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**REPORT TO: THE MORAY LICENSING BOARD ON 14 NOVEMBER 2019**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE APPLICATION RENEWAL PROCESS FOLLOWING DISCLOSURE OF A RELEVANT CONVICTION AND SCHEME OF DELEGATION**

**BY: CLERK TO THE BOARD**

**1. REASON FOR REPORT**

- 1.1 This report is to notify the Board that several personal licences have now reached their ten year renewal mark and that during that ten year period the licence holder may have attracted one or more relevant conviction(s) and that a process is required for dealing with the licence renewals in these circumstances.

**2. RECOMMENDATIONS**

**2.1 It is recommended that the Board:-**

- i) note the reasons as to why a process is required to deal with relevant convictions on the renewal of a personal licence; and**
- ii) determine the process and if necessary amend the scheme of delegation;**

**3. BACKGROUND**

- 3.1 The Licensing (Scotland) Act 2005 provides that a personal licence lasts for a period of ten years from the date of issue and must then be renewed. A renewal application may be lodged in the 9 month period beginning 12 months prior to the expiry of the licence i.e. no later than 3 months before expiry.
- 3.2 An application to renew the licence is basically the same as an application for a new licence. The ten year anniversary of the licence is also a time when refresher training needs to be undertaken and applicants will often update

their training schedule at the same time as renewing the licence but the two are separate processes.

- 3.3 Section 73 requires the Board to notify the Chief Constable of the receipt of an application for a personal licence, whether that is a new licence or a renewal. The Chief Constable then has up to 21 days to respond to the notice of application with notice as to whether the applicant has been convicted of a relevant or foreign offence.
- 3.4 The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007 No. 513) prescribe a list of offences which are relevant offences for the purposes of the Licensing (Scotland) Act 2005.
- 3.5 When the Chief Constable responds with notice of a conviction the Chief Constable may also include a recommendation for the determination of the application.
- 3.6 Where the Chief Constables makes a recommendation, s.74(5) of the Licensing (Scotland) Act 2005 states the Board must hold a hearing to consider and determine the application where the Chief Constable has made a recommendation;
- 3.7 Where there is no recommendation from the Chief Constable, s.74(5A) of the Licensing (Scotland) Act 2005 states the Board may hold a hearing to consider and determine the application where the Chief Constable has made no recommendation;
- 3.8 September 2019 is the tenth anniversary of the Act coming into force so this is the first time that licences have come up for renewal and a gap has been noted in the process.
- 3.9 During the course of a licence the licence holder is required to notify the Board if he/she is convicted of a relevant offence under s.82. Whenever the Board receives such a notification, in accordance with s.83 a copy is sent to the Chief Constable to confirm the conviction. If the Chief Constable confirms the conviction then, at the same time, the Chief Constable may make a recommendation about the personal licence. This gives rise to three potential courses of action:
  - If the conviction is not confirmed the Board may take no action; or
  - If the conviction is confirmed but there is no recommendation the Board must hold a hearing or determine to take no action; or
  - If the conviction is confirmed and a recommendation is made the Board must hold a hearing.
- 3.10 Previously the Board determined that in the circumstances described in para 3.9 above the Board would take no action.

- 3.11 If a hearing is held then if satisfied that it is necessary to do so for one of the licensing objectives the Board may make an order revoking, suspending or endorsing the personal licence.
- 3.12 In some instances the licence holder was unaware of the duty to report a relevant conviction and did not do so. The Court is also supposed to notify the Board of relevant convictions but has never done so. Again this may be because the person being convicted forgets to tell the Court that he/she is a personal licence holder.
- 3.13 Now licences are due for renewal the Chief Constable is reporting to the Board where relevant convictions occurred during the first ten year course of the licence. Some of those may never have been reported before and some may have been reported previously and no action taken at the time. There is no formal process for dealing with these cases.
- 3.14 This in turn can lead to one of several scenarios as follows:
- i) Conviction not previously disclosed at the time of conviction but is disclosed at the time of renewal and the Chief Constable makes no recommendation;
  - ii) Conviction not previously disclosed at the time of conviction but is disclosed at the time of renewal and the Chief Constable makes a recommendation;
  - iii) Conviction previously disclosed at the time of conviction and the Chief Constable made no recommendation so no action was taken and the conviction is further disclosed at the time of renewal and the Chief Constable again makes no recommendation;
  - iv) Conviction previously disclosed at the time of conviction and the Chief Constable made no recommendation so no action was taken and the conviction is further disclosed at the time of renewal and, for some reason, the Chief Constable makes a recommendation.
- 3.15 In each scenario the choice is simple, whether to hold a hearing or not. The Act requires the Board to hold a hearing whenever the Chief Constable makes a recommendation, so that covers scenarios 3.14 (ii) and 3.14 (iv) anyway. Therefore the Board is asked to confirm what should be done in scenarios 3.14 (i) and 3.14 (iii) where there is no recommendation. The Act says the Board “may” hold a hearing and where the Board may hold a hearing the Clerk has to bring the matter to the Board anyway to first determine whether to hold a hearing.
- 3.16 In the event that the Board chooses to delegate to the Clerk to determine not to hold a hearing in scenarios 3.14 (i) and 3.14 (iii) then the Clerk can always refuse to exercise the delegation and instead refer a matter to the Board when in doubt.

- 3.17 Alternatively the Board may choose to hold a hearing every time a conviction is disclosed, whether the Chief Constables makes a recommendation or not. This may be a clearer process and all relevant cases would be listed for hearing. Looking at existing records the number of cases is likely to be small and will not overwhelm Board agendas. There are currently six recorded cases of personal licence holders with relevant convictions. Should the Board choose this option then it will obviously supercede the previous decision not to take action on a conviction as it arises if the Chief Constable makes no recommendation.
- 3.18 The Board is then invited to instruct the Clerk to update the scheme of delegation accordingly.
- 3.19 If a hearing is to be held in respect of a new/renewed licence then at that hearing the Licensing Board must, after having regard to the Chief Constable's notice and after giving the licence holder concerned and the Chief Constable an opportunity to be heard:
- i) If satisfied that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence refuse the application; or
  - ii) If satisfied that, having regard to the licensing objectives, it is otherwise necessary to refuse the application then refuse the application; or
  - iii) If not so satisfied grant the application.
- 3.20 If a hearing is held then it should be noted that, even in the absence of a recommendation by the Chief Constable, it is possible for the Board to conclude that it is necessary to refuse the application for the purpose of any of the licensing objectives. However, in the absence of such a recommendation, the Board should be slow to draw the conclusion that refusal is necessary for the purpose of a licensing objective.
- 3.20 If a hearing is not held then the Board must grant the application.
- 3.21 The licensing objectives are:
- Preventing crime and disorder
  - Securing public safety
  - Preventing public nuisance
  - Protecting and improving public health
  - Protecting children from harm

#### **4. IMPLICATIONS**

**(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**

In the exercise of functions under the Licensing (Scotland) Act 2005 the Licensing Board is to have regard to and promote the licensing objectives as previously described.

The licensing objectives closely reflect some of the objectives of the Community Plan and are intended to promote community involvement and prevent the consumption of alcohol from being the source of nuisance, anti-social behaviour and harm. This is also true of the social inclusion and environmental aspects of the Corporate Plan.

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective.

**(b) Policy and Legal**

Legal implications have been explained above.

**(c) Financial Implications**

None

**(d) Risk Implications**

In each individual case the Board is to have regard to any of the licensing objectives, particularly the crime prevention objective and decide whether the risk justifies intervention on such grounds. The risk within the process is that convictions the Board may feel relevant might not be considered as a direct result of the Chief Constable's view.

**(e) Staffing Implications**

More hearing will mean more staff time to prepare and present reports and cases that ultimately may not require intervention.

**(f) Property**

None.

**(g) Equalities/Socio Economic Impact**

There are no issues in this case beyond the general equalities issues that arise in each individual case.

**(h) Consultations**

Consultation is not required.

#### **5. CONCLUSION**

**5.1. It is proposed that the Board note the need for a process to deal with the existence of a relevant conviction in certain circumstances;**

**5.2. It is proposed that the Board determine the process;**

**5.3. It is proposed that the Board instruct the Clerk to amend the scheme of delegation if required.**

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Background Papers: There are no background papers

Ref: SAH