



REPORT TO: MORAY LICENSING BOARD ON 8 FEBRUARY 2023

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – REVIEW OF PREMISES LICENCES

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 To ask the Board to conduct a hearing to consider and determine the premises licence review proposal in respect of each of the premises listed in the schedule circulated separately to members.

2. RECOMMENDATION

- 2.1 **It is recommended that the Board consider and determine the premises licence review proposals having regard to the powers available to the Board under section 39(2) of the Licensing (Scotland) Act 2005.**

3. BACKGROUND

- 3.1 On 22 July 2010 (paragraph 4 of the minute refers) the Board delegated authority to the Clerk and his staff to make a premises licence review proposal in terms of section 37(1) of the Licensing (Scotland) Act 2005 (“the Act”) for any premises where the annual fee remained outstanding for a period of six weeks after the due date.
- 3.2 Annual fees are due each year on the 1 October. Fees are payable in advance for the period 1 October to 30 September the following year. Invoices were issued on 9 September 2022, in advance of 1 October, to serve as a written reminder to licence holders, as is required by Regulations.
- 3.3 By delegated authority detailed in paragraph 3.1 a premises licence review proposal in respect of each of the premises listed in the schedule has been made as a result of the fact the annual fee remains outstanding. Notice was sent by email (where possible) or first class recorded post to all licence holders concerned on the week commencing 23 January 2023.
- 3.4 In addition to the final premises licence review proposal referred to above licence holders have been provided with an invoice, at least one reminder for the invoice and a further letter requesting payment. The Licensing Standards

Officer has also attempted to make contact with relevant premises licence holders.

- 3.5 The Clerk will update the schedule and withdraw the proposal in respect of any licence fee that is paid prior to the date of the hearing.
- 3.6 The review proposals must state the grounds for review. Section 36(3) of the Act states the grounds for review, which are (a) that one or more of the conditions to which the premises licence is subject has been breached, or (b) any other ground relevant to one or more of the licensing objectives.
- 3.7 A review proposal(s) having been made, the Board is obliged to hold a hearing, in terms of section 38(1) of the Act, to consider and determine the proposal(s).
- 3.8 In the present case, grounds for review are made out both in terms of section 36(3) (a) and (b) of the Act.
- 3.9 By failure to pay the annual licence fees which became due on 1 October 2022, the licence holders concerned are breaching a mandatory condition of the premises licence, which condition is imposed by paragraph 10(2) of Schedule 3 of the Act.
- 3.10 In addition, by the failure to pay the annual licence fees, the licence holders concerned have deprived the Board of revenue and this reduces the Board's ability to promote the licensing objectives.
- 3.11 At the review hearing section 39(2) of the Act confers on the Board the power to:
 - i) Issue a written warning;
 - ii) vary the licence;
 - iii) suspend the licence for such period as the Board may determine including suspending the licence unless and until the fee is paid; or
 - iv) revoke the licence.

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 (Local Outcomes Improvement Plan (LIOP)) in relation to changing our relationship with alcohol where people are healthier and experience fewer harms as a result of alcohol use, a growing, diverse and sustainable 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 Legal implications have been explained above.

(c) Financial implications

Loss of unpaid fees with the resultant impact on the Board's ability to promote the licensing objectives as set out above..

(d) Risk Implications

None.

(e) Staffing Implications

Additional administration is required in pursuing unpaid annual fees.

(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) Climate Change and Biodiversity Impacts

None.

(i) Consultations

None required.

5. CONCLUSION

5.1 The Board should consider and determine the premises licence review proposals in respect of each premises listed in the schedule circulated separately to members having regard to the powers available to the Board under section 39(2) of the Licensing (Scotland) Act 2005.

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

Background Papers: There are no background papers.

Ref: SAH