

ANGUS LICENSING BOARD – 9 JANUARY 2020

PREMISES LICENCES UNDER THE LICENSING (SCOTLAND) ACT 2005

LICENCE REVIEW PROPOSALS

REPORT BY CLERK TO THE BOARD

ABSTRACT

The purpose of this report is to advise members of the non-payment of Annual Fees under the Licensing (Scotland) Act 2005 (“the 2005 Act”) as detailed in the Appendix to this Report.

1. RECOMMENDATION

It is recommended that the Board consider and determine:-

- (i) to hold a review (“a premises licence review proposal”) in respect of those premises detailed in the attached Appendix.
- (ii) to fix a review hearing date within 42 days of their decision to make the premises licence review proposal.
- (iii) to agree that any hearing be cancelled should the outstanding fees be paid prior to the hearing.

2. LEGAL

Paragraph 10 of Schedule 3 to the 2005 Act makes it a mandatory condition applicable to all premises licences that the fee must be paid as required by The Licensing (Fees) (Scotland) Regulations 2007. The regulations provide for the fee being an annual fee and specifies the amounts due by different types of premises.

The Regulations specify that the first annual fee is due within 30 days after the date on which the licence takes effect.

The Regulations further specify that subsequent annual fees are due on 1st October each year or, where that date falls on a Saturday or Sunday, on the immediately following Monday.

Despite reminders and repeated requests for payment being made the annual fees in respect of each of the licensed premises detailed in the attached Appendix have not been paid.

In terms of Section 37(1) of the 2005 Act, the Licensing Board may, on its own initiative, propose to review a premises licence on any grounds for review. The grounds for the Licensing Board making such a premises licence review proposal are:

- za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence
- 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.

In terms of section 37(4) of the 2005 Act, a premises licence review proposal must specify the alleged ground for review, including in particular:-

- i) where the ground is that specified in za) above, a summary of the information on which the Board's view that the alleged ground applies is based
- ii) where the ground is that specified in a) above the condition or conditions alleged to have been breached
- iii) where the ground is that specified in c) above, the licensing objective to which the ground of review relates

In these particular cases, it is recommended that the condition alleged to have been breached is that the licence holders have failed to pay their annual fee and that the Board ought to specify this in making a premises review proposal.

In making a premises review proposal, the Board may include in the proposal any information that the Board considers may be relevant to their consideration of the alleged ground for reviewing, including, in particular, information in relation to:-

- a) the licence holder,
- b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or
- c) any person who is an interested party in relation to the licensed premises.

If the Board decides to make a premises review proposal, they should be aware that the review hearing must take place within 42 days from the date they make the proposal in line with the Licensing (Procedure) (Scotland) Regulations 2007.

3. FINANCIAL IMPLICATIONS

There are no financial implications arising from 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. CONCLUSION

The Board is requested to determine to agree to make a premises licence review proposal in respect of the premises detailed in the Appendix and to fix a review hearing date within 42 days of their decision to make the proposal. The Board is asked to agree that any hearing be cancelled should the outstanding fees be paid prior to the hearing.

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NON PAYMENT OF ANNUAL FEES FOR 2019

Premises Number	Premises Name	Premises Address	Amount
86	World Buffet	Montrose Road, Arbroath	£280
139	Finavon Hotel	Finavon, "By-Forfar"	£280
159	St James Convenience Store	35E St James Road, Forfar	£220
273	Sunny's Bar and Kitchen	2 Mattocks Road, Wellbank	£280
280	The Panmure Hotel	Tay Street, Monifieth	£280
299	St Thomas Bar	17 James Street, Arbroath	£220