

ANGUS LICENSING BOARD – 12 MAY 2016

REVIEW OF PREMISES LICENCE

REPORT BY THE CLERK TO THE LICENSING BOARD

ABSTRACT:

The purpose of this Report is to present a Premises Licence under the Licensing (Scotland) Act 2005 ("the 2005 Act") to the Board for review.

1. RECOMMENDATION(S)

It is recommended that the Board conducts a Hearing to review the Premises Licence listed in the Annex to this Report and, if satisfied that a ground for review is established, then the Board may:-

- (i) issue a written warning to the Licenceholder;
- (ii) make a variation of the licence;
- (iii) suspend the licence for such period as the Board may determine; or
- (iv) revoke the licence.

2. BACKGROUND

Members will recall determining on 31 March 2016 to hold a review in respect of premises where the premises licenceholder has failed to pay annual fees.

In terms of the 2005 Act, the Licensing Board may review the licence on the following grounds:-

- (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.

It is a mandatory condition of all premises licences issued under the 2005 Act that an annual fee must be paid in terms of the relevant regulations. Accordingly, where a premises licence is in effect, or is suspended, the holder of that licence must make payment of an annual fee;

- The first annual fee being payable on 1 October 2009 or 30 days after the date on which the licence takes effect.
- Subsequent annual fees are due on 1 October each year, or where that date falls on a Saturday or Sunday on the immediately following Monday.

Despite the Clerk giving notification to licensees that annual fees are due in respect of the premises, fees remain unpaid in respect of those premises listed in **APPENDIX 1**. The respective premises licence holder would therefore appear to be in breach of the said condition of their premises licence.

Where a review hearing is to be held, the Board must, in the case of a premises licence review application, give notice of the hearing to the applicant, and give notice of the hearing and a copy of the premises licence review proposal or application to the licence holder, and any Licensing Standards Officer for the area in which the premises concerned are situated.

Where a Licensing Standards Officer receives a copy of a premises licence review proposal or application the Officer must, before the review hearing, prepare and submit to the Board a report on the proposal or application, and the Board must take the report into account at the hearing. The Licensing Standards Officer has provided a report which is attached as **APPENDIX 2**.

3. FINANCIAL IMPLICATIONS

There are no financial implications arising out of this Report.

4. HUMAN RIGHTS IMPLICATIONS

In dealing with the matters as set out in this report, the Board will have regard to any human rights issues in relation to the licence holders.

Members are advised that Article 1 of the First Protocol of the European Convention of Human Rights (i.e. protection of property) applies in relation to this Report. The licence holder is considered to be the owner of the licence and as such is entitled to the peaceful enjoyment of his/her possession. However, Angus Licensing Board may take such action as it deems necessary to control the use of the property in accordance with the general interest and subject to the conditions provided for by law. Article 14 requires non-discriminatory treatment of individuals in the enjoyment of their rights.

The legal basis for taking any action in connection with this Report is in terms of the 2005 Act.

Any actions considered by the Licensing Board must be proportionate, i.e. there should be as little intervention as possible to achieve the Board's desired aim. If the Board is minded to suspend the licence, members must first consider the Board's desired aim in imposing a period of suspension and must also consider an appropriate period of suspension taking into account the guidance on proportionality and must ensure that their decision does not discriminate against the licence holder.

5. EQUALITIES IMPLICATIONS

The issues dealt with in this report have been the subject of consideration from an equalities perspective. An equalities impact assessment is not required.

6. CONCLUSION

The Board is requested to review the premises licences and determine what steps, if any, they consider to be necessary for the purposes of the licensing objectives.

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NOTE: The background papers (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- The Licensing (Scotland) Act 2005
- The Licensing (Fees)(Scotland) Regulations 2007

NON PAYMENT OF ANNUAL FEES FOR 2015

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| 55 | Lorne Bar | 17 Commerce Street, Arbroath, DD11 1NA | £280 |
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LICENSING (SCOTLAND) ACT 2005
PREMISES LICENCE REVIEW PROPOSAL

A premises licence review proposal has been received from Angus Licensing Board in respect of:

The Lorne Bar, 17 Commerce Street, Arbroath

The Board are asked to note where a Licensing Standards Officer receives a copy of a premises licence review proposal, the Licensing Standards Officer must, before the review hearing, prepare and submit to the Licensing Board a report on the proposal. The Board must take this report into account at the hearing.

Background:

The Licensing Board on 31 March 2016 considered a premise licence review proposal for the Lorne Bar as the premises had failed to pay their annual fees. The Board's decision was to hold a review hearing.

Licensing Standards Officer's Report:

I spoke to the joint premises licence holder and designated premises manager, Mr Brian Burgess, on 23rd March 2016 who advised me that the premises has been closed for 3 years and that he believed the premises licence had already been surrendered. I informed him that the premises licence was still in effect and requested that he returned the licence to Angus Council Licensing Department; to date we have not received the premises licence and I have been unable to contact Mr Burgess since first speaking to him.

Mr & Mrs Burgess, who are the joint premises licence holders, had their personal licences revoked on 18th December 2014 as they had not carried out refresher training.

Mark Gillespie
Licensing Standards Officer
Angus Council

13 April 2016