

ANGUS LICENSING BOARD – 17 SEPTEMBER 2020

COVID-19

REPORT BY CLERK TO THE BOARD

ABSTRACT

The purpose of this Report is to update Board Members of the work undertaken remotely by officers as a result of the COVID-19 Pandemic and to outline the legislative changes and resultant impact on Board Business brought about by the Coronavirus (Scotland) Act 2020.

1. RECOMMENDATION

It is recommended that the Board:

- i) note the work undertaken remotely by officers since March 2020; and
- ii) note the legislative changes and resultant impact on Board Business brought about by the introduction of the Coronavirus (Scotland) Act 2020.

2. BACKGROUND

Angus Council issued guidance on 17 March 2020 that if an employee was able to work from home, they were to do so with immediate effect and until further notice. From 18 March 2020, officers have been working remotely and will continue to do so until such time a return to the office is possible.

Working remotely has presented a number of challenges for officers in carrying on Licensing Board business as normal. As far as was possible, the licensing department continued to receive applications for new grants and renewals. These applications, in the main, have been received digitally with payments largely being received over the telephone. This remains the position. No applications were formally suspended, but there were significant challenges in respect of processing new grant or renewal applications for Personal Licences as the majority of training courses had been cancelled.

A significant volume of work has required to be undertaken by legal officers and the Licensing Standards Officer (LSO) in respect of legal research, providing legal advice, drafting guidance documents, updating websites and sending communications for the public to use and read online, as well as handling enquiries from licence holders, applicants, members of the public, Councillors, internal departments, other Local Authorities, and Licensing Groups. This has been the case going forward as matters change and as we progress through the Route Map phases as set by the Scottish Government.

There has also been a number of legislative changes brought about by the Coronavirus (Scotland) Act 2020, applicable Regulations and Guidance which have increased the workload for legal officers and the LSO. Examples of work that has been completed by them and some of the challenges they have faced, are outlined below.

3. IMMEDIATE IMPACT

On Friday 20 March 2020, the Prime Minister issued instructions that due to the ongoing COVID-19 pandemic, all public houses were to close as soon as possible and in any case by the end of business that night and to remain closed until further notice.

A number of enquiries in respect of which premises were to close and who may still operate were received. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 came into force on 27th March 2020. Guidance notes were produced by Legal officers and the LSO and placed on the Angus Council website for the trade, licence holders, and members of the public to refer to. Reports of premises continuing to operate were also received, which required the LSO to contact licence holders and premises managers. It

proved a challenge to the LSO, given visits were suspended, to ensure compliance. Close working with Police Scotland in this regard was required.

The Angus Licensing Board scheduled for March 2020 was cancelled and several reports and applications were delayed. Legal officers and the LSO required to carry out a review exercise to ensure that applications did not miss deadlines or run the risk of deemed grants. Emergency powers were not required to be used in respect of liquor licences given this review.

4. CANCELLATION OF EVENTS

As further guidance became available from the Scottish Government, legal officers and the LSO required to review events which had liquor applications either granted or pending in relation to them. This resulted in the LSO contacting 95 licence holders and several Occasional Licence applicants, and liaising with them to ensure their event would not go ahead in contravention of Government guidance.

5. VIRTUAL BOARDS

The Angus Licensing Board has met four times by virtual means. The Coronavirus (Scotland) Act 2020 permitted Boards to meet in this way. The organising of virtual boards has presented numerous challenges for officers, particularly those in Committee Services and IT. These have included arranging and facilitating IT equipment and platforms, ensuring GDPR compliance and working with applicants and agents to make sure they could access the digital forum.

Over a two-month period, the Board has met four times and has heard the following applications:

- New Premises Licences: 3
- Major Variations: 4
- Premises Licence Reviews: 5
- Personal Licence Reviews: 6
- New Grant of Personal Licences: 1
- Occasional Licences: 1

6. PHASED RE-OPENING OF PREMISES

It was expected that licensed premises would be able to re-open their outdoor drinking areas only, in mid-June. The Scottish Government took a decision to delay the re-opening until 6th July 2020.

A number of Occasional Licence applications were received over a very short period of time to licence outdoor drinking areas. A corporate decision was taken, with a view to ensuring public safety, for these Occasional Licence applications to be shared with extra internal departments for consultation: Roads, Environmental Health and Consumer Protection, Planning and Building Standards.

This led to an increase in workload for the LSO and legal officers per application as there were often several issues raised. The LSO also had to carry out visits to premises where there issues could not be resolved by remote means. Additional COVID-19 conditions required to be drafted by legal officers and the LSO which were applied to every Occasional Licence for an outdoor area. Risk Assessments and Noise Management Plans for each premises also required to be drafted/amended all in keeping with Scottish Government Guidance and applicable Regulations.

There were also increased enquiries from licence holders, internal departments, the public and Police Scotland in respect of premises operating outside drinking areas which resulted in legal officers and the LSO requiring to provide guidance, information, investigation and or legal advice.

On 15th July 2020 indoor licensed premises were permitted to re-open. This resulted in an increased number of enquiries from licensed premises holders in respect of what they must do, and what they could or could not do. Legal Officers and the LSO were also faced with frequently changing guidelines, Guidance, Updates, legislation and applicable Regulations, from the Scottish Government and also required to work closely with other internal

departments to make sure that Angus licensed premises were acting appropriately and in compliance with current Guidelines, Guidance, Updates, legislation and applicable Regulations.

The re-opening of licensed premises continues to be an on-going issue for the LSO and legal officers, with notifications and queries still being received in respect of COVID-19 breaches and licensing issues. The LSO has also required to carry out visits where appropriate to premises where there are issues, and when necessary, passing matters to the Environmental Health department who now have enforcement powers in relation to such matters. The LSO has also undertaken joint visits with Police Scotland or passed on information to Police Scotland, where appropriate to do so, in respect of premises.

7. PERSONAL LICENCES

The Coronavirus (Scotland) Act 2020 permitted Personal Licence holders to have relevant deadlines extended. The Board has made decisions in relation to some of these deadlines and thereafter delegated authority to the Clerk to determine such matters. Those Personal Licence holders who were due to undertake refresher training between March 2020 and July 2020 now have until December 2020 in order to undertake it if they are able to show the reason they could not undertake training was for a reason related to the Coronavirus.

Personal Licence Holders who were due to renew their licence between March 2020 and August 2020 were permitted to renew until the day before their licence expired if they could not renew within the normal timeframe due to reasons related to the Coronavirus. There has also been some flexibility allowed in relation to them having more time to submit training qualification certificates.

This procedure involved the LSO contacting each licence holder to ascertain if an extension was required and if it was appropriate to do so for a reason related to the Coronavirus. This will now be an on-going matter and the Legal officers and LSO will be working closely on this.

8. LEGAL

The Board will be aware that the Licensing (Scotland) Act 2005 is the main piece of legislation in respect of Liquor Licensing Law. The Coronavirus (Scotland) Act 2020 has made significant but temporary changes in respect of the 2005 Act and relevant statutory instruments. The main changes of the 2020 Act can be summarised as follows:

- a) Flexibility for the Licensing Board in respect of holding in-person hearings. The Licensing Board can determine that a hearing cannot be held in person, or at a meeting of the Licensing Board, because of reasons relating to coronavirus;
- b) The Board must give any person who would have had the right to be heard at any hearing the option to be heard either by telephone, written representation (including e-mail) or by video conference;
- c) A premises licence will not cease to have effect in terms of Section 28 of the 2005 Act by virtue of a premises temporarily closing for a reason relating to coronavirus;
- d) Additional time (28 days instead of 7 days) is provided for the premises licence holder to notify the Licensing Board that any of the events in section 54(2) have occurred. Section 54(4)(b) is modified to the effect that instead of a premises licence variation application to substitute a new premises manager being required to be submitted to the Licensing Board within 6 weeks, a premises licence holder has up to 3 months from the date of the loss of the premises manager;
- e) If food is sold on the premises but the operating plan does not contain an express term to the effect that food may be taken away, or delivered, from the premises for consumption off the premises, a term to that effect is to be implied into the operating plan;
- f) Provision so that the annual functions report must be published not later than 9 months after the end of the financial year (meaning the year ending on 31 March). Similar modifications relating to annual financial reports of Licensing Boards are made;
- g) The Board may decide to delegate decision-making over any matter listed in paragraph 10(2) to a Committee of the Board consisting of no less than 3 members. Such a delegation can take place only if a Licensing Board considers it necessary for a reason relating to coronavirus;
- h) The quorum for a meeting of a Licensing Board is one-third of members rather than one-half. The proviso that the quorum is, in any case, not fewer than 3 members is maintained;

- i) The Board does not have to meet in public if it cannot do so as a result of the coronavirus outbreak. A similar modification is made to paragraph 5(3) of schedule 2 relating to meetings of Local Licensing Forums;
- j) If for a reason relating to coronavirus, the Board is unable to hold a hearing within the period required by legislation, the Board must hold the hearing as soon as reasonably practicable after the end of that period;
- k) Where a personal licence renewal application is made and the Board has not determined the application before the expiry date, the licence will continue to have effect for a period of 6 months;
- l) Personal licence renewal application may be made up to the day before the expiry date of the licence;
- m) The Board can extend the period up to a length of time of their choosing for completion of the necessary training and for the licence holder to provide evidence of having undertaken that training. The Board can, by virtue of new section 87(3B), extend the period more than once.

9. FINANCIAL IMPLICATIONS

There has been a decrease in fee income given the reduction overall in the number of applications being received in relation to liquor licensing, particularly in respect of Occasional Licences.

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