



---

## **Licensing Board**

Wednesday, 30 September 2020

**NOTICE IS HEREBY GIVEN** that a Meeting of the **Licensing Board** is to be held at remote locations via video conference, on **Wednesday, 30 September 2020** at **14:00**.

### **BUSINESS**

#### **BUSINESS**

- |    |  |                |
|----|--|----------------|
| 1. | <b>Minutes of the Meeting 6 February 2020</b>                            | <b>5 - 8</b>   |
|    | <b>THE LICENSING (SCOTLAND) ACT 2005</b>                                 |                |
| 2. | <b>Board Licensing Act 05 Fees and Business Transacted Review Report</b> | <b>9 - 22</b>  |
| 3. | <b>Chief Constable Annual Report</b>                                     | <b>23 - 32</b> |
| 4. | <b>Application List</b>  | <b>33 - 36</b> |
| 5. | <b>Report on Review of Personal Licence Case 1-2020</b>                  | <b>37 - 42</b> |
| 6. | <b>Report on Review of Personal Licence Case 2-2020</b>                  | <b>43 - 46</b> |
| 7. | <b>Report on Review of Personal Licence Case 3-2020</b>                  | <b>47 - 50</b> |
| 8. | <b>Premises Licence Review 2-2020 Report</b>                             | <b>51 - 56</b> |

**Any person attending the meeting who requires access assistance should contact customer services on 01343 563217 in advance of the meeting.**

\* **Declaration of Group Decisions and Members Interests** - The Chair of the meeting shall seek declarations from any individual or political group at the beginning of a meeting whether any prior decision has been reached on how the individual or members of the group will vote on any item(s) of business on the Agenda, and if so on which item(s). A prior decision shall be one that the individual or the group deems to be mandatory on the individual or the group members such that the individual or the group members will be subject to sanctions should they not vote in accordance with the prior decision. Any such prior decisions will be recorded in the Minute of the meeting.

\*\* **Written Questions** - Any Member can put one written question about any relevant and competent business within the specified remits not already on the agenda, to the Chair provided it is received by the Proper Officer or Committee Services by 12 noon two working days prior to the day of the meeting. A copy of any written answer provided by the Chair will be tabled at the start of the relevant section of the meeting. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than 10 minutes after the Council has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he or she can submit it in writing to the Proper Officer who will arrange for a written answer to be provided within 7 working days.

\*\*\* **Question Time** - At each ordinary meeting of the Committee ten minutes will be allowed for Members questions when any Member of the Committee can put a question to the Chair on any business within the remit of that Section of the Committee. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than ten minutes after the Committee has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he/she can submit it in writing to the proper officer who will arrange for a written answer to be provided within seven working days.

Clerk Name: Alasdair McEachan

Clerk Telephone: 01343 563080

Clerk Email: [alasdair.mceachan@moray.gov.uk](mailto:alasdair.mceachan@moray.gov.uk)

# **THE MORAY COUNCIL**

## **Licensing Board**

### **SEDERUNT**

Councillor Gordon Cowie (Chair)  
Councillor James Allan (Member)  
Councillor David Bremner (Member)  
Councillor Frank Brown (Member)  
Councillor Paula Coy (Member)  
Councillor Ryan Edwards (Member)  
Councillor Maria McLean (Member)  
Councillor Louise Nicol (Member)  
Councillor Amy Taylor (Member)

Clerk Name: Alasdair McEachan  
Clerk Telephone: 01343 563080  
Clerk Email: [alasdair.mceachan@moray.gov.uk](mailto:alasdair.mceachan@moray.gov.uk)

## **THE MORAY LICENSING BOARD**

### **MINUTE OF THE MEETING OF THE MORAY LICENSING BOARD**

The Moray Council Chambers, Council Headquarters, High Street, Elgin on  
Thursday 6 February 2020

#### **1. SEDERUNT**

##### **PRESENT**

Councillors: A Taylor  
J Allan  
F Brown  
G Cowie  
P Coy  
D Bremner  
R Edwards  
L Laing  
M McLean

##### **APOLOGIES**

Apologies were intimated on behalf of Councillor M McLean

##### **IN ATTENDANCE**

Sean Hoath, Depute Clerk to the Licensing Board  
Emma Rapley, Licensing Standards Officer

#### **1. MINUTES**

- (i) The Minutes of the Meeting held on 14 November 2019 were submitted and approved

2. There were no declarations of group or individual members interests

#### **3. APPLICATIONS**

##### **(i) Major Variation – Hopeman Stores**

The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant's representative introduced the application and answered questions. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

(ii) **New Premises Licence – Iceland (Food Warehouse)**

The Depute Clerk introduced the application and advised that paperwork was outstanding and that no objections or representations had been received. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

(iii) **Major Variation– Aberlour Distillery**

The Applicants Solicitor Rory Anderson of Grigor and Young was present. The Depute Clerk introduced the application and advised that paperwork was in order and that no objections or representations had been received. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

(iv) **Major Variation– Kiss Nightclub**

The Applicant was present. The Depute Clerk introduced the application and advised that paperwork was in order and that no objections or representations had been received. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

(v) **Major Variation– 1496**

The Applicant was present. The Depute Clerk introduced the application and advised that paperwork was in order and that no objections or representations had been received. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

(vi) **Major Variation– Carisbrooke Hotel**

The Depute Clerk introduced the application and advised that paperwork was in order and that no objections or representations had been received. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

4. **Licensing (Scotland) Act 2005 – Application for Personal Licences Upon Disclosure of a Conviction**

The applicant was not present and had not been invited to appear. The Depute Clerk introduced the application and the fact that whilst the Chief Constable had disclosed a relevant offence there had been no recommendation for refusal and so the Board was not obliged to hold a hearing. There was a discussion on the subject. Councillor Brown proposed that in the circumstances a hearing should take place and the Board agreed to hold a hearing to determine the application at the next available Board meeting.

**5. Licensing (Scotland) Act 2005 – Personal Licence Hearing Following Disclosure Of Relevant Conviction By Licence Holder**

The applicant was present. The Chief Constable made a recommendation that the Board consider all options open to them. Each party presented their case and answered questions from the Board. After some discussion Cllr Coy moved to revoke the licence it being necessary to do so for the purpose of the licensing objectives. This was seconded by Cllr Brown. Cllr Allan moved an amendment to endorse the licence on the same grounds but having regard to the licence holder's personal circumstances. This was seconded by Cllr Bremner. There was an equal vote and the casting vote lay with the Chair who determined to endorse the licence.

**6&7. Licensing (Scotland) Act 2005 – These items were linked (6) Personal Licence Review Hearing Following Disclosure Of Relevant Conviction By Licence Holder and (7) Review of a Premises licence on the Application of the Chief Constable**

The applicant was present. The Premise licence was dealt with first. There was some dubiety over service of the premises review. The applicant was given the option to defer however he wanted to proceed. The parties presented their cases and answered questions from the Board. After discussion Cllr Brown stated that he found grounds for review established and moved to give the licence holder a written warning finding it necessary and appropriate having regard to the licensing objectives. This was seconded by Cllr Coy. There being no one otherwise minded the Board resolved to issue a written warning.

In regards to the personal licence, after some debate the Board agreed to hold a hearing to review the personal licence. The Chief Constable had made no recommendation. The parties presented their cases and answered questions from the Board. After discussion. Cllr Coy moved to endorse the personal licence it being necessary to do so for the purpose of the licensing objectives, this was seconded by Cllr Edwards. There being no one otherwise minded it was agreed to endorse the licence.

**8. Licensing (Scotland) Act 2005 – Review of a Premises licence of the Board's Own Motion**

A report was presented to the Board for review of one or more premises licences that had failed to pay the annual premises licence fee. The Board had previously agreed to make premises licence review proposals whenever an annual fee remained outstanding for at least 6 weeks after the due date. The review was based on a breach of licence condition and grounds related to one or more of the licensing objectives. The Depute Clerk introduced the report and explained that only one premise remained on the list of unpaid fees. After hearing the issues the Board agreed that grounds for review were established and with it being necessary to do so for the purpose of the licensing objectives the licence would be suspended with immediate effect. The licence would remain suspended for a

period of 6 months, after which time the Board would further review the position. If in the meantime the fee was paid then the suspension would automatically be lifted.



---

**REPORT TO: THE MORAY LICENSING BOARD 30 SEPTEMBER 2020**

**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, to 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) note the current fees attached at Appendix 1;
- ii) note the financial report on income and expenditure data at Appendix 2;
- iii) agree to publish the financial report;
- 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;
- v) note the table of business conducted for the last financial year as well as the first half of this calendar year for comparison attached at Appendix 3; and
- vi) note that the annual functions report will be brought to the next meeting of the Board on the 2 December;

### 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 2019 to 31 March 2020.
- 4.3 The figures and calculations are summarised at **Appendix 2**.
- 4.4 The figures reveal the following indications:
  - There was a notional surplus of £12933.00 for the last financial year.
  - This has been the first full financial year reflecting a number of staff changes including the filling of the Licensing Standards Officer post.
  - Legal Services has been through a number of changes and the regulatory and licensing section now has a full complement of staff

including senior solicitor, solicitor, two LSOs and administrative support.

- The financial year 2019/2020 also saw the implementation of the mobile ICT system for LSOs, previously delayed by the supplier, so the expenditure for that has now been incurred.

## **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 is also asked to note that attached at Appendix 3 is a review of business transacted. This is not a full functions report as referred to in paragraph 4.5 above and that functions report will be brought back to the Board at the next meeting on the 2 December.

## **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 hoped that the income for 2020/2021 will be of a similar level.
- 5.2 The normal review has been delayed by the COVID pandemic. Annual fees fall due on the 1<sup>st</sup> October each year in advance for the year. The Board is obliged to send a reminder to licensed premises for the payment of annual fees and those reminders (invoices) have already gone out as normal. So the fees for the period 1/10/20 to 30/9/21 have remained unchanged as it has not been possible to carry out the review before fees became due.
- 5.3 Unfortunately licensed premises have suffered as a result of COVID. Discussions were held between SOLAR Licensing (the national body for licensing clerks) and the Scottish Government about whether annual fees would still be due. In the end the Scottish Government did not intervene with the process of payment of annual fees and the law did not change. Therefore fees were legally due as normal. The Licensing Board is fully financed by the Moray Council and fee income is passed to the Council to cover the cost to the Council of providing the licensing function. That cost to the Council did not go away and annual fees represent the vast majority of the licensing budget. Therefore it was just not possible to waive annual fees by absorbing a cost of over £110,000.00. It would have left no budget going forward. The Clerk has checked with colleagues around the country and the position is the same throughout Scotland with licensing clerks issuing annual fee reminders as normal.

- 5.4 The overarching 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...”.
- 5.5 Fee setting is not an exact science. However it seems likely that keeping things as they are will continue to result in income being broadly equivalent to expenditure. This means that despite missing the usual timescale for review, the recommendation is for the Board to keep the current fee structure in any event.
- 5.6 There is a relatively small surplus but it should also be borne in mind that overall numbers of applications, particularly major variations and personal licences are reducing as time goes on. Application numbers have also been severely hit by COVID so overall income from applications has been well below normal for quarters 1 and 2 of 2020. The Clerk has not yet had any definite indications about whether a number of licensed premises will not recover at all from the pandemic (and so not re-open and not pay their fees). So there are several unknown factors that may even leave a shortfall in the next financial year.
- 5.7 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. However, there is no comparison for such a novel set of circumstances as COVID.
- 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. However, as the reminders have already been issued for 1/10/20 to 30/9/21, the clear

recommendation would be not to implement any change unless and until the next set of fee reminders would be due.

- 5.11 If all goes to plan then the next fee review will be June 2021, which will reveal more about the ongoing financial year. That review will be in good time before the next reminders are issued at the end of August 2021.
- 5.12 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 the Scottish Government has already consulted on the statutory fee for occasional licences. Any major change to the cost of an occasional licence may radically alter the income and expenditure balance and necessitate a further fee review. It is totally unknown as to when further statutory changes might be seen. 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.

## **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

## Moray Licensing Board Current Fee Scale

### Premises Licence Application Categories and Annual Fees

Category	Rateable Value	Application Fee	Annual Fee
Category 1	nil rateable value or within certain defined exemptions described above	200	144
Category 2	rateable value between £1 and £11,500	800	176
Category 3	rateable value between £11,501 and £35,000	1100	224
Category 4	rateable value between £35,001 and £70,000	1300	400
Category 5	rateable value between £70,001 and £140,000	1700	560
Category 6	rateable value over £140,000	2000	720

### Type of Application and Fee

Type of Application	Fee - £
An application to vary a premises licence where the variation sought is the substitution of a premises manager and any other variation is a minor variation	31
An application to vary a premises licence where the variation sought is a minor variation and there is no substitution of the premises manager	20
Application for an occasional licence	10
Application for extended hours	10
Application for a personal licence	50

### Type of Application and Fee

Type of Application	Fee - £ Category 1-3	Fee - £ Category 4-6
Any variation of a premises licence that is not within the definition of the prescribed fees below i.e. that is a major variation	350	500
Application by the licence holder to transfer and vary a licence	375 for major variations and 145 for minor ones	600 for major variations and 220 for minor ones
Application by the licence holder to transfer a licence (no variation)	125	200
Application by another person to transfer and vary a licence	450 for major variations and 220 for minor ones	675 for major variations and 295 for minor ones
Application by another person to transfer a licence (no variation)	200	275
Application for a provisional premises licence £Variable (to be the same as a category 1 premises)	180	180
Application for confirmation of a provisional		Variable

# Type of Application and Fee

Type of Application	Fee - £ Category 1-3	Fee - £ Category 4-6
premises licence £Variable (this will vary between premises. The confirmation fee will be the fee that would have been payable for a premises licence application (based on the rateable value as above) LESS the amount paid on application for the provisional premises licence as a category 1)	Variable	
Application for a temporary premises licence	200	200
Application for a replacement personal licence	25	25
Application for a replacement premises licence	40	40

**CS103 Licensng Board**

		<b>Budget</b>	<b>Actual</b>		
		2019/20	2019/20		
A	Employee Costs				
98	Employee Costs Allocation	0.00	2613.04	Env Svcs recharge (not LSO)	
99	TOTAL: Other Costs	0.00	2613.04	Staffing	Overhead
	Employee Costs Total	0.00	2613.04	2394.02	219.02
D	Supplies and Services				
09	Software licences, maintenance	2200.00	5302.40		
11	Printing and Stationery	130.00	350.21		
12	Postages	0.00	1211.38		
15	Catering	150.00	0.00		
27	Fees, charges and subs	2700.00	0.00		
30	Expenses	100.00	49.95		
D	33 Conference Expenses	1750.00	0.00		
42	Advertising	376.00	0.00		
60	Other Admin Costs	200.00	0.00		
	Supplies and Services Total	7606.00	6913.94		
E	Transport & Plant Costs				
10	Staff Transport Costs	0.00	18.50		
	Transport & Plant Costs Total	0.00	18.50		
F	Support Services				
50	Apportioned Costs	0.00	105697.09	LEGAL	85827.77
	Support Services Total	0.00	105697.09	Gambling	2282.43
					83545.34
				Staffing	Overhead
				77187.73	6357.61
L	Income				
20	Income from Service Users	-120924.00	-134833.48		
	Income Total	-120924.00	-134833.48		
	Running Total -----	-113318.00	-19590.91		

Nominal		Annual Budget	Actual to Date		
	Totals:-	-120924.00	-134833.48		Reconciliation
74300	Premises Licence Fees	-107866.00	-105391.48	FMS excluding gambling	-12933.34
74301	Occasional & Extended Hours	-7061.00	-5326.00	Statement	-12933.34
74302	Gaming Act Permits	-196.00	-600.00	Diff	0.00
74337	Personal Licence Fees	-359.00	-15176.00		
74339	Gambling Premises Licences	-5442.00	-4200.00		
78608	Small Lotteries	0.00	-4140.00		

<u>Summary figures as per Glasgow City Council I&amp;E Template</u>	
	£
<b>Income</b>	<b>(125,893)</b>
<b>Expenditure</b>	
Direct Staff Costs	79,582
Other Direct Costs	6,932
Indirect Costs	26,446
Total Expenditure	<b>112,960</b>
<b>Net Income</b>	<b>(12,933)</b>

Notes

Income

Direct Staff Costs

Other Direct Costs

(for internal use only)

Excludes gambling income

Excludes Gambling staff recharges. Includes Legal, Environmental Health and Building Control staffing

Includes Training, Supplies & Services as shown in green above

#### Indirect Costs

Indirect costs include Apportioned costs, less Legal staffing, add indirect overheads for Legal, Environmental Health and Building Standards.



	2019/2020					Q1 2020					Q2 2020				
Licence Type	Rec	Grt	Ref	Rev	W/D	Rec	Grt	Ref	Rev	W/D	Rec	Grt	Ref	Rev	W/D
Confirmation of Provisional	6	5									1				
Personal Licence	292	298	1								16				
Premises Lic - Extended Hours	37	36				5	5				9	5			
Premises Lic - Occasional	455	405			1	24	17	1			57	53			
Premises Lic Transfer - Holder	7	5				1					1	3			
Premises Lic Transfer - Other	4	3													
Premises Lic Transfer Vary - Other Major	1	1				3									
Premises Lic Transfer Vary - Other Minor	5	6													
Premises Lic Transfer Vary -Holder Minor	6	7									1	2			
Premises Lic Vary - Major	20	16									3	2			
Premises Lic Vary - Minor	10	8									3	1			
Premises Lic Vary - Substitute	50	49				1					7	3			
Premises Licence	8	5		1							3				
Provisional Licence		3													
<b>Total</b>	<b>895</b>	<b>839</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>34</b>	<b>22</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>101</b>	<b>69</b>	<b>0</b>	<b>0</b>	<b>0</b>

Rec - Received

Grt - Granted

Ref - Refused

Rev - Revoked

W/D - Withdrawn





---

**REPORT TO: THE MORAY LICENSING BOARD 30 SEPTEMBER 2020**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – CHIEF CONSTABLE’S REPORT UNDER SECTION 12A**

**BY: CLERK TO THE BOARD**

**1. REASON FOR THE REPORT**

- 1.1 This report is to place before the Board a report from the Chief Constable, who has a responsibility to report certain matters to the Board on an annual basis.

**2. RECOMMENDATIONS**

- 2.1 **It is recommended that the Board note the contents of the report attached at Appendix 1.**

**3. BACKGROUND**

- 3.1 The Chief Constable on 7 July 2020, submitted a report under section 12A of the Licensing (Scotland) Act 2005. This section provides that he should send a report to the Licensing Board at the end of each financial year that sets out the following information.
- 3.2 His views about matters relating to policing in the Licensing Board’s area during that year and the following year, in connection with the operation of the Licensing (Scotland) Act 2005; and
- 3.3 Any steps taken during the year, or intended to be taken in the following year, to prevent the sale or supply of alcohol to children or young people in the Board’s area.
- 3.4 The Chief Constable’s report for 2019 to 2020 is attached at **Appendix I**.

#### **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**

Matters raised in the Chief Constable's report may be relevant to Licensing Board policy.

**(c) Financial implications**

None.

**(d) Risk Implications**

None

**(e) Staffing Implications**

None.

**(f) Property**

None.

**(g) Equalities**

None.

**(g) Consultations**

None.

#### **5. Conclusion**

**5.1 It is proposed that the Board note the report from the Chief Constable.**

Author of Report: Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board

Background Papers:None

Ref: SH



# Chief Constable's Annual Licensing Report for 2019/20

## Moray Licensing Board

## **Foreword**

It gives me great pleasure to provide the Annual Licensing Report for 2019/20, in accordance with Section 12(A) Licensing (Scotland) Act 2005. During this year Police Scotland has continued to work tirelessly towards supporting and enforcing the licensing objectives.

Police Scotland continues to work closely with local authorities and partnership agencies to deliver effective regulation in liquor licencing. Preventing alcohol fuelled violence, disorder and antisocial behaviour is a priority and I believe that working together to achieve effective early intervention and enforcement is vital to this.

I would like to take this time to thank our many local partnerships and acknowledge the good work that they do, as without their support we would not be able to maintain the high standard in licencing we have become accustomed to in the Moray Licensing Board area.

Going forward I will continue to emphasise the importance of partnership working to our dedicated officers and staff. I am confident that through strong partnerships and collaborative working, we will meet any challenges that may arise and will continue to improve licensing standards for the communities of Scotland.

Mr Iain Livingstone QPM  
Chief Constable  
Police Service of Scotland

## **Police Scotland Licensing Overview –**

The Violence Prevention and Licensing Co-ordination Unit (VPLCU) sits within Safer Communities based at Dalmarnock Police Station, Glasgow.

The VPLCU upholds the two tier structure for licensing which supports both national and local priorities through service delivery. They have overall responsibility for determining and delivering national licensing strategy and policy, by providing advice, guidance and support to divisional licensing teams as well as undertaking other specialist functions.

The Violence Prevention and Licensing Co-ordination Unit is a specialist department which consists of a small team of officers, based in Glasgow. The officers within the unit work with divisional licensing teams and partner agencies to help shape policy and strategy around the police licensing function. They provide practical and tactical advice to police licensing practitioners, operational officers, supervisors and policing commanders.

The VPLCU seek to ensure that legislation governing the sale and supply of alcohol is applied consistently across the country and all opportunities are taken to stop the illegal or irresponsible sale, supply or consumption of alcohol with the intention of preventing and reducing crime and disorder.

During 2019/2020, from a licensing perspective, our focus was on the following:

- Scrutiny of the serious incidents of violence, disorder and antisocial behaviour linked to licensed premises;
- Continuous professional development training and guidance for staff to harmonise licensing practice across the country;
- Working closely with statutory partners within a National Licensing Trade Forum to identify licensing related issues and prevent/reduce associated crimes;
- Governance and ongoing development of the National ICT Licensing System, known as “Inn Keeper”, to increase the efficiency and effectiveness of liquor and civic licensing administration and management;
- The implementation and ongoing development of the Licensing Admin tool provides divisional licensing officers with a single ICT product negating the need to research police systems independently. Through accurate recording, the licensing admin tool assists Police Scotland in deploying our resources to the right places and the right time to keep people safe.

Each of the thirteen Local Policing Divisions have a licensing team responsible for the day to day management of licensing administration, complying with statutory requirements as well as addressing any issues that may arise within licensed premises in their local area.

## **LICENSING BOARD AREA**

The Moray Licensing Board area is policed by North East Division.

Chief Superintendent Campbell Thomson is the Local Police Commander who has the responsibility for all day-to-day policing functions.

## **Local Policing Priorities**

Following our public consultation process, the policing priorities for North East Division 2019-2020, as set out in our Local Policing Plans, are as follows:

- Anti-social Behaviour, Violence and Disorder;
- Acquisitive Crime;
- Road Safety and Road Crime;
- Protecting People at Risk of Harm;
- Serious Organised Crime;
- Counter Terrorism and Domestic Extremism.

## **OPERATION OF THE LICENSING (SCOTLAND) ACT 2005**

The North East Division Licensing Team is located across the division in Aberdeen, Inverurie, Elgin and Stonehaven. All staff have a division wide remit and a working knowledge of all the areas covered.

The North East Division Licensing Team, supported by Community Policing Officers, has promoted the Police Service of Scotland's force priorities alongside the five licensing objectives, the overarching principles and aims of the Licensing (Scotland) Act 2005.

In the reporting period, as statutory consultees, the team responded to the Board regarding 479 applications for occasional licences or extended hours (an increase from 438 the previous year), 11 premises or provisional premises applications (the previous year saw 12), 282 personal licence holder applications (an increase from 207 the previous year which reflect the 10 year renewal point) and 43 premises variations or premises licence transfer applications (an increase from 38 the previous year).

Where any query arises from any such application, a member of the team will seek to discuss the application with the applicant, or the applicant's agent, to ensure that responses to the Board by means of representation or objection are considered, reasonable and proportionate.

**OFFICIAL**  
**NOT PROTECTIVELY MARKED**

The team enjoys a strong working relationship with the Local Authority Licensing Standards Officer, who share information and regularly conduct joint visits to licensed premises, on both a pro-active and reactive basis.

The North East Division Licensing Team is represented on the Local Licensing Forum and Moray Alcohol and Drugs Partnership and works alongside the following groups and organisations to jointly improve local licensing issues:

- Licensed Trade Association;
- Community Safety Partnership;
- Local Security Industry companies;
- Street Pastors.

Reviewing incidents on, or connected to, licensed premises is a key part of our day-to-day business.

Community based Police Officers are encouraged and expected to routinely visit licensed premises within their area. Sizeable towns in Moray benefit from a dedicated Weekend Policing Plan to support the night time economy.

Within the reporting period, there were 3893 inspections (visits) to licensed premises within Moray recorded on the InnKeeper system, a marked increase on 3305 the previous year.

Any Police Officer who attends an incident at a licensed premises is expected to submit a concise report via the InnKeeper system, particularly when the incident involves violence, disorder, anti-social behaviour, drunkenness, drug misuse, underage drinking, breaches of licensing legislation or any other matter that might impact on public safety.

Within the reporting period, there were 192 incidents connected to licensed premises within Moray recorded on the InnKeeper system. This is a reduction from 212 the previous reporting year.

The information obtained may show a causal link between the operation of the premises and the incident. An incremental intervention process allows for issues to be addressed quickly and effectively at an early stage. This includes a low level 'interaction' which may involve a discussion between the Police and the premises management and/or licence holder. The level of engagement from within the Aberdeen licensed trade is very good and in many instances, this approach reduces recurrence or escalation.

Premises may become 'monitored' with closer attention being paid to any incidents occurring there. This is often undertaken in conjunction with tasked, supportive visits to the premises by uniformed Police Officers.

However, where necessary, the staged process allows for more formal intervention to support premises where the need for support has been identified. A premises licence holder and the premises management may be asked to meet with the Police,

**OFFICIAL**  
**NOT PROTECTIVELY MARKED**

when concerns will be discussed. This will often involve an agreed action plan being put in place, with a reasonable time scale for completion.

The most common example of an agreed 'action' is refresher training of staff covering their responsibilities including the sale of alcohol to underage or intoxicated persons, 'Challenge 25' and the general terms and conditions of the licence held.

Should the intervention stage not bring about the necessary changes, or be otherwise unsuccessful, the next stage is the submission of a premises licence review application for the consideration of the Licensing Board.

Over the reporting period there have been five licensed premises in Moray subject to a period of monitoring or intervention, a slight increase from three previous year. The issues that were addressed ranged from failure to report incidences of violence, underage persons within and an intoxicated licence holder.

Partnership working between the Police, the Licensing Standards Officer and the premises licence holders and premises' management teams continues to hopefully fully resolve the issues and prevent bringing the matters to the Licensing Board by premises licence review application.

In the reporting period there was one premises licence review application submitted to the Board, which related to the sale of alcohol to underage persons.

The North East Division Licensing Team also has a system in place which monitors certain conduct of Personal Licence holders. Should such a licence holder be charged with any offence, this is brought to the attention of the team. Should the circumstances appear to be inconsistent with any of the five licensing objectives, consideration will be given to bringing this to the attention of the Board by way of a personal licence review. In addition, should an individual be convicted of a relevant offence, this will undergo the same scrutiny. Three such reports for a personal licence review were submitted to the Board in the reporting period.

## **PREVENTING THE SALE OR SUPPLY OF ALCOHOL TO CHILDREN OR YOUNG PEOPLE**

The Moray area attracts a relatively low number of reports of underage drinking or youth congregation involving alcohol when considering other towns and cities across Scotland.

Where a person under 18 years of age is found to be either under the influence of alcohol, drinking alcohol in a public place or in possession of alcohol, the Police Officer involved will take all appropriate steps to ascertain the source of the alcohol.

Where information that cannot be fully evidenced is received regarding the sale of alcohol to children and young persons, in accordance with the national guidance contained within the 'Alcohol Toolkit', letters will be sent to licensed premises in the area reminding them of their responsibilities and requesting extra vigilance.

**OFFICIAL**  
**NOT PROTECTIVELY MARKED**

If such concerns were to continue in respect of specific premises, then other operational strategies would be considered.

One way in which North East Division delivers our commitment to the community is through our School Liaison Officers and School Based Officers. These Officers attend schools and other educational establishments seeking to equip our young people with the appropriate information and understanding that will allow them to make better informed decisions in key areas of their lives, both now and in the future. To this end they deliver lessons, linked to the Curriculum for Excellence, on a range of subjects including alcohol, controlled drugs and anti-social behaviour – particularly alcohol fuelled anti-social behaviour and the potential for related safety issues and consequences.

In support to the Protecting Children and Young Persons from Harm licensing objective, applications for premises licences and variations to premises licences come under close scrutiny often resulting in the submission of letters of objection, or more commonly, of representation, in which the imposition of conditions in respect of on sales, with regard to the times and terms in which children can be on such premises, will be recommended by the Chief Constable.

## **TACKLING SERIOUS AND ORGANISED CRIME**

Many of the processes and procedures involved in licensing applications are carried out to guard against Serious Organised Crime Groups (SOCG) infiltrating the licensed trade in any way. This scrutiny is further enhanced with the nation-wide InnKeeper system. This database contains details of all liquor and civic licences for every Division in Scotland, and enhances our information sharing in respect of premises and people in the licensed trade as they move about the country and work in multiple venues.

If such an SOCG were able to gain a foothold in licensed premises this would afford the criminal group a seemingly legitimate income stream, which could be no more than a veneer for other criminal activities such as money laundering, tax evasion, drug and people trafficking and other dishonest activities.

Many of the procedures currently carried out by the North East Divisional Licensing Team, particularly in relation to new premises licences and the transfer of premises licences are done to ensure complete financial transparency and to ensure there are no business related irregularities which may be indicative of SOCG involvement.

Frequent and directed Police attendance and contact with licensed premises also increases the opportunity for irregularities to be identified or reported.

As part of this, the North East Division Licensing Team regularly liaise with Police Interventions staff who are aware of SOCG activity within the Division to ensure that applicants are not affiliated in any way to such groups, before responding to the Licensing Board.

**OFFICIAL**  
**NOT PROTECTIVELY MARKED**

The consistent high profile approach and interaction with licensed premises in direct correlation with the aforementioned close scrutiny in the application process should reinforce the work carried out to maintain this position.

**PROPOSED ACTIVITY FOR THE YEAR AHEAD**

Over the forthcoming year, North East Division Licensing Team, in conjunction with Community Policing Teams, will work alongside licensed premises, to ensure that these premises are adhering to the spirit of the legislation and operate in a manner that supports the five licensing objectives. We aspire to maintain our number of supportive visits to licensed premises and hope to see a continued reduction in the number of incidents taking place on licensed premises.

Our involvement and participation in public safety campaigns will continue, such as the 'Ask for Angela' personal safety campaign, the 'One Punch' campaign which highlights consequences for both victims and perpetrators of spontaneous acts of violence and support partners with campaigns such as 'Count 14' promoting awareness of alcohol consumption guidelines. We will also remain involved in ongoing work to ensure premises are complying with the recent Duty of Care condition.

Working with established partnerships but particularly with the licensed trade, we hope to continue to see a reduction in alcohol-related crime, particularly violence, whether perpetrated within licensed premises, public places or private spaces.

To conclude we would like to thank you for your continued support and stress the importance of this collaborative problem solving approach. This ensures that Police, license holders and licensed premises staff have a better understanding of their responsibilities. We look forward to furthering this partnership over the coming year.

# MORAY LICENSING BOARD

**MEETING, 30 September 2020 at 14:00hrs in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX**

## Licensing (Scotland) Act 2005

Type	Premises	Applicant	Date received	Comments
New Premises	Brodie Castle& Estate	The National Trust for Scotland Enterprises Limited	Went into process 16 July 20	New Premises licence application Paperwork in order No objections or representations – the applicant and the police have agreed conditions for outdoor drinking facilities No site visit
New Premises	Craigellachie Lodge	Jodi Turner	Went into process 16 July 20	New Premises licence application Paperwork in order No objections or representations No site visit.
Major Variation	Costcutter 19-21 Harbour Street Hopeman	Tim Moyle	05/08/2020	Proposed extension to hours on Sunday to 10:00-21:00 (currently 12.30-21:00) Also propose extentsion of hours to 22:00 on all days except Sunday when closing time will remain at 21:00. Proposal to add a single length of 125cm shelving to alcohol display. Paperwork in order. No objections or representations. No site vists.



## Key to Colour Coding of Applications within Appendices to the Agenda of Business for the Moray Licensing Board

All matters are to be heard by the Moray Licensing Board and the Moray Licensing Board has the final decision. However, in accordance with Government Guidance and locally agreed procedure, applications may be submitted to the Board with a general recommendation.

Please note that colour coding may be subject to change given the nature of the licensing procedure. Documents may be received and/or negotiations resolved following publication of the agenda.

RED

Indicates that the application will normally require to be heard, whether by virtue of general procedural rules or as a result of problems arising. This should apply to all new premises/provisional licence applications. There may be ongoing negotiations to resolve problems.

YELLOW

Indicates changing circumstances with the application. It is not ready to be granted at the time of publication but there are not normally major problems e.g. procedural issues or ongoing negotiations. Applications will normally be submitted with recommendation for grant or deferral.

GREEN

Indicates that all is in order with the application. All documents have been received and checked. All procedures have been followed. There are unlikely to be any representations, objections or problems or the same have been resolved. It is being submitted with a recommendation for grant but members are free to make enquiries as they see fit.





---

**REPORT TO: MORAY LICENSING BOARD ON 30 SEPTEMBER 2020**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE APPLICATION HEARING FOLLOWING DISCLOSURE OF RELEVANT CONVICTION ON APPLICATION (CASE NUMBER 1 OF 2020)**

**BY: CLERK TO THE BOARD**

**1. REASON FOR REPORT**

1.1 This report is to notify the Board:

- i) That notice of relevant conviction(s) has been disclosed on an application for a personal licence. a copy of the notice from the Chief Constable is attached at Appendix 1;
- ii) The Chief Constable has confirmed to the Clerk that the applicant (case number 1 of 2020) has been convicted of relevant offence(s) but the Chief Constable has made no further recommendation;
- iii) That, as a result, s.74(5A) of the Licensing (Scotland) Act 2005 states the Board may hold a hearing to consider and determine whether the licence should be granted or refused.
- iv) That at the meeting on the 6 February 2020 the Board determined to hold a hearing for the purpose of considering this personal licence application.

**2. RECOMMENDATION**

2.1 It is recommended that the Board:

- i) **Note the existence of a relevant conviction and the absence of a recommendation by the Chief Constable;**
- ii) **Note the previous decision to hold a hearing for the purpose of considering and determining the application;**
- iii) **Proceed with a hearing, have regard to the notice from the Chief Constable, hear from the parties, consider the matter and determine whether to grant or refuse the personal licence having regard the grounds for refusal set out in para 3.7 below;**

### **3. BACKGROUND**

- 3.1 The Licensing (Scotland) Act 2005 section 73 requires the Board to notify the Chief Constable of the receipt of an application for a personal licence. 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.
- 3.2 The Chief Constable has confirmed to the Clerk that the applicant (case number 1 of 2020) has been convicted of offence(s) but the Chief Constable has made no recommendation for refusal. A copy of the Chief Constable's notice is attached at Appendix 1.
- 3.3 The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007 No. 513) prescribe which offences are relevant offences for the purposes of the Licensing (Scotland) Act 2005. The list of relevant offences within the Regulation includes, amongst others, the offences disclosed.
- 3.4 Accordingly the applicant for personal licence has been convicted of a relevant offence which has been confirmed by the Chief Constable's representative but no recommendation on behalf of the Chief Constable has been provided.
- 3.5 Under s.74(5A) of the Licensing (Scotland) Act 2005 the Board may hold a hearing, as a result of receipt of the Chief Constable's notice, to consider and determine the application. On the 6 February 202 the Board resolved to hold a hearing and the hearing was due to take place in April however all hearings were cancelled because of coronavirus.
- 3.6 This is therefore the first opportunity to hold that hearing. At the 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 a ground for refusal applies refuse the application; or
  - ii) If not so satisfied grant the application.
- 3.7 The grounds for refusal are
- i) that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence; OR
  - ii) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.
- 3.8 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. However, in the absence of such a recommendation by the Chief Constable based on crime prevention grounds, the Board should be slow to draw the conclusion that refusal is necessary for a purpose(s) related to that objective.

3.9 The licensing objectives are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

#### 4. **SUMMARY OF 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 which are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

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**

The Board is to have regard to the licensing objectives and whether there is real and sufficient risk of prejudicing the same.

**(e) Staffing Implications**

None

**(f) Property**

None

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

There are no issues in this case beyond the general equalities and human rights issues that arise in the consideration of individual cases. In particular:

Article 8 - access to private and sensitive information about the person could give rise to interference with the subject's right to respect for private and family life.

Article 1 of Protocol 1 - the decision may also interfere with the right to property, in that, depending on the outcome, the decision may deprive the subject of income.

Article 6 - the right to a fair trial means the proceedings must be conducted fairly to arrive at a reasoned decision.

Article 8 and Article 1 of Protocol 1 are qualified rights, meaning these can be restricted in order to protect the rights of another or the wider public interest. This will require an objective justification. To be able to objectively justify a decision, the Committee has to demonstrate that any decision is a proportionate means to achieve a legitimate aim. A legitimate aim must be a real consideration that is legal and not discriminatory. Examples of legitimate aims include: Public health; Public safety; Efficiency; Enabling elderly people to live at home longer. Saving cost may be relevant but is not an aim in itself.

Any measure taken to achieve the legitimate aim must also be proportionate i.e. necessary and the least intrusive/discriminatory way of achieving the aim.

Lastly, when any of the Articles are engaged, it will also mean Article 14 should be considered. That is the right not to be discriminated against in relation to the convention rights. The definition of discrimination under this Article covers a much wider spectrum than the protected characteristics under the Equality Act 2010. The Committee should therefore have regard to all the subject's circumstances.

**(h) Consultations**

Consultation is not required.

**5. CONCLUSION**

- 5.1 It is proposed that the Board note the existence of a relevant conviction and the absence of a recommendation by the Chief Constable;**
- 5.2 It is proposed that the Board determine whether to hold a hearing for the purpose of considering and determining the application;**
- 5.3 It is proposed that, if a hearing is held then the Board, having regard to the notice from the Chief Constable, should hear from the parties, consider the matter and determine whether to grant or refuse the personal licence having regard to the grounds for refusal;**
- 5.4 It is proposed that if a hearing is not held then the Board grant the application.**

Author of Report:	Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board
Background Papers:	
Ref:	SAH





---

**REPORT TO: THE MORAY LICENSING BOARD 30 SEPTEMBER 2020**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE REVIEW HEARING FOLLOWING REPORT OF CONDUCT INCONSISTENT WITH THE LICENSING OBJECTIVES BY THE CHIEF CONSTABLE (REFERENCE CASE NUMBER 2 OF 2020)**

**BY: CLERK TO THE BOARD**

**1. REASON FOR REPORT**

- 1.1 This report is to notify the Board that notice of a report of conduct alleged to be inconsistent with the licensing objectives has been received from the Chief Constable under s.84A(1) of the Act and is attached at **Appendix 1**;
- 1.2 The Chief Constable has confirmed to the Clerk that, in the Chief Constable's opinion, the applicant (reference case number 2 of 2020) has acted in a manner which is inconsistent with the licensing objectives namely: preventing crime and disorder and securing public safety; and the Chief Constable has made a recommendation that the Board should consider revocation of the licence under Section 84(7) or 84(7A) of the Act.
- 1.3 That, as a result, s.84A(2) of the Act requires the Board to hold a hearing to consider and determine whether further action is required in relation to the personal licence.

**2. RECOMMENDATIONS**

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

- i) **note the Chief Constable's report means that the Board must hold a hearing to consider the allegations.**
- ii) **hear from the parties, consider the matter and determine whether further action is required in relation to the personal licence and, if so, whether to endorse the Personal Licence, suspend the Licence for a period not greater than 6 months or revoke the licence;**

- iii) **note that where it has been determined by the board that the licence holder is no longer a fit and proper person then under S84(7A) the Board must revoke the licence.**

### **3. BACKGROUND**

- 3.1 On the 3 August 2020 the Clerk received a report from the Chief Constable whereby in terms of Section 84A of the Licensing (Scotland) Act 2005 it was alleged that the personal licence holder Marc Christie has acted in a manner which is inconsistent with one or more of the licensing objective set out at Section 4(1) of Act, in particular preventing crime and disorder and securing public safety.
- 3.2 A copy of the Chief Constable's letter has been provided to the licence holder at his last known address and attached at Appendix 1 for the Board's information. The current whereabouts of the licence holder are not known.
- 3.3 The Chief Constable has recommended that the Board consider revocation of the personal licence under Section 84(7) or 84(7A) of the Act.
- 3.4 As a result of the Chief Constable's report Section 84A(2) of the Act requires the Board to hold a hearing.
- 3.5 At the hearing the Licensing Board must, after having regard to the Chief Constable's Report and after giving the licence holder concerned and the Chief Constable an opportunity to be heard:
- 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 revoke the licence; or
  - If satisfied that it is otherwise necessary for the purposes of any of the licensing objectives, endorse the licence, suspend the licence for no greater than 6 months or revoke the licence or
  - If not so satisfied take no further action.
- 3.6 The licensing objectives are:
- Preventing crime and disorder
  - Securing public safety
  - Preventing public nuisance
  - Protecting and improving public health
  - Protecting children and young persons from harm

### **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**

Legal implications have been explained above.

**(c) Financial Implications**

None

**(d) Risk Implications**

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.

**(e) Staffing Implications**

None.

**(f) Property**

None.

**(g) Equalities**

There are no issues in this case.

**(h) Consultations**

Consultation is not required.

**5. CONCLUSION**

**5.1 It is proposed that the Board note the existence of the report given by the Chief Constable;**

**5.2 It is proposed that the Board, having regard to the report from the Chief Constable, and determine whether to endorse, suspend or revoke the licence for the purposes of any of the licensing objectives.**

Author of Report: Sana Sarwar, Solicitor

Background Papers:

1. Report from Chief Constable

Ref: SS





---

**REPORT TO: MORAY LICENSING BOARD 30 SEPTEMBER 2020**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE REVIEW HEARING FOLLOWING REPORT CONDUCT INCONSISTENT WITH THE LICENSING OBJECTIVES BY THE CHIEF CONSTABLE (REFERENCE CASE NUMBER 3 OF 2020)**

**BY: CLERK TO THE BOARD**

**1. REASON FOR THE REPORT**

- 1.1 This report is to notify the Board that notice of a report of conduct alleged to be inconsistent with the licensing objectives has been received from the Chief Constable under s.84A(1) of the Act and is attached at **Appendix 1**;
- 1.2 The Chief Constable has confirmed to the Clerk that, in the Chief Constable's opinion, the applicant (reference case number 3 of 2020) has acted in a manner which is inconsistent with the licensing objectives namely; Protecting and Improving Public Health; and the Chief Constable has made a recommendation that the Board should consider all options open to them under Section 84(7) or 84(7A) of the Act.
- 1.3 That, as a result, s.84A(2) of the Act requires the Board to hold a hearing to consider and determine whether further action is required in relation to the personal licence.

**2. RECOMMENDATIONS**

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

- i) **note the Chief Constable's report means that the Board must hold a hearing to consider the allegations;**
- ii) **hear from the parties, consider the matter and determine whether further action is required in relation to the personal licence and, if so, whether to endorse the Personal Licence, suspend the Licence for a period not greater than 6 months or revoke the licence; and**

- iii) **note that where it has been determined by the board that the licence holder is no longer a fit and proper person then under S84(7A) the Board must revoke the licence.**

### **3. BACKGROUND**

- 3.1 On the 3 August 2020 the Clerk received a report from the Chief Constable whereby in terms of Section 84A of the Licensing (Scotland) Act 2005 it was alleged that the personal licence holder Steven Taylor has acted in a manner which is inconsistent with one or more of the licensing objective set out at Section 4(1) of Act, in particular Protecting and Improving Public Health.
- 3.2 A copy of the Chief Constable's letter has been provided to the licence holder and is attached at **Appendix 1**.
- 3.3 The Chief Constable has recommended that the Board consider all options open to them under Section 84(7) or 84(7A) of the Act.
- 3.4 As a result of the Chief Constable's report Section 84A(2) of the Act requires the Board to hold a hearing.
- 3.5 If a hearing is to proceed then at the hearing the Licensing Board must, after having regard to the Chief Constable's Report and after giving the licence holder concerned and the Chief Constable an opportunity to be heard:
- 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 revoke the licence; or
  - If satisfied that it is otherwise necessary for the purposes of any of the licensing objectives, endorse the licence, suspend the licence for no greater than 6 months or revoke the licence or
  - If not so satisfied take no further action.
- 3.6 The licensing objectives are:
- 3.6.1. Preventing crime and disorder
  - 3.6.2. Securing public safety
  - 3.6.3. Preventing public nuisance
  - 3.6.4. Protecting and improving public health
  - 3.6.5. Protecting children and young persons from harm

### **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**

Legal implications have been explained above.

**(c) Financial Implications**

None

**(d) Risk Implications**

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.

**(e) Staffing Implications**

None.

**(f) Property**

None.

**(g) Equalities**

There are no issues in this case.

**(h) Consultations**

Consultation is not required.

**5. CONCLUSION**

**5.1 It is proposed that the Board note the existence of the report given by the Chief Constable;**

**5.2 It is proposed that the Board, having regard to the report from the Chief Constable, and determine whether to endorse, suspend or revoke the licence for the purposes of any of the licensing objectives.**

Author of Report: Sana Sarwar, Solicitor

Background Papers:

1. Report from Chief Constable

Ref: SS





---

**REPORT TO: MORAY LICENSING BOARD ON 30 SEPTEMBER 2020**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PREMISES LICENCE  
REVIEW HEARING (REFERENCE NUMBER 2 OF 2020)**

**BY: CLERK TO THE BOARD**

**1. REASON FOR REPORT**

- 1.1 The Licensing (Scotland) Act 2005 at section 36 provides that anyone can request a review of a premises licence.
- 1.2 The report is to notify the Board:
- i) That an application for a review of a particular premises licence has been submitted by the Chief Constable's representative. A copy of the application for review has been circulated to members separately.
  - ii) The Board may reject a review application if the Board considers the application:
    - a) Is frivolous or vexatious; or
    - b) Does not disclose any matter relevant to any ground for review
  - iii) That, where the application is not rejected, section 38(1) of the Licensing (Scotland) Act 2005 requires the Board to hold a review hearing to consider and determine the review application.
  - iv) That, if satisfied at the hearing that a ground for review is established, The Board is to proceed to determine whether any further steps should be taken in respect of the premises licence.
  - v) That if during the course of the premises licence review, the Board makes a finding that a personal licence holder, who is or was working in the premises, acted in a manner inconsistent with the licensing objectives then the Board must also hold a hearing to review the personal licence.

## **2. RECOMMENDATION**

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

- i) note the application for review by the Chief Constable and the initial requirement for the Board to determine if it considers the review application to be frivolous or vexatious or does not disclose any matter relevant to a ground for review;**
- ii) note the requirement in section 38 to hold a review hearing, following the application by the Chief Constable, if the Board determines that any matter relevant to a ground for review is disclosed;**
- iii) note that details of the premises licence review application have been passed to the licence holder and the Licensing Standards Officer (LSO) and the LSO has reported on the same. A copy of the LSO's report has been circulated separately in case it is required;**
- iv) if necessary, hear from the parties, note any recommendations from the Chief Constable, take the LSO's report into account, consider the matter and determine whether a ground for review is established and, if so, determine whether one of the possible steps set out in paragraph 3.9 is necessary; and**
- v) note the requirement that if during the course of the premises licence review, the Board makes a finding that a personal licence holder, who is or was working in the premises, acted in a manner inconsistent with the licensing objectives then the Board must also hold a further hearing to review his/her personal licence.**

## **3. BACKGROUND**

- 3.1 A request for review from the Chief Constable has been received dated 3 August 2020. The Chief Constable states that the grounds for review established are: relevant to sections 36(3)(b) and the licensing objectives of protecting and improving public health; and section 36(3)(za) that having regard to the licensing objectives the licence holder is not a fit and proper person to be the holder of a premises licence.**
- 3.2 A copy of the Chief Constables request is attached at **Appendix 1**.**
- 3.3 The full grounds for review, as set out in the Licensing (Scotland) Act 2005 at section 36(3), are as follows:**
  - i) (za) That having regard to the licensing objectives the licence holder is not a fit and proper person to be the holder of a premises licence.**
  - ii) (a) That one or more of the conditions to which the premises licence is subject has been breached; or**
  - iii) (b) Any other ground relevant to one or more of the licensing objectives.**

- 3.3 It should be noted that in this case the Chief Constable has included a recommendation that, if the Board finds that ground(s) for review are established, then the Board should proceed to take such steps as it considers necessary and appropriate having regard to all options available.
- 3.4 It should also be noted that if a ground for review is established in terms of s.36(3)(za) i.e. the licence holder is not fit and proper then because of section 39(2A), the Board would be obliged to revoke the licence. The licence holder in this case is the individual Steven Taylor.
- 3.5 Section 36(6) provides that the Board may reject a premises licence review application if it considers the application to be frivolous or vexatious or if it does not disclose any matter relevant to a ground for review. That is the first test for the Board to consider.
- 3.6 By virtue of section 38(1), if the review application is not rejected, then the Board must hold a hearing for the purposes of considering and determining the review application.
- 3.7 Where a hearing of a review application is to be held the Board must give notice of the hearing to the applicant, the licence holder and the Licensing Standards officer (LSO). As a matter of course, notices were issued to all. In particular notice was issued to the applicant on the 22 September 2020. In relation to the licence holder and LSO, notices were accompanied by a copy of the review application.
- 3.8 The LSO is required to prepare and submit a report to any hearing and a copy of that report is attached at **Appendix 2**. The Board must take the report into account at any hearing.
- 3.9 The Board may also obtain further information from such persons, and in such manner, as the Board thinks fit, and take the information into account. The Board may also take into account any information relevant to any ground for review even though it is not relevant to any circumstances alleged in the review application under consideration.
- 3.10 At any hearing the Licensing Board may, after giving the parties an opportunity to be heard and having regard to both the recommendation contained in the Chief Constable's application and the report of the LSO and if satisfied that a ground for review is established take such of the following steps that the Board considers necessary or appropriate for the purposes of any of the licensing objectives:
- i) Issue a written warning to the licence holder
  - ii) Make a variation of the licence, which may be permanent or for such period as the Board may determine;
  - iii) Suspend the licence for such period as the Board may determine;
  - iv) Revoke the licence
- 3.11 Any steps taken must also be reasonable and proportionate, having regard to all the circumstances of the case, as well as necessary or appropriate for the purposes of the licensing objectives.

- 3.12 The licensing objectives are set in out in paragraph 4(a).
- 3.13 Where the Board has made a variation or suspended the licence the Board may, on the application of the licence holder, and if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary, revoke the variation or suspension.
- 3.14 In accordance with section 84 where, in the course of a review hearing in respect of any premises licence, a Licensing Board makes a finding that any personal licence holder who is or was working in the licensed premises acted in a manner which was inconsistent with any of the licensing objectives the Board must hold a further hearing to review the personal licence.
- 3.15 The premises manager, also Mr Steven Taylor who is a personal licence holder, has been invited to attend this meeting to respond to the premises licence review. According to the Chief Constable's request, other members of staff were possibly present but were not identified and it is not known if there was another personal licence holder present. If relevant, the personal licence holder should be given the opportunity to listen to the evidence presented in the review of the premises licence and the Board should then hear from the personal licence holder before making any finding as referred to in paragraph 3.13.
- 3.16 The Chief Constable has actually submitted a separate request for review of the premises manager's personal licence so this will be dealt with under a separate Agenda item.
- 3.17 Should the Board then make such a finding as referred to above then the Board must hold a further hearing to review the personal licence.
- 3.18 At a hearing to review the personal licence, after giving the licence holder and such other persons as the Board considers appropriate an opportunity to be heard, and if satisfied that it is necessary to do so for the purposes of any of the licensing objectives, The Board may make one of the following orders:
- i) An order revoking the personal licence;
  - ii) An order suspending the personal licence for such period, not exceeding 6 months, as the Board considers appropriate; or
  - iii) An order endorsing the personal licence.
- 3.19 Any order made must be reasonable and proportionate, having regard to all the circumstances of the case, as well as necessary for the purposes of the licensing objectives.
- 3.20 The endorsing of personal licences is system within the Licensing (Scotland) Act 2005 akin to driving licence endorsements whereby an endorsement will remain on the licence for 5 years from the date of endorsement. If at any time a licence holder amasses 3 endorsements then the Board must hold a further hearing to determine whether to suspend or revoke the licence.

#### **4. SUMMARY OF 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 which are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

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.

##### **(b) Policy and Legal**

Legal implications have been explained above.

##### **(c) Financial Implications**

None.

##### **(d) Risk Implications**

Taking account of allegations made, the Board is to have regard to all the circumstances and decide whether any of the licensing objectives have been compromised and whether any potential risk identified then justifies further intervention as necessary and appropriate for the purpose of the objectives.

##### **(e) Staffing Implications**

None.

##### **(f) Property**

None.

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

In considering this 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**

Consultation is not required.

#### **5. CONCLUSION**

##### **5.1 It is proposed that the Board note the application for review by the Chief Constable and determine if it considers the application to be frivolous or**

**vexatious or does not disclose any matter relevant to a ground for review;**

- 5.2 It is proposed that the Board hold a review hearing if the application is not rejected, hear from the parties, take account of the LSO's report and the recommendation by the Chief Constable, consider the matter and determine whether a ground for review is established and, if so, determine whether one of the possible steps set out in paragraph 3.9 is necessary for any of the licensing objectives, reasonable and proportionate.**
- 5.3 It is proposed that if during the course of the premises licence review, the Board makes a finding that a personal licence holder, who is or was working in the premises, acted in a manner inconsistent with the licensing objectives then the Board hold a further hearing to review his/her personal licence. The Board should then hear from the parties, take account of any recommendation by the Chief Constable and determine if one of the orders in paragraph 3.16 is necessary for the purpose of any of the licensing objectives, reasonable and proportionate.**

Author of Report:	Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board
Background Papers:	
Ref:	SAH