



REPORT TO: MORAY LICENSING BOARD ON 7 SEPTEMBER 2022

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 To make predictions in respect of likely future income and expenditure;
- 1.3 To 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 data at Appendix 2;**
- iii) **Agree to publish the financial report; and**
- iv) **Consider future fees i.e. whether the Board wishes to keep the current fee structure or revise the same and, in the latter case, proceed to 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 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 any amount up to the maxima 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 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 2021 to 31 March 2022.
- 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 loss of £26,663.00 for the last financial year. There was also a loss reported for the previous financial year. These losses more than offsets notional surpluses in recent years prior to those.
 - 4.4.2 Income is fairly fixed. It is correct that in the 2020/2021 financial year overall application numbers, and so income, was adversely affected by COVID. The 2021/2022 financial year has seen some recovery from the pandemic and application numbers have improved. However, going forward, it therefore seems unlikely that income will dramatically increase in the absence of a change to fees.
 - 4.4.3 In terms of expenditure, the largest changes in the past two years have come about as a result of the calculation of internal recharges and so the cost to the council of providing the licensing function.

4.4.4 Legal Services allocated overheads have increased. The service has been through a number of changes and the Licensing and Regulatory section has now experienced the loss of a solicitor. A full complement of staff would include a senior solicitor, two solicitors, two LSOs and access to administrative support. Recruitment is underway for a further solicitor who will be mostly taking on work not related to licensing. It is therefore expected there will be relatively little impact on this calculation next year.

4.4.5 The largest changes have been an increase to the internal recharges to licensing from other services. The overall internal recharges have increased by a large margin and during the financial year being reported the sum of approx. £51,100.00.

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 will be a separate report to the next meeting relating to the required functions that will include 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 page.

5. FUTURE FEES

5.1 As part of trying to predict the future we look to the past:

5.1.1 In 2018/2019 fee income was stated to be £119,260.00;

5.1.2 In 2019/2020 there was no review due to the pandemic;

5.1.3 In 2020/2021 application numbers (variations, occasional licences etc) were down considerably due to the pandemic and that affected income. Nevertheless, it was determined at the time not to alter fees as it was hoped that the income for 2021/2022 would be more back to normal.

5.1.4 In 2021/2022 income has recovered to be slightly above the level reported in 2019. Therefore, it is not anticipated that income will rise further for 2022/2023 in the absence of a rise in fees.

5.2 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 however income is falling short of expenditure and that is not sustainable.

5.3 Annual fees fall due on 1 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 no later than 30 days before the fee is due. Those reminders (invoices) therefore go out at the end of August each year. In light of the review at this meeting the fees invoices for the period 1/10/22 to 30/9/23 have been held back. The trade has been notified that invoices will be delayed. Should the Board determine not to revise fees then the invoices will be issued as planned. If, however, fees are to change then the roll out of invoices will be delayed by the need to first update all the records on the financial system.

- 5.4 Throughout the pandemic, the Scottish Government did not intervene with the process of payment of annual fees and the law did not change. Therefore fees were and are 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.
- 5.5 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...”.
- 5.6 Fee setting is not an exact science. It is fair to say that recent financial years have been unprecedented and going forward will simply have to be recorded as unusual and written off. Looking forward it seems likely that keeping things as they are will result in income being broadly consistent with pre-COVID levels. However, as with all costs, licensing costs have increased substantially on pre COVID levels and licensing staff are working with finance staff on the issue of recharges. As things stand currently it is an issue that impacts on the overall budget situation.
- 5.7 Since the introduction of the current fee scale in 2016, fees have not changed. They have not even been included in the annual inflationary increases applied to Council charges. So fees have been a full 20% below the statutory maximums for that period and among the lowest, if not the lowest, fees in Scotland for the last 6 years.
- 5.8 It now seems that whilst income is back to normal, costs have caught up with and are now exceeding income. We have come through the COVID years and not increased fees at a time when the trade suffered. It was predicted last year that, owing to many unknown variables, the budget could be left in a shortfall in this financial year. Unfortunately this has come to pass and the Council has incurred the losses of the last two years to the benefit of the trade. The figures now indicate an increase is warranted.
- 5.9 As it happens in analysis the income appears 20% short of expenditure. As the vast majority of income comes from premises licence annual fees it is therefore recommended that the Board look at increasing fees.
- 5.10 It should be noted that figures for both projected income and expenditure can only ever be estimates and may not be a true reflection of actual amounts. The estimates are based on historical data about income, expenditure and transactions.

- 5.11 The options open to the Board are:
- 5.11.1 To do nothing and income, expenditure and fees will be reviewed again in 2023: OR
 - 5.11.2 To increase annual fees up to the maximum statutory figures which are shown in the information at **Appendix 1** for comparison. **This is the recommended option;****
 - 5.11.3 In addition to, or instead of, changing annual fees, to change other fees that the Board has control over. Again those are shown in the information at **Appendix 1**;
 - 5.11.4 To implement another combination of the above as the Board sees fit, for example, an incremental increase in annual fees with or without a change to certain other fees.
- 5.12 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.
- 5.13 There is a requirement that fees may not be varied so that the variation comes into effect less than a year after the date with effect from which the fee in question was first determined or last varied. As the fees were last varied on 11 August 2016, they can be varied again at any time
- 5.14 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 is extremely unlikely that legislation will be brought forward to amend occasional licence fees. This is disappointing as the fee charged for an Occasional Licence does not meet the cost of processing those. Recommendations in this report therefore proceed on the assumption of the statutory fee structure remaining the same.

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. 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.

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