



THE MORAY LICENSING BOARD

THURSDAY 19 APRIL 2018

YOUR ATTENDANCE IS REQUESTED at the Meeting of **THE MORAY LICENSING BOARD** to be held within the The Moray Council, Council Chambers, High Street, Elgin on Thursday 19th April 2018 at 10.00am.

Alasdair McEachan
CLERK

11 April 2018

BUSINESS

1. Prior Minutes
 - (i) Minutes of the Meeting held on 7th December 2017
 - (ii) Minutes of the Special Meeting held on 9th April 2018

The Licencing (Scotland) Act 2005

2. Applications Section – Appendix 1
3. Alcohol Licensing Statement of Policy
4. Review Proposals for Non Payment of Annual Fees

CLERK:	Alasdair McEachan
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THE MORAY LICENSING BOARD**SEDERUNT****COUNCILLOR J ALLAN****COUNCILLOR D BREMNER****COUNCILLOR G COWIE****COUNCILLOR P COY****COUNCILLOR J DIVERS****COUNCILLOR R EDWARDS****COUNCILLOR L LAING****COUNCILLOR M MCLEAN****COUNCILLOR R SHEPHERD****CLERK TO THE BOARD: Mr A McEachan**



THE MORAY LICENSING BOARD

THURSDAY 19 APRIL 2018

NOTICE IS HEREBY GIVEN that a Meeting of **THE MORAY LICENSING BOARD** is to be held within the The Moray Council, Council Chambers, High Street, Elgin on Thursday 19 April 2018 at 10.00am.

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CLERK

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THE MORAY LICENSING BOARD

MINUTE OF THE MEETING OF THE MORAY LICENSING BOARD

The Moray Council Chambers, Council Headquarters, High Street, Elgin on Thursday 7 December 2017

PRESENT

Councillors: D Bremner
G Cowie
P Coy
R Edwards
L Laing
R Shepherd

APOLOGIES

Apologies were intimated on behalf of Councillors J Allan, J Divers and M McLean

IN ATTENDANCE

Sean Hoath, Depute Clerk to the Licensing Board

1. PRIOR MINUTES

- (i) The Minutes of the Meeting held on 5 October 2017 were submitted and approved
- (ii) The Minutes of the Special Meeting held on 28 November 2017 were submitted and approved.

There were no declarations of interest.

2. APPLICATIONS

(i) New Premises Licence – Ditsy Teacup

The Applicant was present. The Depute Clerk introduced the application and advised that all the paperwork was in order and a site visit had been carried out on 3 October 2017. The Applicant was invited to address the Board. There were no questions from the Board. The Applicant confirmed she was happy with the way the hearing was handled. The Convenor proposed granting the application and there being no-one otherwise minded it was agreed to grant the application.

(ii) Major Variation – Macallan Distillery

The Applicant was represented by Mr Neil Ross, solicitor. The Depute Clerk introduced the application and advised that all the paperwork was in order and a site visit had been carried out. The Applicant's representative was invited to address the Board. There were no questions from the Board. The Applicant confirmed she was happy with the way the hearing was handled. The Convenor proposed granting the application and there being no-one otherwise minded it was agreed to grant the application.

MINUTE OF SPECIAL MEETING OF THE MORAY LICENSING BOARD

Monday 9th April 2018

PRESENT

Councillors Allan
Bremner
Cowie
Divers
Edwards
Laing
McLean
Shepherd

APOLOGIES

P Coy

IN ATTENDANCE

Sean Hoath, Depute Clerk.

1. CONVENING OF MEETING

The meeting was convened at 13.00am at the HQ Car Park, Council Office, Elgin.

2. SITE VISITS

The following premises were visited:

- (i) Provisional Premises Licence – 25 Batchen Street, Elgin – it was decided not to visit the premises as members had no access and were already well aware of the premises, location and area.
- (ii) Premises Licence – WooHa Brewery, Upper Hempriggs Farm, Kinloss

3. CONCLUSION OF MEETING

At the conclusion of the foregoing programme of site visits, the meeting concluded at 14.10am.

MORAY LICENSING BOARD

MEETING, 19 April 2018 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

Type	Premises	Applicant	Date received	Comments
Major Variation	Strathisla Distillery Seafield Avenue Keith AB55 5BS	Chivas Brothers Limited	23 January 2018	Major variation application for new layout of new off sales shelf display and amended Operating Plan Paperwork in order No objections or representations
New Premises Licence	Wooha Brewing Company Upper Hempriggs Farm Kinloss IV36 2UB	Heather McDonald	6 March 2018	New premises licence application Site visit carried out Paperwork in order No objections or representations
New Provisional Licence	Against the Grain Beer Ltd 25 Batchen Street Elgin IV30 1BH	Against the Grain Beer Ltd	22 March 2018	New provisional licence application Site visit carried out Paperwork in order No objections or representations

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.

Licensing (Scotland) Act 2005

Licensing Objectives

Section 4 sets out the licensing objectives:

- “(1) For the purposes of this Act, the licensing objectives are—
- (a) preventing crime and disorder,
 - (b) securing public safety,
 - (c) preventing public nuisance,
 - (d) protecting and improving public health, and
 - (e) protecting children and young persons from harm.”

Applications for a Premises Licence or Provisional Premises Licence

Section 20 Application

By section 20 any person (over 18) may apply to the appropriate Licensing Board for a premises licence in respect of any premises.

An application under subsection must—

- (a) contain a description of the subject premises, and
- (b) be accompanied by—
 - (i) an operating plan for the subject premises,
 - (ii) a “layout plan” of the subject premises, and
 - (iii) the certificates required by section 50(1).

Notice of Application

Notice of the application has been given to—

- (a) each person having a notifiable interest in neighbouring land *i.e. neighbours within 4 metres of the boundary of the premises*
- (b) the community council within whose area the premises are situated,
- (d) the chief constable, and
- (e) the fire service
- (f) the NHS

Objections / Representations

By section 22 any person may, by notice to the Licensing Board—

- (a) object to the application on any ground relevant to one of the grounds for refusal (detailed below)
- (b) make representations to the Board—
 - (i) in support of the application,
 - (ii) as to modifications which the person considers should be made to the operating plan accompanying the application, or
 - (iii) as to conditions which the person considers should be imposed.

A representation is not an objection to a licence being granted. It means the representer would like to see a changes or changes to the licence or conditions on the licence before it is granted.

Where a Licensing Board receives a notice of objection or representation the Board must—

- (a) give a copy of the notice to the applicant, and
- (b) have regard to the objection or representation in determining the application,

unless the Board rejects the notice as being frivolous or vexatious.

Where a Licensing Board rejects a notice of objection or representation as frivolous or vexatious, the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

Consideration and determination of a Premises Licence Application

Section 23(4) states that:

“(4) The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies and—

- (a) if none of them applies, the Board must grant the application, or
- (b) if any of them applies, the Board must refuse the application.”

Possible Courses of Action

1. Grant the licence as applied for;
2. Grant the licence with a condition(s) under s.27(6). Determine the licensing objective and how the situation can be improved and the exact terms of a condition.
3. Grant the licence with a modification to the operating plan under s.23(7) which states that
“(7) Where the Licensing Board considers that—
 - (a) they would refuse the application as made, but
 - (b) if a modification proposed by them were made to the operating plan for the subject premises accompanying the application, they would be able to grant the application,the Board must, if the applicant accepts the proposed modification, grant the application as modified.”
4. Refuse - In section 23(5) of Act:
 - (5) The grounds for refusal are—
 - (a) that the subject premises are excluded premises,
 - (b) that the application must be refused under section 25(2) (*licence refused within the last year*), 64(2) (*licence sought for 24 hours continuous*) or 65(3) (*off sale hours outside 10am to 10pm*),
 - (ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of the premises licence,

- (c) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
 - (d) that, having regard to—
 - (i) the nature of the activities proposed to be carried on in the subject premises,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises,the Board considers that the premises are unsuitable for use for the sale of alcohol,
 - (e) that, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises, in the locality.
5. Defer – if for example the Board wanted to arrange a further site visit.

Consequences of Refusal

Section 25 says that where a Licensing Board has refused a premises licence application the Board must refuse any subsequent premises licence application in respect of the same premises before the expiry of the period of one year beginning with the date of the earlier refusal UNLESS at the time of the earlier refusal the Board directed that this provision would not apply or the Board is satisfied that there has been a material change of circumstances.

Applications to Vary a Licence

Section 29 Application

By section 29(1) a premises licence holder may apply to the appropriate licensing Board for a variation of the licence. Such an application must be accompanied by

- (a) the premises licence to which the application relates, or
- (b) if that is not practicable, a statement of the reasons for failure to produce the licence.

Meaning of Variation

Section 29(5) defines a variation as meaning any variation (which includes addition deletion or other modification) of:

- (a) any of the conditions to which the licence is subject (*other than those to which the licence is subject by virtue of section 27(1) which are Schedule 3 mandatory conditions and cannot be changed*);
- (b) any of the information contained in the operating plan contained in the licence;
- (c) the layout plan contained in the licence; or
- (d) any other information contained or referred to in the licence.

Generally a variation that involves a change to the information contained within the operating plan is not a minor variation and it requires to be determined by the Licensing Board.

Any variation that involves:

- (i) a change to the layout plan that does not affect the operating plan
- (ii) a restriction on the access for children/young persons
- (iii) a change of premises manager
- (iv) reduction in the alcohol display area or capacity
- (v) reduction in the core hours

can be considered to be a minor variation which must be granted and so is dealt with under delegated powers.

Notice of Application

Notice of the application has been given to—

- (a) each person having a notifiable interest in neighbouring land *i.e. neighbours within 4 metres of the boundary of the premises*
- (b) the community council within whose area the premises are situated,
- (d) the chief constable, and
- (e) the fire service
- (f) the NHS

Section 22 applies the same as it does to a premises licence application and so any person may, by notice to the Licensing Board object to the application on any ground relevant to one of the grounds for refusal or make representations to the Board concerning the application.

Determination of the Variation Application

Section 30(3) provides that the Licensing Board must hold a hearing for the purpose of considering and determining the application. The Board must consider whether any of the grounds for refusal applies and:

- (a) if none of them applies, the Board must grant the application;
- (b) if any of them applies, the Board must refuse the application;

Section 30(5) provides that the grounds for refusal are:

- (a) that the application must be refused under section 32(2) (*licence refused within the last year*), 64(2) (*licence sought for 24 hours continuous*) or 65(3) (*off sale hours outside 10am to 10pm*);
- (b) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives;
- (c) that, having regard to the nature of the activities carried on or proposed to be carried on in the subject premises, the location, character and condition of the premises, and the persons likely to frequent the premises,

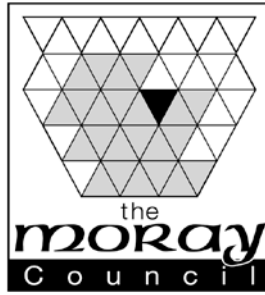
the Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation;
(d) that the Board considers that if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises (taking account of the variation), in the locality.

Where the Licensing Board grants the application, the Board may make a variation of the conditions to which the licence is subject.

Where the Licensing Board refuses the application the Board must specify the ground for refusal, and where relevant the Board must specify the licensing objective or objectives in question.

Subsequent Applications Following Refusal

Section 32 says that where a Licensing Board has refused a premises licence variation application the Board must refuse any subsequent premises licence variation application in respect of the same premises licence, and seeking the same variation made before the expiry of the period of one year beginning with the date of the earlier refusal UNLESS at the time of the earlier refusal the Board directed that this provision would not apply or the Board is satisfied that there has been a material change of circumstances.



REPORT TO: MORAY LICENSING BOARD 19 APRIL 2018

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – STATEMENT OF POLICY

BY: CLERK TO THE BOARD

1. Reason for Report

- 1.1 The reason for this report is to advise the Board with regard to the statutory obligation to develop, consult 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.

2. Recommendations

It is recommended that the Board:-

- 2.1 **Note the statutory obligation to develop, consult upon and publish a statement of licensing policy each licensing policy period and note that a revised policy must be in place by 29th November 2018;**
- 2.2 **Note and approve the timetable for production of the policy at Appendix 1;**
- 2.3 **Nominate and instruct a Policy Sub Group of five Board members, with a quorum of three, to meet as and when required to discuss policy matters with officers and other involved parties, the function of the Sub Group being to provide input and recommendations in respect of certain matters on behalf of the Board during preparation and revision of this policy and other policies going forward;**
- 2.4 **Note that the policy statement will require final approval by the full Board before publication.**

3. Background

- 3.1 The Licensing (Scotland) Act 2005 (“the Act”) requires the Board to publish a Statement of Policy before the beginning of every licensing policy period. The last policy statement came into force on the 29 November 2013.
- 3.2 The licensing policy period is defined by reference to each date that is 18 months after the local government elections. The next policy statement must therefore be published by the 29 November 2018.
- 3.2 The Board may also choose to review the policy by publishing a supplementary statement at any time within licensing policy period.
- 3.3 The Act sets out the persons/bodies that the Board is required to consult as part of the process of preparing or revising the policy statement. The persons/bodies are:
- the Local Licensing Forum for the Board's area (and if the membership of the Forum is not representative of the public interests then such other persons as appear to the Board to be representative of those interests); and
 - The relevant health board; and
 - such other persons as the Board thinks appropriate.
- 3.4 As part of the Statement of Policy the Act also requires that the Board include a statement as to the extent to which the Board considers there to be overprovision of licensed premises, or licensed premises of a particular description, in any locality within the Board's area. The current policy contains such a statement to the effect that there is no overprovision within Moray.
- 3.5 A draft timetable for production of a new statement of policy, including proposed consultation exercises, has been produced and is attached at **Appendix 1**. It should be noted that there may be some individual variations from the draft timetable in practice but the overall timescale for publication remains fixed.
- 3.6 Part of the proposed timetable includes the nomination of a policy sub group that can meet as and when required to discuss policy matters with officers and other involved parties and provide input and recommendations. This is considered a more flexible approach to policy development.
- 3.7 The Act makes it clear that the Board cannot delegate the final determination of a policy statement so any policy recommendations will be subject to final approval from the full Board.
- 3.8 The Policy Statement will ultimately be published on the Council's web site and be available for inspection free of charge at Access points and main libraries. The publication of the statement will also be advertised in accordance with the Act.

4. Implications

(a) Moray 2023 A Plan for the Future/Service Plan

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 are detailed in the report.

(c) Financial implications

None.

(d) Risk Implications

None.

(e) Staffing Implications

Consultation and preparation of revised documents will involve a very considerable amount of staff time across several services. To date this has proven difficult to resource, hence the potential for variations within the timetable. However, assistance has been secured from the Research and Information Officer to assist with the collection, collation and analysis of statistics.

(f) Property

None.

(g) Equalities

As part of the consultation process the draft policy will be referred to the Council's Equal Opportunities Officer for comment and to assist in terms of determining the need for an equality impact assessment EIA before a final decision is made on policy. The results will be brought back before the Board.

(h) Consultations

Consultation will be required in accordance with the Act and is catered for in the proposed timetable at Appendix 1.

5. **Conclusion**

- 6.1 **It is proposed that the Board note the requirement to develop, consult upon and publish a Statement of Policy, nominate a policy sub group for all policy purposes and instruct the Clerk to proceed to develop and consult on the draft policy as per Appendix 1.**

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

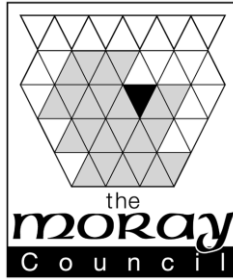
Background Papers: There are no background papers

Ref: SAH

LICENSING POLICY STATEMENT
Timetable for Publication of Revised Statement

Date	Action by	Action Target
STAGE 1 Information Gathering and Informal Consultation		
January to April 2018	Depute Clerk and Partner organisations including Local Licensing Forum by meetings and letters*	Informal consultation. Issue Questionnaires / Surveys. Ask partners for ideas for review to incorporate into a revised document for discussion with Board Policy Sub Group
19 April 2018	Full Licensing Board meeting	Appointment of Licensing Policy sub group
End of April / Early May 2018	Consultees + Trade + Board or Board policy sub group	Licensing Event for half a day
May 2018	Board policy sub group	Meeting to discuss policy ideas
14 June 2018	Full Licensing Board Meeting	1 st Draft Revised Policy Statement Approval for formal consultation.
STAGE 2 Formal Consultation		
June – July 2018	Depute Clerk to the Board	Formal consultation on draft revised statement via methods approved by Board eg. Meetings / newsletter / website / social media*
Late July 2018	Public + Consultees + Trade + Board or Board policy sub group	Licensing Event for ALL on draft policy
August 2018	Board Policy sub group	Analyse any responses. Finalise Draft Policy Statement for approval by full Board.
6 September 2018	Full Licensing Board Meeting	Discuss Progress at this meeting as appropriate
STAGE 3 Finalisation		
October 2018	Depute Clerk to the Board	Finalise Policy Statement
15 November 2018	Full Licensing Board Meeting	Approve Revised Statement for publishing
November 2018	Depute Clerk to the Board	Publicise Statement as required: - Free copies made available to the public e.g on request and in libraries; - Publish on the Board's web pages; - Newsletters and other promotional material as per consultation above
STAGE 4 Publication		
29 November 2018	Depute Clerk to the Board	PUBLISH POLICY On website & with libraries / Access Points

*As far as possible all communication / promotion will be by electronic means in order to reduce the potential cost i.e. email / website publication / social media etc.



REPORT TO: THE MORAY LICENSING BOARD 19 APRIL 2018

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 to members separately at the meeting.

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 s.39(2) of the Licensing (Scotland) Act 2005.**

3. BACKGROUND

- 3.1 On 22 July 2010 (para 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 s.37(1) of 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 the 30 September the following year. Invoices are issued on the 27 August each year, in advance of the 1 October, to serve as written reminder to licence holders, as is required by Regulations.
- 3.3 By the delegated authority detailed in para 3.1 a premises licence review proposal in respect of each of the premises listed in the schedule has been made. Notice was sent by first class post to all licence holders concerned on the ***. The Clerk will notify the Board and withdraw the proposal in respect of any licence fee that is paid prior to the date of the hearing.
- 3.4 The review proposal 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.
- 3.5 A review proposal having been made, the Board is obliged to hold a hearing, in terms of s.38(1), to consider and determine the proposal.

- 3.6 In the present case, grounds for review are made out both in terms of ss.36(3) (a) and (b) of the Act.
- 3.7 By the failure to pay the annual licence fees which became due on 1 October 2017, 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.
- 3.8 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.
- 3.9 At the review hearing section 39(2) confers on the Board the power to:
- 3.9.1 Issue a written warning;
 - 3.9.2 Vary the licence;
 - 3.9.3 Suspend the licence for such period as the Board may determine including suspending the licence unless and until the fee is paid; or
 - 3.9.4 Revoke the licence.

4. SUMMARY OF IMPLICATIONS

(a) Moray 2023 A Plan for the Future/Service Plan

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

The legal implications have been explained above.

(c) Financial implications

Loss of unpaid fees.

(d) Risk Implications

None

(e) Staffing Implications

Additional administration is required in pursuing unpaid annual fees.

(f) Property

None

(g) Equalities

None

(h) Consultations

None required.

5. CONCLUSION

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 s.39(2) of the Licensing (Scotland) Act 2005.

Author of Report: Sean Hoath

Background Papers: There are no background papers

Ref: SAH