and so income, has been adversely affected by COVID. However the largest changes have come about as a result of internal recharge calculations.
 - Legal Services allocated overheads have increased on last year by £29000. The service has been through a number of changes and the Licensing and Regulatory section now has a full complement of staff including senior solicitor, solicitor, and two LSOs. Recruitment is underway for a further solicitor, following on from a decision taken at Moray Council on 12 May 2021 (Para 11 of the Minute refers) but that is on the basis that the team will be taking on further work not related to licensing. It is therefore expected there will be relatively little impact on this calculation next year.

- The largest change has been an increase to the internal recharges to licensing from other services. The overall internal recharges have increased by approximately £56000 on the previous financial year. That is down to how other services calculate their time and cost. In particular the mailroom charge increased by £33000 on last year. Discussions are ongoing with the mail room to gain a better understanding of how this increase was arrived at.

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. As a direct result of the COVID pandemic it has taken longer than usual to prepare and present the financial information required. 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.

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 should be quite consistent. It is encouraging that premises licence numbers have remained stable. Application numbers (variations, occasional licences etc) have been down. Assuming applications recover it is hoped that the income for 2021/2022 will be more back to normal.
- 5.2 The normal review has been delayed by the COVID pandemic hampering calculations. 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. Those reminders (invoices) go out at the end of August each year. So if the fees for the period 1/10/21 to 30/9/22 are to remained unchanged then the invoices will go out as planned. If, however, fees are to change then the roll out of invoices will be delayed by the need to first update all the records on the financial system.
- 5.3 As was the case last year, the Scottish Government did not intervene with the process of payment of annual fees and the law did not change. Therefore fees are 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.
- 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. The stark change this year has been largely brought about by changes internally but has been compounded by some loss of income. It is also fair to say that the last two financial years have been unprecedented and hopefully anomolous. It seems likely that keeping things as they are will result in income being broadly consistent with pre-COVID levels. Licensing costs have increased substantially on pre COVID levels and licensing staff are working with finance staff on the issue of recharges.
- 5.6 This means that the recommendation is for the Board to keep the current fee structure and see how the position develops in the next financial year.
- 5.7 It was predicted last year that owing to many unknown variables, the budget could be left in a shortfall in this financial year. Unfortunately this has come to pass.
- 5.8 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.
- 5.9 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. Nevertheless there will be pressure from the licensed trade not to place any increased financial burden at a time when a large number have already suffered through the pandemic.
- 5.10 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.
- 5.11 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.
- 5.12 If all goes to plan then the next fee review will be June 2022, which will reveal more about the ongoing financial year. That review will hopefully be in good time before the next reminders are issued at the end of August 2022.

- 5.13 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 of the Council's Finance Service.

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

Appendix 1

Moray Licensing Board Current Fee Scale

Premises Licence Application Categories and Annual Fees

Category	Rateable Value	Application Fee	Annual Fee
Category 1	nil rateable value or within certain defined exemptions described above	200	144
Category 2	rateable value between £1 and £11,500	800	176
Category 3	rateable value between £11,501 and £35,000	1100	224
Category 4	rateable value between £35,001 and £70,000	1300	400
Category 5	rateable value between £70,001 and £140,000	1700	560
Category 6	rateable value over £140,000	2000	720

Type of Application and Fee

Type of Application	Fee - £
An application to vary a premises licence where the variation sought is the substitution of a premises manager and any other variation is a minor variation	31
An application to vary a premises licence where the variation sought is a minor variation and there is no substitution of the premises manager	20
Application for an occasional licence	10
Application for extended hours	10
Application for a personal licence	50

Type of Application and Fee

Type of Application	Fee - £ Category 1-3	Fee - £ Category 4-6
Any variation of a premises licence that is not within the definition of the prescribed fees below i.e. that is a major variation	350	500
Application by the licence holder to transfer and vary a licence	375 for major variations and 145 for minor ones	600 for major variations and 220 for minor ones
Application by the licence holder to transfer a licence (no variation)	125	200
Application by another person to transfer and vary a licence	450 for major variations and 220 for minor ones	675 for major variations and 295 for minor ones
Application by another person to transfer a licence (no variation)	200	275

Type of Application and Fee

Type of Application	Fee - £ Category 1-3	Fee - £ Category 4-6
Application for a provisional premises licence £Variable (to be the same as a category 1 premises)	180	180
Application for confirmation of a provisional premises licence £Variable (this will vary between premises. The confirmation fee will be the fee that would have been payable for a premises licence application (based on the rateable value as above) LESS the amount paid on application for the provisional premises licence as a category 1)	Variable	Variable
Application for a temporary premises licence	200	200
Application for a replacement personal licence	25	25
Application for a replacement premises licence	40	40

Summary figures as per Glasgow City Council I&E Template

	£
Income	(106,056)
Expenditure	
Direct Staff Costs	106,384
Other Direct Costs	3,090
Indirect Costs	55,885
Net Expenditure	164,359
Net Income	58,303

Notes

Income

Direct Staff Costs

Other Direct Costs

Indirect Costs

(for internal use only)

Excludes gambling income

Excludes Gambling staff recharges. Includes Legal, Environmental Health and Building Control staffing

Includes Training, Supplies & Services as shown in green above

Indirect costs include Apportioned costs, less Legal staffing, add indirect overheads for Legal, Environmental Health and Building Standards.



REPORT TO: THE MORAY LICENSING BOARD 25 AUGUST 2021

SUBJECT: LICENSING (SCOTLAND) ACT 2005 - ANNUAL FUNCTIONS REPORT

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 This report is to seek approval to publish the draft functions report which incorporates a report from the Licensing Standards Officer.

2. RECOMMENDATION

2.1 It is recommended that the Board:-

- (i) Note the draft annual functions report at Appendix 1, amend the same if the Board considers appropriate and agree the final report; and**
- (ii) Instruct the Clerk to publish the agreed final report on the Board's web pages;**

3. BACKGROUND

- 3.1 The Air Weapons and Licensing (Scotland) Act 2015 amended the Licensing (Scotland) Act 2005 ("the Act") so as to require each Licensing Board to prepare and publish an annual report, within 3 months after the end of each financial year, on the following:
- A statement as to how the Board has had regard to the licensing objectives and their statement of policy in exercising functions under the Act;
 - A summary of the decisions made;
 - Information about the number of licences held including the number of occasional licences issued; and
 - Such other information as the Board considers appropriate.
- 3.2 Following the introduction of the requirement to produce an annual functions report in 2018, the Board is invited to consider the draft report which has been produced for approval and is attached at **Appendix 1**.
- 3.3 The normal deadline for publication would be the end of June each year. This year's report has been delayed by issues arising as a result of the COVID

pandemic. The report is supplemented by a COVID review in order to relay some of the changes and issues brought about by the pandemic. The COVID supplement is attached at **Appendix 2**.

4. 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

Policy and Legal implications have been explained above.

(c) Financial implications

None identified.

(d) Risk Implications

None identified. It is a legal requirement to publish the report. There is no stated action for failure to do so therefore any failure would be open to challenge by judicial review.

(e) Staffing Implications

Preparation of statistics involves considerable staff time and they are required annually but statistics are also useful for other purposes e.g. the annual return to the Scottish Government. No additional resources are required.

(f) Property

None.

(g) Equalities/Socio Economic Impact

In considering individual decisions 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.

(h) Consultations

None.

5. CONCLUSION

5.1 It is proposed that the Board note the contents of this report and agree to publish the final annual functions report.

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

Background Papers:

Ref: SH

Appendix 1

Moray Licensing Board

Annual Functions Report

1 April 2020 - 31 March 2021

in accordance with the
Licensing (Scotland) Act 2005
(as amended by the Air Weapons and Licensing (Scotland) Act 2015)

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About Moray

With a population of around 95,500, Moray nestles between the rugged and spectacular Highlands and the flat, fertile farmlands of the north-east and although it belongs to neither, it shares the best elements of both – from the snow-capped peaks of the Cairngorms to the unspoiled coastline of the Moray Firth. Local industry is as diverse as the landscape in which it is located and makes a major contribution to the area's buoyant economy. Moray is the heartland of the Scotch whisky industry and is home to more than 45 distilleries whose brands are savoured in just about every corner of the world. Whatever country you're in, you'll find a bottle of Speyside Malt for sale.

In the spirit of celebration, music plays a vital role in the Moray community. There are major music festivals every year, including the traditional Speyfest and the Spirit of Speyside, the latter linked to the whisky industry. Venues for the performing arts thrive in the area, and each town sustains a lively artistic culture. Two thriving arts and performance centres exist in Findhorn alone.

Traditional industries - farming, fishing and forestry - play an important part in the area's culture whilst underpinning the economy. In addition, two internationally renowned food producers, Baxters of Speyside and Walkers of Aberlour, have put Moray firmly on the international map.

The area's biggest town and administrative capital is Elgin, which is also Moray's principal shopping centre. Many leading national retailers are represented alongside long-established local outlets. Other main towns include Forres, well known for its successes in national floral competitions; Buckie, with its fishing and commercial harbour; and Keith, built on a once-thriving textiles industry.

Introduction

Moray Licensing Board ("the Board") is the licensing authority for the purposes of alcohol and gambling in Moray.

The current Board was formed in May 2017 and comprises of nine members who are elected members of Moray Council. Current membership of the Board can be viewed here:

http://www.moray.gov.uk/moray_standard/page_67620.html

These members form part of an independent Board which are responsible for considering applications and objections in relation to regulating the sale of alcohol and for regulating licensed premises and other premises on which alcohol is sold in accordance with the Licensing (Scotland) Act 2005 as amended.

Under the ("the Act"), the Licensing Board are responsible for considering applications for:-

- 1.1 Provisional premises licences including confirmations
- 1.2 Premises licences including transfers and variations
- 1.3 Reviews of licences
- 1.4 Temporary licences
- 1.5 Occasional licences and extended hours
- 1.6 Personal licences including training updates and renewal of personal licences

The Licensing Objectives

Section 4 of the Act sets out the following five licensing objectives

- (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.

The licensing objectives are central to the licensing system and provide a basis for the administration of the licensing regime. The licensing objectives can also provide the basis for refusing an application for the grant of a premise or occasional licence. The breach of the objectives may form a competent ground for the review of a premises licence and the objectives can also provide a basis for the attachment of conditions to a premise or occasional licence.

In exercising its functions under the Act, the Board is required to have regard to the licensing objectives.

Annual Functions Report

From 1 April 2020 to 31 March 2021, the Board met on an approximate eight week cycle on the following dates:

- (a) 30 September 2020
- (b) 2 December 2020
- (c) 17 February 2021

Meetings were held by remote connection which worked well and facilitated the easy attendance of all parties, including those from outside Moray. It is hoped that this facility will remain available to licence applicants.

Applications before the Board were dealt with in an open and transparent manner in accordance with licensing legislation and the Board's policy. A copy of the Board's statement of licensing policy, incorporating hearing procedures, can be found at this link:
<http://www.moray.gov.uk/downloads/file68385.pdf>

Information and assistance is always available to persons wishing to apply for a licence or respond to an application. The board has published guidance documents and licensing staff are on hand to answer queries.

Board meetings are as informal as possible whilst maintaining a fair process. The majority of applicants before the Moray Board are willing and able to represent themselves.

Decisions of the Board

Each application, received by the Licensing Board is considered on its individual merits. All licence applications that are received must be weighed-up in accordance with the Licensing (Scotland) Act 2005 and in particular in cognisance of the licensing objectives. The Board must also consider the licence application in line with the Board's policy statement. Attached to this report at Appendix 1 are details of application numbers and decisions made by the Moray Board.

The majority of applications are dealt with by way of delegated authority to a sub group of the Board or officers appointed to assist the Board. The sub group or officers can only grant such a licence where the application is not contrary to the Licensing Policy and no objections have been received. A copy of the Board's scheme of delegation can be found here:
<http://www.moray.gov.uk/downloads/file70892.pdf>

In considering the applications, the Licensing Board considered a number of different sources of information to enable them to reach decisions. These sources include applicants themselves, council services (including planning, building standards and environmental health), reports from Community Councils, Local Residents, the Local Licensing Forum, the Licensing Standards Officer, Police Scotland and the NHS.

Tourism and Industry continue to play an important role in parts of Moray. Moray Council has set out a number of community planning priorities including healthier citizens, a growing and diverse economy and safer communities. Licensing plays an important role in all of these and decisions of the Licensing Board also have regard to these community planning priorities.

Licence Applications

During the course of the year, the Board received applications for 190 occasional licences. The Board also considered and granted 40 premises licence applications. The overall number of premises licences increased on the previous financial year from 345 to 347.

Personal Licence Applications

The Board granted 64 personal licence applications.

The Board considered one application for a personal licence where the applicant had disclosed a relevant conviction. The Board agreed to grant the personal licence.

Personal Licence Reviews

The Board heard two applications from Police Scotland, each for the review of a personal licence based on conduct alleged to be inconsistent with the licensing objectives.

The first personal licence holder had surrendered his licence and moved away from the area and the hearing was no longer necessary.

In the second case the Board found grounds for review to be made and revoked the personal licence.

Premises Licence Reviews

Breach of the objectives and/or breach of a licence condition may also provide grounds for reviewing a premises licence. During the financial year 2020-2021, two premises licence reviews were heard by the Board.

In the first review grounds for review were established related to the licensing objectives and the licence holder not being a fit and proper person. As a result, the Board revoked the premises licence.

The second review was for non payment of annual premises licence fees which resulted in the Board suspending the licence pending payment or further review.

Statement of Policy / Policy Matters

During the financial year, there was no review of policy due by the Board.

However the Board did consider and implement a number of initiatives to assist licence holders through the difficult COVID period.

Licensing Hours

In granting licences, the Board recognises that licensing hours are an important part of how licensed premises function; However, the Board must continually balance the impact that licensing hours has on the wider area against the increasing growth of the local economy within Moray which continues to play a key role for investment, employment and tourism.

The Board's policy in respect of licensing hours is set out in the statement of policy. The Board's approach to hours has been generally permissive although applications tend to remain within the hours set out in the policy.

The Board has an existing practice of permitting specific hours over the Christmas / New Year festive period by way of a general extension. This is a flexible policy to allow all premises to open if they choose to do so, rather than having to apply for specific hours. This regulation allows businesses to promote themselves and benefit from increased trade. The Board has had no complaints in respect of festive opening. The policy on festive hours is published here:

<http://www.moray.gov.uk/downloads/file107983.pdf>

Licensing Forum

The Moray Licensing Forum should form an integral part of the licensing regime in Moray. The forum membership includes the LSO, Police Scotland, representatives of the NHS, representatives of the District Licensed Trade Association and representatives of Elgin Community Council. The forum last met on the 24 May 2019 after which the MADP was no longer able to Chair and drive the group. It is hoped the Licensing Forum can be revived and will be able to meet again soon with the Board once a year to provide valuable feedback to the Board on the community's opinion on alcohol licensing issues.

Licensing Standards

There are two full time LSOs within the licensing service. One LSO is responsible for liquor licensing and gambling. The LSOs offer guidance and advice to licence holders and communities to supervise the compliance of the requirements of the Act by the licence holders. The LSOs also act as an intermediary between licence holders and the general public helping to avoid and resolve any disputes or agreements. LSOs build a rapport with the local trade and members of the public as a consistent point of contact. This ensures there is a cohesive working partnership between all persons interested in the operation of the Act. There is a separate report from the LSO included below regarding activities that have taken place during the period in question.

Licensing Standard Officer's Report

The Liquor LSO post was taken up by the current postholder in February 2019. The role of the LSO is defined by the Licensing (Scotland) Act 2005 for the LSO to:

- Provide guidance and information regarding the Act
- Ensure compliance with the Act in terms of the licence
- Provide mediation to resolve disputes

The last year has been dictated by the Coronavirus pandemic, which has meant that the LSO role has included offering support to Environmental Health and Police Scotland to ensure licensed premises are complying with their responsibilities under the Coronavirus Regulations. This has included issuing guidance to all licence holders each time it has been made available or updated, answering queries and finding information for licence holders, as well as conducting both proactive and reactive multiagency visits to premises about which complaints have been received.

The LSO has looked at ways in which the Licensing Board can support the local licensed trade and with the Depute Clerk to the Board has developed the open ended occasional licence which has meant that already licensed premises, which do not have a licensed out door space, can licence an area to use as a beer garden using one occasional licence rather than having the added administrative and financial burden of applying for repeated occasional licences. This has allowed us to help all barring one applicant to open outdoor spaces, a total of fifteen premises which have been supported to trade during the current coronavirus restrictions which otherwise would not have been able to until Moray reached a lower tier/ level, further premises are applying for this as the financial year ends.

Consultation with the licensed trade in June 2020 regarding the re-opening and potential pedestrianisation of Batchen Street, identified that a number of premises felt that they were unfairly disadvantaged by not having off sales on their licence and the LSO identified that offering a reduced fee major variation purely to add off sales to a licence may be beneficial to licensed premises in Moray – this was run between 1st March 2021 and 30th April 2021. Unfortunately there was a disappointing uptake from the licensed trade in terms of this with only three premises applying.

The LSO has also encouraged a number of businesses who were trading on occasional licences to apply for a premises licence which is beneficial to both the individual and the Licensing Board and supported a number of new businesses, who have found a niche during the pandemic, to apply for premises licences.

Overall Conclusion

It is the view of the Board that the licensing function in Moray operates very well. The Board has come to this view based on the very low number of incidents which are linked to Licensed Premises in the area and the low number of premises licence reviews

Annual Licensing Application Numbers 2020-2021

Premises Licences	
Licences in Force on 31 March 2020	347
(a) on-sales only	86
(b) off-sales only	102
(c) both	159
Applications received during 2020 – 2021	
(a) on-sales only	8
(b) off-sales only	20
(c) both	27
Applications refused during 2020 – 2021 under section 23	0
Applications granted during 2020 – 2021 under section 23	40
Applications for review of premises licence during 2020 – 2021 under S36 & S37 resulting in	
(a) written warning	
(b) variation	
(c) suspension	
(d) revocation	
(e) no action	
Occasional Licence Statistics	
Number of Occasional Licences granted during 2020 – 2021	190
Personal Licence Statistics	
Personal Licences in Force on 31 March 2021	1268
Applications During 2020 – 2021 under section 72:-	
(a) refused	0
(b) granted	64
Proceedings taken during 2020 – 2021 under section 83 (notice of conviction) resulting in:-	
(a) endorsement	
(b) suspension	
(c) revocation	
(d) no action	
Proceedings taken during 2020 – 2021 under section 84 (conduct inconsistent with licensing objectives) resulting in:-	
(a) endorsement	
(b) suspension	
(c) revocation	
(d) no action	
Proceedings during 2020 – 2021 under section 86 (multiple endorsements) resulting in:-	
(a) endorsement	
(b) suspension	
(c) revocation	
(d) no action	
Revocations of personal licences during 2020 – 2021 under section 87(3) (failure to provide evidence of having undertaken refresher training)	

COVID Supplement to Annual Functions Report

The year has been defined by the COVID pandemic. The restrictions introduced to try and control the spread of the disease have dictated how everyone has had to go about their daily business. This has had a huge effect on businesses and particularly businesses that undertake licensable activities. The basic idea behind a licence is public safety so activities requiring a licence, that generally involve people coming together, have been restricted or even completely banned for large periods of time.

The licensing service, along with many other council services, also suffered from an immediate and almost complete loss of resources. With staff being sent home the race was on to adapt both where and how the service could keep going. With little means to keep processing applications that had already been received a backlog began.

Lockdowns were relatively easy to deal with. When businesses and activities were shut down completely it was a straightforward matter to stop everything. However this still left a backlog.

Gradually technology was rolled out to enable staff to get back to working more normally, but still remotely.

Much more difficult to deal with were periods where restrictions were relaxed and businesses were allowed to open up to an extent. Scottish Government announcements were often made at short notice. Guidance on new ways of working were often issued the day before changes were due to take effect. The legislation was varied and constantly changing, again at very short notice. In fact when the level system was introduced by the The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 the law was laid before Parliament on the 30th October and came into force on the 2nd November 2020. Between then and now there have been at least 32 sets of amending Regulations.

Licensing staff endeavoured throughout to keep licence holders, applicants and businesses in general up to date with restrictions and requirements. Regular circular emails were issued to contact lists as well as announcement through social media. This was made all the harder by the fact that in many cases Regulations and guidance conflicted. For example in licensed premises all the guidance states that table service is mandatory and an absolute requirement. However the law actually states that table service is required where reasonably practicable.

As well as keeping all parties advised of updates and trying to clear backlogs, licensing joined in with other council services to assist businesses in other ways. The priority was to help struggling businesses take advantage of every opportunity to keep trading. Once such scheme was the opening of public spaces in Elgin town

centre for business use, which involved closing roads to traffic and making open air space available and, where appropriate, licensed.

Outdoor spaces became very important during the pandemic. Legislation never obviated the need for appropriate licences. So the licensing service had to be creative in licensing various spaces and activities, often at short notice.

Measures specifically devised and implemented by licensing during the lockdowns included:

- Allowing licence holders to extend the life of various licences – for example public entertainment licences where the event had to be cancelled but could be re-arranged to a later date (often a year);
- Allowing taxis to continue operating during a period when vehicle testing was not available;
- Open ended occasional licences for outdoor spaces brought into use by existing licence holders, for example gardens and car parks;
- Increased use of occasional licences for unlicensed areas like pavements;
- Use of extended hours licences to add activities to existing licences;
- A streamlined, quick, value for money licence variation process to add off sales to existing licences. Whilst legislation automatically allowed licensed premises to sell food for consumption of the premises (takeaway) a licence was still required for the off sale of alcohol;

All this led to an increase in enquiries for the licensing team. Licensing staff received and answered hundreds of enquiries from concerned licence holders and applicants.

Licensing staff still also managed to run and complete public consultations for the new SEV licence type and to complete the required taxi fare review.

Hearings have taken place remotely. It is hoped and expected that this service will continue to be available to licence applicants and holders. Often licence applicants, particularly large companies, are represented by licensing lawyers from all over Scotland. Online meetings have facilitated their attendance without them having to charge their clients for a full day to travel and attend what is often a 10 minute hearing.

Backlogs of applications have been cleared and the licensing system has recently been upgraded by ICT. Businesses have been kept going as much as possible whilst keeping the public safe.

Licensing visits have obviously been very difficult during the pandemic, and impossible during lockdowns, but the LSOs have been kept busy talking to and advising licence holders. Where permissible and safe to do so, licensing staff have undertaken visits including joint visits with environmental health officers to advise and assist licence holders in measures to keep the public safe.

Licences were not issued where the event was in apparent conflict with clear COVID guidance and law.

The main, lasting casualty of the pandemic has been the licensing budget, as reported separately.

The COVID pandemic has thrown up a lot of novel and difficult sets of circumstances. Licensing has had to adapt and overcome in order to continue the service and assist licence holders/businesses as much as possible to keep trading and keep going.

