



REPORT TO: THE MORAY LICENSING BOARD 13 JUNE 2019

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

BY: CLERK TO THE BOARD

1. REASON FOR THE 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; make predictions in respect of likely future income and expenditure; and 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) consider and note the current fees attached at Appendix 1;
- ii) consider and 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 departments of 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 department, the Clerk has now collated income and expenditure figures for the financial year 1 April 2018 to 31 March 2019.
- 4.3 The figures and calculations are summarised at **Appendix 2**.
- 4.4 The figures reveal the following indications:
- Taking account of the reduction in income, because of the reduced annual fees, there was still a notional surplus for the last financial year.
 - The notional surplus was greater than anticipated but this was largely because of a temporary reduction in staffing levels and so lower staffing recharges to the Licensing Board. One of the solicitors undertaking licensing work left the Council in early December 2018 and that post was not filled until April 2019, resulting in a significant staff gap of approximately 4 months. The Legal Services Manager for licensing also left the council at the end of January 2019 and that post is not being filled. Another solicitor and a member of clerical staff both of whom carried out some licensing work also left. The LSO for alcohol licensing left the council in August 2018 and a replacement was not recruited until February of 2019. Between those times some of the alcohol related work was covered by the single LSO in post but there was still a significant staff gap for several months. All this resulted in lower than expected staffing costs.

- Legal Services has been through a restructure and in terms of licensing now has a full complement of staff including senior solicitor, solicitor, two LSOs and administrative support.
- During the 2018/2019 year some additional expenditure was anticipated, in particular a mobile ICT system for LSOs. Unfortunately implementation of that system that was delayed by the supplier and so the expenditure for that has been carried forward into the 2019/2020 annual budget.

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. 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.
- 4.7 The Board has previously agreed to review fees on an annual basis and this fits in line with the new requirement for an annual financial report.

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 is quite consistent. It is therefore anticipated that the income for 2019/2020 will be of a similar level if the current fee structure remains the same. However, it should also be borne in mind that overall numbers of applications, particularly major variations and personal licences are reducing as time goes on.
- 5.2 If fees and expenditure were to remain at the current levels, it appears likely that income will again exceed expenditure in 2019/2020.
- 5.3 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.
- 5.4 However, going forward there is also likely to be further expenditure in the coming year that will need to be accounted for, in particular, there will be additional expenditure in respect of staff. As detailed in para 4.4 staff costs were unusually low for the last financial year because of temporary gaps in staffing. It is expected that staffing costs will increase for the next financial year. The amount cannot be precisely predicted as the actual cost is calculated based on the time spent by staff on licensing and time is recorded by staff on an ongoing basis. However it is anticipated that the gap between income and expenditure will be much closer.

- 5.5 The additional anticipated expenditure of approximately £5000 will also fall into the next budget.
- 5.6 The 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...”.
- 5.7 Fee setting is not an exact science. Taking account of all the above, it seems likely that keeping things as they are will result in income being broadly equivalent to expenditure. Therefore the recommendation is for the Board to keep the current fee structure as it is.
- 5.8 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.
- 5.9 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.
- 5.10 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.
- 5.11 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 now the Scottish Government is consulting on the statutory fee for occasional licences. No decisions have yet been made and the consultation does not close until July 2019. A major change to the cost of an occasional licence may radically alter the income and expenditure balance and necessitate a further fee review. However, it seems likely that the effects will not be seen until the next financial review in June 2020 anyway. 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 Department.

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