

ANGUS COUNCIL

CIVIC LICENSING COMMITTEE – 10 JANUARY 2019

IMMEDIATE SUSPENSION OF LICENCES

REPORT BY SERVICE LEADER – LEGAL AND DEMOCRATIC

ABSTRACT

The purpose of this report is to advise Committee of its powers to order the immediate suspension of a licence if it is of the opinion that the carrying on of the activity to which the licence relates is causing or is likely to cause a serious threat to public order or public safety; and to delegate authority to exercise this power.

1. RECOMMENDATION

It is recommended that the Committee:-

- (i) note its powers, under Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982, to order the immediate suspension of a licence if it is of the opinion that the carrying on of the activity to which the licence relates is causing or is likely to cause a serious threat to public order or public safety;
- (ii) note that any suspension ordered under Paragraph 12 above only lasts for a period of the date six weeks after the order was made or the date of any decision of the licensing authority whether or not to suspend or revoke the licence under Paragraph 11 of Schedule 1 to the Civic Government (Scotland) Act 1982 (whichever is the earliest); and
- (iii) agree to delegate authority to the Service Leader – Legal and Democratic (and her successors in office as Monitoring Officer of Angus Council in terms of Section 5 of the Local Government and Housing Act 1989), in consultation with Convener and Vice Convener (if available), to order the immediate suspension of a licence in terms of Paragraph 12 above given the need to deal with these issues as a matter of urgency.

2. BACKGROUND

- 2.1 A report on this matter was submitted to this Committee at its meeting on 22 February 2018 (Report 80/18 refers). Having considered the terms of that report, this Committee determined, amongst other things, to agree to delegate authority to the Head of Legal and Democratic Services (and her successors in office as Monitoring Officer of Angus Council in terms of Section 5 of the Local Government and Housing Act 1989), in consultation with Convener and Vice Convener (if available), to order the immediate suspension of a licence in terms of Paragraph 12 of the Civic Government (Scotland) Act 1982 given the need to deal with these issues as a matter of urgency.
- 2.2 The decision by this Committee to delegate a decision to an officer of the Council required the approval of the Council. Angus Council, at its meeting on 22 March 2018, determined not to agree to delegate authority to order the immediate suspension of licences to the Head of Legal and Democratic Services.
- 2.3 The purpose of this report is to invite the Committee to reconsider the Council's position in respect of this matter. In the intervening period Police Scotland have made representations to the Council expressing concerns at the delays in progressing requests

to order the immediate suspension of licences and highlighting the risk to public safety which may be caused by these delays.

3. REPORT

3.1 Paragraph 11 of Schedule 1 to the Civic Government (Scotland) Act 1982 ("the 1982 Act") provides that a licensing authority may, whether upon a complaint made to them or not, suspend or revoke a licence if, in their opinion:-

- (a) the holder of the licence or, where the holder is not a natural person, any director of it or partner in it or any other person responsible for its management, is not or is no longer a fit and proper person to hold the licence,
- (b) the activity to which the licence relates is being managed by or carried on for the benefit of a person, other than the licence holder, who would have been refused the grant or renewal of the licence had they applied for the licence themselves,
- (c) the carrying on of the activity to which the licence relates has caused, is causing or is likely to cause undue public nuisance or a threat to public order or public safety; or
- (d) a condition of the licence has been contravened.

3.2 In considering whether to suspend or revoke a licence a licensing authority may:-

(a) have regard to:-

- (i) any misconduct on the part of the holder of the licence, whether or not constituting a breach of any provision of Part I or II of this Act or this Schedule, which in the opinion of the authority has a bearing on his fitness to hold a licence;
- (ii) where the licence relates to an activity consisting of or including the use of premises or a vehicle or vessel, any misconduct on the part of person frequenting or using the premises, vehicle or vessel occurring there or any misconduct in the immediate vicinity of the premises, vehicle or vessel which is attributable to those persons; and

(b) make such reasonable inquiries as they think fit and, subject to sub-paragraph (5) below, include the results of their inquiries in the matters to which they have regard in such consideration.

3.3 A licensing authority may, whether upon an application made to them or not, recall an order to suspend a licence made under this Paragraph 11.

3.4 A licensing authority in considering whether or not to suspend or revoke a licence may, but before deciding to do so shall, give:-

(a) the holder of the licence;

(b) any person who has made a complaint relevant to the matters to be considered at the hearing;

(c) the chief constable; and

(d) where the licence relates to an activity wholly or mainly carried on:-

(a) in premises to which Part 3 of the Fire (Scotland) Act 2005 applies, the enforcing authority;

(b) in any other premises, the Scottish Fire and Rescue Service,

an opportunity to be heard by the licensing authority.

- 3.5 A licensing authority shall have complied with their duty to give the parties referred to above the opportunity to be heard if it gives not less than 14 days' notice of the hearing and full details of the matter to be considered.
- 3.6 The period of suspension of a licence shall be the unexpired portion of the duration of the licence, or such shorter period as the licensing authority may fix; and the effect of suspension shall be that the licence shall cease to have effect during the period of the suspension.
- 3.7 Members will be familiar with the above process as the Committee is regularly invited to consider whether to suspend or revoke a licence under the above provisions.
- 3.8 Schedule 1 of Paragraph 12 to the 1982 Act permits the Committee to, whether upon a complaint made to them or not, order the suspension of a licence if they are of the opinion that the carrying on of the activity to which the licence relates is causing or is likely to cause a serious threat to public order or public safety.
- 3.9 In considering whether to suspend a licence under this Paragraph, a licensing authority may make such reasonable inquiries as they think fit and include the results of their inquiries in the matters to which they have regard in such consideration. Where a licensing authority intend to include any of the results of their inquiries above in the matters to which they have regard for the purposes of this Paragraph they shall notify the holder of the licence of that intention.
- 3.10 A licensing authority shall, before reaching a decision on the question whether or not to suspend a licence under this Paragraph, consult the chief constable and, where the licence relates to an activity wholly or mainly carried on:-
- (a) in premises to which Part 3 of the Fire (Scotland) Act 2005 applies, the enforcing authority;
 - (b) in any other premises,

the Scottish Fire and Rescue Service.
- 3.11 An order under this Paragraph suspending a licence shall have effect from the date on which it is made until whichever is the earlier of the following two dates—
- (a) a date six weeks after the order was made;
 - (b) the date of any decision of the licensing authority whether or not to suspend or revoke the licence under Paragraph 11 above.
- 3.12 A licensing authority may, whether upon an application made to them or not, recall an order made under this Paragraph.
- 3.13 Committee is asked to note that a licence holder (or any other person) does not have the right to be heard or be present when a decision is made to order the immediate suspension of a licence.
- 3.14 It is submitted that decisions to order the immediate suspension of a licence (whether arising from a request from Police Scotland or otherwise) need to be dealt with quickly and should not have to wait until the next meeting of this Committee. Accordingly, delegation is sought to the Service Leader – Legal and Democratic (and her successors in office as Monitoring Officer of Angus Council in terms of Section 5 of the Local Government and Housing Act 1989), in consultation with Convener and Vice Convener (if available), to order the immediate suspension of a licence under Paragraph 12.
- 3.15 When this matter first arose, consideration was given to delegating authority to order the immediate suspension of a licence to the Convener and Vice Convener alone. However, Section 56 of the Local Government (Scotland) Act 1973 (“the 1973 Act”) provides that a

local authority can only arrange for the discharge of their functions by a committee of the authority, a sub-committee of the authority, an officer of the authority or by any other local authority in Scotland. It would be possible to establish a sub-committee of the Civic Licensing Committee but this would be subject to the requirements of the 1973 Act in respect of statutory notice, publication etc. This would not permit these issues to be dealt with quickly. Accordingly, it is submitted that this authority should be delegated to an officer of the local authority in consultation with the Convener and Vice Convener (if available).

- 3.16 The Committee is asked to note that, in all likelihood, and regardless of whether an immediate suspension is ordered, any issues raised will be presented to the next available Committee in order that the Committee can consider whether it wishes to suspend or revoke a licence under Paragraph 11 of Schedule 1 to the 1982 Act (when the licence holder will have the right to be present, heard and represented).
- 3.17 Finally, any decision to order the immediate suspension of a licence (or to refuse to do so) may be appealed to the Sheriff by the holder of the licence, the Chief Constable or, in relation an activity wholly or mainly carried on in premises the Scottish Fire and Rescue Service.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications arising from this report.

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