



REPORT TO: MORAY LICENSING BOARD ON 17 FEBRUARY 2021

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – REVIEW OF PREMISES
LICENCE FEE FOR VARIATION OF PREMISES LICENCE TO
ADD OFF SALES**

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 To ask the Board to consider and agree a proposal to amend the fee to vary a premises licence to £50 on a temporary basis specifically and solely for the purpose of allowing the addition of off sales to premises licences and allow these applications to be processed by email circulation.

2. RECOMMENDATION

- 2.1 **It is recommended that the Board consider and agree to the proposal to temporarily amend the premises licence variation fee structure to add the proposed fee pursuant to the Board's power to set such fees under s.12 of the Licensing (Fees) (Scotland) Regulations 2007 and temporarily amend processing arrangements to deal with such applications as set out in para 1.1 of the report.**

3. BACKGROUND

- 3.1 By virtue of the Licensing (Fees)(Scotland) Regulations 2007 and in particular s.12(2) of the same Licensing Boards have the power to set fees for variations to premises licences other than minor variations and variations to the premises manager. These are generally termed major variations. Section 12(2) confirms that different fees may be determined in respect of different applications.
- 3.2 The current fees set for major variations to a premises licence are based on rateable value bandings in a similar way to premises licence application and annual fees. The current fees are £350 for a major variation to any premises falling within RV bandings 0 to 3 inclusive and £500 for bandings 4 to 6 inclusive.
- 3.3 As a result of the pandemic licensed premises have been seeking alternative ways to trade and one of the enduring restrictions on licensed premises has been the ability to trade on a take-away basis only. This includes the selling of alcohol for consumption off the premises i.e. off sales.

- 3.4 Coronavirus legislation and guidance from the Scottish Government automatically implied the ability for licensed premises to sell food on a take-away basis into all premises licence operating plans. However this did not include the implied ability to sell alcohol on an off sale basis. Any ability to sell alcohol on an off sale basis had to be specifically allowed for in the operating plan. A variation to add off sales is a major variation and must be decided by the Board (it cannot be delegated) and can therefore take some time to address even under normal circumstances.
- 3.5 Unfortunately many premises licences did not traditionally include off sales. For example an old restaurant alcohol licence did not include off sales so when it was translated, through grandfather rights, to the current style of generic premises licence it did not allow off sales. This has left many premises wanting to make alcohol off sales without the ability to do so without a major variation of their existing licence.
- 3.6 In the absence of Board meetings and given both time and financial pressures on the trade, licensing staff sought a way to allow trading and address the problem cheaply and at short notice. On a few prior occasions the Board had allowed an extended hours application to temporarily add certain activities to an operating plan rather than premises having to go through a full variation and pay £350 or £500 to fill the gap. So this method was adopted to allow a few premises to start trading at short notice in off sales based on £10 extended hours applications. Extended hours applications are used as it is not possible to obtain an occasional licence for a premises that is already licensed.
- 3.7 This addressed the immediate problem for the trade but has created extra work for the licensing team. The licensing team has had to process a significant number of applications during lockdown, particularly occasionals and extended hours. Licensing administration has been affected by the limited resources of time and staff availability. This has had an effect on the maintenance of the service. In addition the licensing service loses money on each temporary application as the cost of processing exceeds the statutory fee of £10.
- 3.8 Therefore, in order to reduce the overall number of applications, it is proposed that a cheaper, more convenient type of premises licence variation be allowed specifically and solely for the purpose of adding off sales to an existing premises licence.
- 3.9 The budget situation is not settled. Income has been down on previous years but with the final payment of annual fees it should be possible to balance or come close to balancing the liquor licensing budget for 2020/2021. Whilst there may be a small amount of income potentially lost by reducing the fee for this variation, there is no guarantee that applications will be made and by encouraging applicants the proposal has the advantage of saving all the money currently being lost on temporary applications.
- 3.10 Such a variation to the operating plan is a major variation that must be decided by the Board. The application process is set with forms and systems already in place. There is no need to change the administration. It is however proposed that rather than wait for Board meetings, these types of variations will be circulated for approval by email and determined by a majority view.

- 3.11 It is proposed that this process and fee will be a temporary addition to the licensing structure. It will remain in place during the period of general lockdown and can be reviewed when fees are subjected to the next annual review planned for June 2021.

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 (Moray 2023) 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

The Legal implications have been explained above.

(c) Financial Implications

Low impact. Potential loss of a small amount of anticipated income from variations which will be offset by the savings from not having to process numerous temporary applications.

(d) Risk Implications

None.

(e) Staffing Implications

Additional administration is required in pursuing unpaid annual fees.

(f) Property

None.

(g) Equalities/Socio Economic Impact

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

(h) Consultations

None required.

5. CONCLUSION

5.1 The Board is invited to consider and agree to a proposal to add a temporary specific type of premises licence major variation to the liquor licensing portfolio and agree the process and fee for the same.

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Background Papers:

Ref: SAH