

Moray Licensing Board

Annual Functions Report

1 April 2020 - 31 March 2021

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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](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 1<sup>st</sup> March 2021 and 30<sup>th</sup> 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

<b>Premises Licences</b>	
<b>Licences in Force on 31 March 2020</b>	<b>347</b>
(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	
<b>Occasional Licence Statistics</b>	
Number of Occasional Licences granted during 2020 – 2021	190
<b>Personal Licence Statistics</b>	
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	
<b>Revocations of personal licences during 2020 – 2021 under section 87(3) (failure to provide evidence of having undertaken refresher training)</b>	