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## Licensing Board

Wednesday, 15 November 2023

**NOTICE IS HEREBY GIVEN** that a Meeting of the **Licensing Board** is to be held at **Council Chambers, Council Office, High Street, Elgin, IV30 1BX** on **Wednesday, 15 November 2023** at **14:00**.

### BUSINESS

- 1 **Sederunt**
- 2 **Declaration of Member's Interests**
- 3 **Minute of the meeting held 6 September 2023** 5 - 6
- 4 **Application List for Board 15 November 2023**
  - 4a. **Cardhu Distillery 23-01695-PREVMA**
  - 4b. **Strathisla Distillery 23-01537-PREVMA**
  - 4c. **Elgin Bridge Centre 23-02195-PRELIC**
  - 4d. **Catch 79 23-02238-PRETHA**
5. **Annual Review of Licensing Fees** 7 - 16

Report by Clerk to the Board

## GUIDANCE NOTES

\* **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.

# THE MORAY COUNCIL

## Licensing Board

### SEDERUNT

Councillor Peter Bloomfield (Chair)  
Councillor Sonya Warren (Chair)

Councillor James Allan (Member)  
Councillor Neil Cameron (Member)  
Councillor Tracy Colyer (Member)  
Councillor David Gordon (Member)  
Councillor Scott Lawrence (Member)  
Councillor Ben Williams (Member)

Clerk Name:	Lindsey Robinson
Clerk Telephone:	07966 120593
Clerk Email:	committee.services@moray.gov.uk



**Minute of Meeting of the Licensing Board**

**Wednesday, 06 September 2023**

**Council Chambers, Council Office, High Street, Elgin, IV30 1BX**

**PRESENT**

Councillor Peter Bloomfield, Councillor Neil Cameron, Councillor Tracy Colyer, Councillor David Gordon, Councillor Scott Lawrence, Councillor Sonya Warren

**APOLOGIES**

Councillor James Allan, Councillor Ben Williams

**IN ATTENDANCE**

Sean Hoath, Depute Clerk to the Board, Jennifer Smith, Legal Advisor, Lindsey Robinson, Committee Services Officer, all Moray Council and PC Mitchell Dickson, Police Scotland.

**1. Chair**

Councillor Peter Bloomfield, as co-chair of the Licensing Board, chaired the meeting.

**2. Declaration of Member's Interests**

The Board noted that there were no declarations of Member's interests.

**3. Minute of the meeting held 21 June 2023**

The minute of the meeting of the Licensing Board held 21 June 2023 was submitted and approved.

**4. Greshop Filling Station - 23-00929-PREVMA**

The Depute Clerk to the Board introduced the application as a major variation and advised the Board that all paperwork was in order and there were no objections or representations.

PC Dickson confirmed that there was nothing more to add from Police Scotland.

The applicant's representative addressed the Board and responded to the questions asked.

Thereafter, the Chair moved that the variation be granted, and there being no one otherwise minded, the variation was granted.

**5. The Gables Whisky B and B - 23-01124-PREVMA**

The Depute Clerk to the Board introduced the application as a major variation and advised the Board that all paperwork was in order and there were no objections or

representations as the applicant had agreed to the conditions from Police Scotland. He further advised that the applicant was not present so it was up to the Board as to whether the case was heard.

The Board agreed to continue with the determination of the case.

PC Dickson confirmed that there was nothing more to add from Police Scotland.

Thereafter, the Chair moved that the variation be granted, and there being no one otherwise minded, the variation was granted.

After the item was concluded the applicant managed to join the meeting and was advised of the outcome.

## **6. Spar Shop - 23-00982-PREVMA**

The Depute Clerk to the Board introduced the application as a major variation and advised the Board that all paperwork was in order and there were no objections or representations.

PC Dickson confirmed that there was nothing more to add from Police Scotland.

The applicant's representative addressed the Board and responded to the questions asked.

Thereafter, the Chair moved that the variation be granted, and there being no one otherwise minded, the variation was granted.

## **7. Review of Statement of Policy**

The meeting had before it a report by the Clerk to the Board advising the Board with regard to the statutory obligation to develop, consult on and publish a policy statement setting out the principles they propose to apply to the exercise of their functions under the Licensing (Scotland) Act 2005.

Following consideration the Board unanimously agreed:

- i. Note the statutory obligation to develop, consult upon and publish a statement of licensing policy and note that a revised policy must be in place by 29 November 2023;
- ii. Note the progress to date in developing a draft revised policy;
- iii. Note the terms of the draft revised policy as reviewed and developed by the Board following full research and informal consultation produced at Appendix 1;
- iv. Note the draft policy has been the subject of formal consultation for the period of 23 June 2023 to 14 August 2023 and review the responses to that consultation at Appendix 2;
- v. Approve a final policy statement for publication.



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**REPORT TO: THE MORAY LICENSING BOARD 15 NOVEMBER 2023**

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

**BY: CLERK TO THE BOARD**

**1. REASON FOR REPORT**

- 1.1 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;
- 1.2 Make predictions in respect of likely future income and expenditure; and
- 1.3 Determine whether the Board wishes to undertake a review of licensing fees as a result.

**2. RECOMMENDATION**

**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 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 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 7 September 2022 (paragraph 5 of the minute refers).
- 3.3 The current scale sets the premises licence application and annual 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 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.
- 3.5 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 services within 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 service, the Clerk has now collated income and expenditure figures for the financial year 1 April 2022 to 31 March 2023.
- 4.3 The figures and calculations are summarised at **Appendix 2**.
- 4.4 The figures reveal the following indications:
  - 4.4.1 There was a notional surplus of £23,015.00 for the last financial year. However this surplus should be viewed in the light of the loss (that exceeded £26,000) from the previous year.
  - 4.4.2 Income is fairly fixed. The majority of income arises from premises licence annual fees and the numbers of premises are fairly consistent.
  - 4.4.3 In terms of expenditure, changes have come about in previous years mostly as a result of the calculation of internal recharges and so the cost to the Council of providing the licensing function. Legal Services time has reduced. Legal resources are stretched and it is not possible to devote as much time to alcohol licensing. The Licensing and Regulatory section experienced the loss of a solicitor some time ago but it has not proved possible to recruit despite several attempts. It is also at a time when the new civic government licence type of short term lets has demanded a great deal of licensing time.

#### **5. PUBLICATION OF THE FINANCIAL REPORT**

- 5.1 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. The report has been produced later than the time specified in the Act as it is difficult to obtain financial information in time.

- 5.2 A separate report was submitted to the meeting of the 21 June 2023 (para 6 of the minute refers) relating to the required functions including details of the licensing applications processed.
- 5.3 The Board is asked to note and agree to publication of this financial report on the Board's web pages.

## **6. FUTURE FEES**

- 6.1 As income is primarily made up of annual fees and as the number of premises licences is largely stable, overall income going forward is predicted to be quite consistent. It is encouraging that premises licence numbers have remained stable and that income has recovered to the extent of not falling short of expenditure.
- 6.2 Annual fees were increased to the maximum levels following the last financial review.
- 6.3 As stated, expenditure can fluctuate more than income. So this needs to be monitored going forward.
- 6.4 In addition, at the start of the current financial year, many premises were subject to a re-evaluation for business rates by the Scottish Assessor's Office. This resulted in some premises changing the rateable value banding as so their annual fee category. The fee banding for many premises has increased for the fees due on 1 October 2023 however there are also just as many premises that have reduced their rating and so fee.
- 6.5 As a result of these factors it is not recommended that the fee scale is changed as a result of this report. Instead it is recommended that the current fee scale remains in place pending the next review in 2024.
- 6.6 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...".
- 6.7 Prior to the change last year fees were a full 20% below the statutory maximums and among the lowest, if not the lowest, fees in Scotland for many years.
- 6.8 Fee setting is not an exact science. 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.

- 6.9 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. Nevertheless there will always be pressure from the licensed trade not to place any increased financial burden on them.
- 6.10 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 7 September 2022, they can be varied again at any time.
- 6.11 Finally, it has been noted before that the Scottish Government was reviewing licensing fees and exploring options for a possible change to the fee structure. In particular the Scottish Government consulted some time ago 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. However, from information currently available to officers, including attendance at a national group organised by the Scottish Government, it appears unlikely that legislation will be brought forward to amend occasional licence fees any time soon. Recommendations in this report therefore proceed on the assumption of the statutory fee structure remaining the same.

## **7. 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 in relation to healthier citizens, a growing and diverse economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

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

The 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. There will be some staff time in amending invoice amounts on the system if the fees are increased.

**(f) Property**

None.

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

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) Climate Change and Biodiversity Impacts**

None.

**(i) Consultations**

As far as possible, the figures within this report have been prepared in consultation with Alistair Milne, Accountant of the Council's Finance Service.

**8. CONCLUSION**

**8.1 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:



## Appendix 1 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	180
Category 2	rateable value between £1 and £11,500	800	220
Category 3	rateable value between £11,501 and £35,000	1100	280
Category 4	rateable value between £35,001 and £70,000	1300	500
Category 5	rateable value between £70,001 and £140,000	1700	700
Category 6	rateable value over £140,000	2000	900

### 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 (to be the same as a category 1 premises)	200	200
Application for confirmation of a provisional premises licence	Variable	Variable

Type of Application and Fee

<b>Type of Application</b>	<b>Fee - £ Category 1-3</b>	<b>Fee - £ Category 4-6</b>
£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)		
Application for a temporary premises licence	200	200
Application for a replacement personal licence	25	25
Application for a replacement premises licence	40	40

**Summary figures as per Council I&E Template**

	<u>£</u>
<b>Income</b>	<b>(158,329)</b>
<b>Expenditure</b>	
Direct Staff Costs	75,447
Other Direct Costs	4,725
Indirect Costs	<u>55,143</u>
<b>Total Expenditure</b>	<b>135,314</b>
<b>Net Expenditure</b>	<b>(23,015)</b>

**Notes**

Income	Excludes gambling income
Direct Staff Costs	Excludes Gambling staff recharges. Includes Legal, Environmental Health and Building Control staffing
Other Direct Costs	Includes Training, Supplies & Services as shown above
Indirect Costs	Indirect costs include Apportioned costs, less Legal staffing, add indirect overheads for Legal, Environmental Health and Building Standards.

