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**Report to the Licensing Board**

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**Date of Meeting: 15 August 2017**

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**Subject: Delegation Arrangements**

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**Report by: Depute Clerk to the Licensing Board**

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**1.0 Purpose**

- 1.1 To seek the Board's authority of the delegation arrangements for dealing with various licence applications as undernoted in terms of the Licensing (Sc) Act 2005.

**2.0 Background**

- 2.1 Paragraph 10 of Schedule 1 to the Licensing (Sc) Act 2005 gives the Board the authority to delegate to the Clerk the power to exercise on behalf of the Board any of the Board's functions other than those specifically reserved to it (as noted at paragraph 10(2) of the said Schedule).
- 2.2 The Board has previously delegated those decisions not reserved to it, to the Clerk or the Depute Clerks. It is good practice for this to be brought to the attention of, and confirmed by, the current Board. There have also been some amendments to the legislation since the last approval and accordingly such delegations require to be approved.

**3.0 Recommendation**

- 3.1 It is recommended that Clackmannanshire Licensing Board approve the following delegations to the Clerk of the Board with the power to the Clerk to arrange for the discharge of the specified functions by a Depute Clerk or the Licensing Administrator as the Clerk deems appropriate:
- a) grant of applications for minor variations;
  - b) grant of applications for the transfer of a premises licence falling within paragraph 4.2 below;
  - c) grant and refusal of applications for personal licences falling within paragraph 4.3 below;
  - d) grant of applications for occasional licences falling with paragraph 4.4 below;
  - e) grant of extended hours applications falling within paragraph 4.5 below;
  - f) grant of confirmation of provisional licences falling within paragraph 4.6 below;

- g) for the purposes of premises licence review hearings to: (i) determine whether the application is not vexatious or frivolous, and sets out matters relevant to a ground for review; (ii) obtain further information from such persons and in such manner as the Clerk or Depute Clerk thinks fit; and (iii) request the attendance of any person at a review hearing for the purpose of providing information, and the production at a review hearing by any person of any document in that person's possession or under that person's control, as described at paragraph 4.7 below.
- h) grant of a shortened period of notice in respect of an occasional licence application as provided in s57(4) of the 2005 Act; and the grant of relief generally where the requirements of s135 of the 2005 Act are met; both as described in paragraph 4.8 below.

## **4.0 Considerations**

### **4.1 MINOR VARIATIONS**

A minor variation is defined in s29(6) of the 2005 Act and in the Licensing (Minor Variations) (Scotland) Regulations 2011, as follows:

- a) any variation of the layout plan not resulting in any inconsistency with the operating plan;
- b) any variation reflecting a restriction of the terms on which children or young persons are allowed entry to the premises including:
  - i. an increase in the minimum age at which children or young persons may be allowed onto the premises;
  - ii. a reduction in the time at which children or young persons are allowed onto the premises;
  - iii. a restriction to the access of children or young persons to certain parts of the premises;
- c) any variation of the information contained in the licence relating to the premises manager including substitution of a new premises manager;
- d) where the name of the premises is disclosed in the premises licence, any change in that name;
- e) a temporary or permanent reduction in the licensed hours which does not result in the premises opening any earlier or closing any later than stated in the premises licence and operating plan;
- f) any reduction in the capacity of the premises whether resulting from a variation to the layout plan or otherwise;
- g) any variation resulting in the cessation of the provision of live or recorded music at a decibel level exceeding 85 decibels;
- h) any variation to provide that, when the premises are fully occupied, more customers are likely to be seated than standing.

The 2005 Act provides that the Board must grant a minor variation. Given this, it is considered appropriate that the Board continue to delegate the grant of such applications.

#### 4.2 PREMISES LICENCE TRANSFER

The Act makes provision for two types of premises licence transfer:

- 1) transfer by the existing licence holder to another party (the transferee) [s33 of the 2005 Act]; and
- 2) transfers in the event of the death, incapacity, insolvency or dissolution of the premises licence holder, and on transfer (by sale or otherwise) of the business carried on in the licensed premises, to another person [s34 of the 2005 Act].

Where such an application is received notification must be given to the Chief Constable who is then required to lodge one of the following notices:

- a) a notice stating that neither the transferee or a connected person nor, in the case of a transfer application by other than the premises licence holder, the applicant (i.e. an executor, attorney, insolvency practitioner or the party to whom the business is to be transferred) has been convicted of any relevant or foreign offence; or
- b) a notice specifying any convictions for relevant and foreign offences in respect of any of the above persons.

In addition, the Chief Constable can, on giving a notice, make a recommendation that it is necessary for the purposes of any of the licensing objectives that the transfer application be refused.

Similarly, the Chief Constable can now, on giving a notice, provide any other information s/he considers relevant to the consideration by the Board of the transfer application in respect of the transferee, a connected person or any person who would be an interested party in relation to the licensed premises if the application were to be granted. This provision was inserted by The Air Weapons and Licensing (Scotland) Act 2015 and was commenced on 15 May 2017.

Further amendments to this transfer process are pending and a supplementary report will be brought to the Board upon implementation at that time.

The Act provides that the Board **must** grant the transfer application when it has received a notice specified at paragraph a) above, **and** the Chief Constable has not made any recommendation in respect of the licensing objectives, **and** has not provided any information s/he considers relevant. It is therefore considered appropriate that the Board continue to delegate the grant of such applications.

In all other cases the Board **must** hold a hearing to consider and determine the application. There is a specific prohibition against the Board delegating the conducting of hearings.

#### 4.3 PERSONAL LICENCES

In terms of s74(2) of the 2005 Act, an application for a personal Licence **must** be granted if the following circumstances apply:

- a) the applicant is aged 18 or over;
- b) the applicant possess a licensing qualification;
- c) the applicant does not already hold a personal licence;
- d) no personal licence previously held by the applicant has been revoked within a period of 5 years prior to the date of receipt of the current application;
- e) a notice from the Chief Constable has been received stating s/he is unaware of the applicant having been convicted of any relevant or foreign offence;
- f) the notice from the Chief Constable does not contain any recommendation that s/he considers it necessary for the purposes of the licensing objectives that the application be refused;
- g) no information has been provided by either the Chief Constable or the Licensing Standards Officer (LSO) which they consider to be relevant to the consideration by the Board of the application.

The Act further provides that if any of the conditions a) to d) is not met, then the Board **must** refuse the application. It is therefore considered appropriate that the Board should continue to delegate the power to refuse an application where any of the circumstances outlined in a) to d) has not been met.

If a notice from the Chief Constable includes a recommendation that the application be refused, then the Board **must** hold a hearing to determine the application.

If the notice from the Chief Constable specifies convictions of the applicant but does not include a recommendation that the application be refused, then the Board **may** hold hearing to determine the application.

Similarly, where the Board receives information from either the Chief Constable, or the LSO, which they consider to be relevant to the consideration by the Board of the application, the Board **may** hold a hearing.

#### 4.4 OCCASIONAL LICENCES

An Occasional Licence can be applied for by either, a premises licence holder, a personal licence holder or a representative of any voluntary organisation. Notice of an application must be given to both the Chief Constable and the LSO; the latter may provide a report to the Board commenting on the application.

Any person may object to an application on a relevant ground of refusal, or make representations in support of the application or with regard to any conditions which the person considers should be imposed.

The Act provides that the Board **must** grant an application if no objection or representation is received, nor has the LSO provided a report. It is considered appropriate that the Board continue to delegate the grant of such applications.

The Act specifically prohibits delegation where objections or representations have been received, and it is therefore for the Board to determine these application, and it **may** hold a hearing for that purpose, or otherwise give the applicant an opportunity to comment on the objections or representations or any report by the LSO before making a decision.

#### 4.5 **EXTENDED HOURS APPLICATIONS**

A holder of a premises licence can apply for an extension of licensed hours in connection with either (a) a special event or occasion to be catered for on the premises; or (b) a special event of local or national significance.

The Chief Constable may give notice of objection where s/he considers it necessary for the purposes of any of the licensing objectives. The LSO must provide a report commenting on the application.

In applications where no notice is received from the Chief Constable, and the LSO report indicates that: (i) it is a genuine special occasion or event to be catered for on the premises; (ii) that the proposed extension of hours is reasonable for the purposes of that event; and (iii) there are no concerns with regard to public nuisance or the protection of children or young persons, it is considered appropriate that the Board continue to delegate the grant of such applications.

In other cases, the Board may hold a hearing to determine the application or otherwise give the applicant an opportunity to comment on any notice or report before making a decision.

#### 4.6 **CONFIRMATION OF PROVISIONAL PREMISES LICENCE APPLICATIONS**

A person wishing to construct or convert premises for use as licensed premises may apply for a provisional premises licence, which application will go before the Board for determination.

The applicant must thereafter carry out the construction or conversion within the provisional period of 4 years (unless extended by the Board). Such a licence does not take effect unless confirmed by the Board, and an application for confirmation must be made before the expiry of the provisional period.

The Act provides that the Board **must** confirm the licence if satisfied that there has been no variation (other than a minor variation) made to the operating or layout plans since either the issue of the provisional licence, or since the last of any variation(s) which has been granted after issue of the provisional licence. It is therefore considered appropriate that the Board continue to delegate the confirmation of such applications.

#### 4.7 **PREMISES LICENCE REVIEW HEARINGS**

Premises Licence Review applications can be made to the Board by any person, although in practice such applications are likely to be made by either the Chief Constable or the LSO. The Clerk examines the applications on behalf of the Board as there is a requirement to state the ground of review and in certain circumstances to provide a summary of information which is believed to substantiate that ground.

There is provision in s36(6) of the Act for the Review application to be rejected by the Board where it considers the application to be vexatious or frivolous, or where it does not disclose any matter relevant to any ground for review. This is a matter upon which the Clerk would generally be required to advise the Board.

Further the Board has power in terms of s38(5) and (6) of the 2005 Act for the purposes of a review hearing to: (i) obtain further information from such persons and in such manner as the Board thinks fit; and (ii) to request the attendance at a hearing of any person for the purpose of providing information, and the production by any person of any documents in that person's possession or under that person's control.

The Board must hold a hearing within 42 days of receipt of a premises review licence application. Without the delegation of these powers a report would require to be brought to the Board for it to consider firstly, whether the application is competent in disclosing a ground for review, and is not vexatious or frivolous, and secondly, then decide who should be required to attend or what documents should be produced. This may cause unnecessary administrative pressures due to the short timescale and could lead to the calling of additional meetings for this purpose, which in turn would incur additional administrative expense and is perhaps not best use of Board members' time. The Clerk or Deputies are in a position to decide on the competency of an application and whether any person or document is required.

Members will note that during the course of a premises review hearing it is competent for it to find that a personal licence holder who is or was working in the licensed premises which are subject to the review has acted in a manner inconsistent with any of the licensing objectives. It is considered appropriate, if the review application reveals such circumstances which may lead to the Board making such a finding, that the personal licence holder should be requested to attend the review to provide information.

It is considered appropriate that the Board continue to delegate the grant of such functions.

The Clerk will report to the Board prior to any review hearing on any exercise of these powers, and the Board can still request the attendance of any other person or document it deems necessary.

#### **4.8 SHORTENED PERIOD OF NOTICE and GRANT OF RELIEF**

Section 57(4) of the Licensing (Sc) Act 2005 gives Boards the power to reduce the statutory period allowed to the Chief Constable and the LSO to report on an occasional licence application, where the Board is satisfied that the application must be dealt with quickly. Generally such circumstances have arisen for funerals; however members will recall "late" applications being submitted due to other acceptable reasons such as a change of bar provider or an oversight on the part of the applicant.

Similarly, section 135 gives Boards the power to grant relief to an applicant for any failure to comply with any procedural provision where that failure is due to mistake, oversight or other excusable cause, and the Board considers it appropriate in the circumstances to relieve the failure. Members will recall a number of these requests over the past months, requiring a quorate response

before the application can then be entered into process. In the vast majority the decision of the Board has been to grant the request.

In circumstances where time may be of the essence, seeking a quorate decision to grant relief can take time due to Board Members other commitments, thus restricting the time available to process the application before the date of the event. It is therefore considered appropriate that this function be delegated to the Clerk. Applications for a shortened period of notice for an occasional licence application or for relief for any other procedural failure would be reviewed by the Clerk and if meeting the criteria would be granted; if any doubt arose as to the veracity of the reasons provided, or where repeated requests for similar failures occurred, the matter could still be referred to the Board for a quorate decision.

## 5.0 Sustainability Implications

5.1. None

## 6.0 Resource Implications

6.1. *Financial Details* - None

5.2 *Staffing* - None

## 6.0 Equalities Impact

6.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?

Yes  No

## 7.0 Legality

7.1 It has been confirmed that in adopting the recommendations contained in this report, the Board is acting within its legal powers. Yes

## 8.0 Appendices

8.1 None.

## 9.0 Background Papers

9.1 None.

### Author(s)

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### Approved by

NAME	DESIGNATION	SIGNATURE
Andrew Wyse	Clerk to the Licensing Board	Signed: A Wyse

