

Moray Licensing Board
Annual Functions Report

1 April 2018 - 31 March 2019

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
 - 1.1.1 confirmation of provisional premises licences
 - 1.1.2 premises licences
- 1.2 transfer of premises licences
 - 1.2.1 variation of premises licences
 - 1.2.2 reviews of premises licences
- 1.3 temporary licences
 - 1.3.1 occasional licences
 - 1.3.2 extensions of licensing hours
- 1.4 personal licences
 - 1.4.1 review of personal licences
 - 1.4.2 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 2018 to 31 March 2019, the Board met on an approximate eight week cycle on the following dates:

- (a) 19 April 2018

- (b) 14 June 2018
- (c) 1 August 2018
- (d) 6 September 2018
- (e) 15 November 2018
- (f) 19 December 2018
- (g) 7 February 2019

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 information as possible whilst maintain 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>

During the course of the year, the Board also received applications for 451 occasional licences.

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.

Premise Licence Review

Breach of the objectives may also provide grounds for reviewing a premise licence. During the financial year 2018-2019, one premise licence review was brought before the Board. This review related to a breach of a number of the licensing conditions which included lack of staff training records and the sale of alcohol by a non-personal licence holder at the premise in the absence of the Premise Manager or Personal Licence Holder. In addition, representations made by Police Scotland, Environmental Health and local residents identified multiple issues relevant to the prevention of crime and disorder and prevention of public nuisance licensing objectives as a result of the operation of the premise. As a result of the licence holders' lack of compliance with existing premise licence conditions, and the lack of meaningful engagement with the authorities and with neighbours, confidence in the licence holder complying with additional terms was unlikely. The licence holder had failed to demonstrate on a number of occasions the extent of the significant responsibility that was involved in running a licensed premise and in the Board's view illustrated a serious disregard for the prevention of crime and disorder and prevention of public nuisance. The Board found that this conduct was inconsistent with the licensing objectives aforementioned and on this basis the premise licence was revoked.

Personal Licence

During this financial year, the Board refused 1 personal licence application. This was on the ground that the refusal was considered necessary for the purposes of preventing crime and disorder and securing public safety given the serious nature of the applicant's previous conviction.

Statement of Policy

During the financial year, the Board reviewed its policy and sought information from a wide range of partners together with analysing and collecting data and information for a number of sources including Police Scotland, NHS, Moray Alcohol and Drug Partnership, Census etc. on matters relevant to the sale and consumption of alcohol in Moray. The Board considered a number of key areas and agreed to make the following changes to the policy:

Children in Licensed Premises

The Board's initial policy allowed children/young people to access licensed premises until the hours of 8pm. However, the Board recognised that changes in lifestyles and attitudes meant that it was becoming increasingly common for families to eat and socialise later in the evenings. The Board also recognised that tourists were often accustomed to dining later in the evenings. The Board determined that this provision was restrictive and agreed that 10pm would be a more suitable time.

Social Responsibility

During the course of the year, the Board introduced a number of conditions into its policy and premise licences to address a number of concerns raised about the increased risk of vulnerability to those who had consumed an excessive amount of alcohol within the Moray area. Following discussions with Police Scotland and Alcohol Focus Scotland, the Board introduced a condition on premise licence holders to implement a social responsibility policy outlining a standard approach to be taken towards any individual displaying excessive signs of intoxication. In addition, all staff members must have additional training in identifying the signs of intoxication and an enhanced awareness of vulnerability through intoxication. The policy aims to introduce measures to aid in reducing vulnerability through intoxication, however attained, for the promotion of the licensing objectives. The Board is also in the process of issuing guidance to local premises.

Curfew

The Board also reviewed their policy in relation to late night premises that were subject to a curfew. Traditionally, the curfew was introduced to prevent customers who intended to drink past 1.30am from drifting between premises or remaining on the streets and potentially becoming the source of anti-social behaviour or causing a nuisance to local residents within the locality. In addition, the curfew created a staggered system for leaving the premise and as such reducing the overall numbers of people on the street. However, the Board recognised that there was very little evidence to suggest that this curfew was required to deal with high levels of antisocial behaviour or issues relating to public nuisance. Police Scotland provided evidence that currently Moray did not experience a higher level of antisocial behaviour than was generally expected with late night premises. On this basis, the Board agreed that curfew was no longer an effective and proportionate means of promoting the licensing objectives and such a condition should not be automatically attached to any premises licence unless it was appropriate in response to a particular set of circumstances.

Overprovision

During this period, the Board also reviewed its policy on overprovision of licensed premise in its area. As part of the statement of policy the Board has a duty to publish a determination as to whether it considers that there is an overprovision of licensed

premises in its area. Pursuant to that duty the Board consulted with a number of partners including the local licensing forum, Police Scotland, NHS, Moray Alcohol & Drug Partnership and collated a large volume of data from numerous sources to consider the relationship between Moray and alcohol. A report was produced which found that Moray had the 14th highest alcohol related death rate of the 32 local authorities, however, there had been a reduction in the number of active service users engaged in services for alcohol issues. It also noted lower rates of alcohol related hospital stays in comparison to NHS Grampian and nationally. On this basis the Board concluded that there was no evidence to support a finding of overprovision within Moray.

Review of Gambling Policy

During this financial year, the Board undertook a review of its Gambling Policy in accordance with the Gambling Act 2005 which requires local authorities to review their Statement of Gambling Policy every three years. This review provided the opportunity for the Board to align its policy in accordance with the relevant code of practice and guidance issued by the Gambling Commission to ensure that its policy statement continued to be consistent with the licensing objectives.

Current Licences

Appendix 2 contains a breakdown of the current Premises Licences.

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 forms 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 has met four times during the financial year and has sought to promote the work of the licensing forum to develop links with new organisations and engage with the local community. It is anticipated that the Licensing Forum will meet with the Board once a year to provide valuable feedback to the Board on the community's opinion on alcohol licensing issues.

Licensing Standards

Following the appointment of 1 full-time LSO during the previous financial year, a second full time LSO has been appointed. It is envisaged that one LSO will be responsible for all aspects relating to civic and taxi licensing, while the second LSO will be responsible for liquor licensing, gambling and adult entertainment. The LSOs will 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 will act as an intermediary between licence holders and the general public helping to avoid and resolve any disputes or agreements. LSOs also attend meetings with the trade and the public which allows them to build a rapport with the local trade and members of the public as a consistent point of contact. This will ensure that there is a cohesive working partnership between all persons interested in the operation of the Act.

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

Premises Licences	
Licences in Force on 31 March 2019	329
(a) on-sales only	88
(b) off-sales only	94
(c) both	147
Applications received during 2018-19	
(a) on sale	2
(b) off sale	3
(c) both	1
Applications refused during 2018-19 under section 23	0
Applications granted during 2018-19 under section 23	6
Applications for review of premises licence during 2018-19 under S36 & S37 resulting in:-	2
(a) written warning	0
(b) variation	0
(c) suspension	1
(d) revocation	1
(e) no action	0
Occasional Licence Statistics	
Number of Occasional Licences granted during 2018-19	451
Personal Licence Statistics	
	1275
Personal Licences in Force on 31 March 2019	197
Applications during 2018-19 under section 72:-	
(a) refused	1
(b) granted	197

Proceedings taken during 2018-19 under section 83 (notice of conviction) resulting in:-	0
(a) endorsement	0
(b) suspension	0
(c) revocation	0
(d) no action	0
Proceedings taken during 2018-19 under section 84 (conduct inconsistent with licensing objectives) resulting in:-	0
(a) endorsement	0
(b) suspension	0
(c) revocation	0
(d) no action	0
Proceedings during 2018-19 under section 86 (multiple endorsements) resulting in:-	0
(a) endorsement	0
(b) suspension	0
(c) revocation	0
(d) no action	0
Revocations of personal licences during 2018-19 under section 87(3) (failure to provide evidence of having undertaken refresher training)	0
Staff employed at 31 March 2019	
Number (full-time equivalent) of licensing standards officers employed	2