



THE MORAY LICENSING BOARD

WEDNESDAY 1ST AUGUST 2018

NOTICE IS HEREBY GIVEN that the Meeting of **THE MORAY LICENSING BOARD** is to be held within the The Moray Council, Council Chambers, High Street, Elgin on Wednesday 1st August at 10.00am.

Alasdair McEachan
CLERK

24 July 2018

BUSINESS

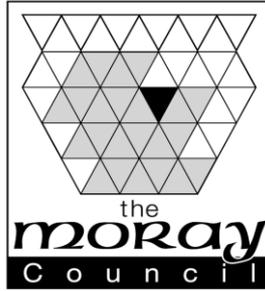
1. Minutes of the Special Meeting held on the 31st July 2018

The Licencing (Scotland) Act 2005

2. Request for Review of Premises Licence – Case No 1 of 2018

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



REPORT TO: THE MORAY LICENSING BOARD ON 1 AUGUST 2018

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PREMISES LICENCE REVIEW HEARING (REFERENCE NUMBER 1 OF 2018)

BY: CLERK TO THE BOARD

1. Reason for Report

1.1 The Licensing (Scotland) Act 2005 (“the Act”) at section 36 provides that anyone can request a review of a premises licence.

1.2 This report is to notify the Board that:

1.2.1 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 separately.

1.2.2 The Board may reject a review application if the board considers the application:

1.2.2.1 Is frivolous or vexatious.

1.2.2.2 Does not disclose any matter relevant to any ground for review.

1.2.3 Where the application is not rejected, the Act requires the Board to hold a review hearing to consider and determine the review application.

1.2.4 At the hearing the Board must determine whether a ground for review is established.

1.2.5 If satisfied at the hearing that a ground for review is established, The Board is then to proceed to determine whether any further steps should be taken in respect of the premises licence.

1.2.6 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. Recommendations

It is recommended that the Board:-

- 2.1 Note the application for review by the Chief Constable and the initial requirement for the Board to determine, as preliminary points, whether:
2.1.1 It considers the application to be frivolous or vexatious; and
2.1.2 If the application is considered to be frivolous or vexatious then reject it; or
2.1.3 If the application is not considered to be frivolous or vexatious then go on to consider whether the application discloses any matter relevant to a ground for review; and
2.1.4 If the application does not disclose a matter relevant to a ground for review then reject it; or
2.1.5 If the application does disclose a matter relevant to a ground for review then note the requirement to hold a hearing to consider and determine the request for review.**
- 2.2 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;**
- 2.3 At any hearing, 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;**
- 2.4 If a ground for review is established, determine whether one of the possible steps set out in paragraph 3.9 is necessary.**
- 2.5 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 was received on 15 June 2018. The Chief Constable states that the grounds for review are relevant to the licensing objective of preventing crime and disorder.**
- 3.2 The grounds for review, as set out in the Licensing (Scotland) Act 2005 at section 36(2), are as follows:
3.2.1 That one or more of the conditions to which the premises licence is subject has been breached; or
3.2.2 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's view, if the Board finds that ground(s) for review are established, is that nothing less than a**

suspension of the premises licence for such a period as the Board sees fit as both proportionate and appropriate. The recommended suspension is unless and until pending criminal proceedings are concluded at which time there should be a further review. That is currently an indeterminate period.

- 3.4 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.
- 3.5 By virtue of section 38(1), if the review application is not rejected, for one of the reasons stated in paragraph 3.4 above, then the Board must hold a hearing for the purposes of considering and determining the review application.
- 3.6 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). Notices were issued on the 25 June 2018 and, in relation to the licence holder and LSO, notices were accompanied by a copy of the review application.
- 3.7 The LSO is required to prepare and submit a report to the hearing and a copy of that report has been circulated to members, the licence holder and the Chief Constable. The Board must take the report into account at the hearing.
- 3.8 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.
- 3.9 At the 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:
 - 3.9.1. Issue a written warning to the licence holder;
 - 3.9.2. Make a variation of the licence, which may be permanent or for such period as the Board may determine;
 - 3.9.3. Suspend the licence for such period as the Board may determine;
 - 3.9.4. Revoke the licence.
- 3.10 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.
- 3.11 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
- 3.12 Where the Board has varied or suspended the licence in accordance with paragraph 3.9 above then the Board may subsequently, 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.
- 3.13 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.
- 3.14 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.
- 3.15 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:
- 3.15.1. An order revoking the personal licence;
 - 3.15.2. An order suspending the personal licence for such period, not exceeding 6 months, as the Board considers appropriate; or
 - 3.15.3. An order endorsing the personal licence.
- 3.16 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.
- 3.17 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.

Implications

(a) Moray 2026 A Plan for the Future/ Service Plan

The provisions of alcohol licensing, including the licensing objectives, 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.

(a) Policy and Legal

Legal implications have been explained above.

(b) 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

In considering this matter the Licensing Board should have regard to the subject's rights under the European Convention on Human Rights (and the Human Rights Act 1998).

In particular:

Art 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.

Art 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.

Art 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 has taken place with the LSO as described. Further 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 and therefore whether it will hold a hearing;

5.2 It is proposed that, if it is appropriate, the Board hold a review hearing, 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 3.15 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: There are no background papers
Ref: SAH