

ANGUS LICENSING BOARD – 17 FEBRUARY 2022

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 Premises Licence Fees under the Licensing (Scotland) Act 2005 (“the 2005 Act”) as detailed in the Appendix to this Report.

1. RECOMMENDATIONS

It is recommended that the Board consider and determine:-

- (i) to hold a review hearing (“a premises licence review proposal”) in respect of each of those premises detailed in the attached Appendix.
- (ii) to fix a review hearing date in respect of each of those premises within 42 days of the decision to make the premises licence review proposal.
- (iii) to agree that any review 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 for payment being made to the licence holders 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

If the fees below are not paid by the licence holders, Board income will decrease by £2880.00

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 2021

Lic. No.	Premises Name	Premises Address	Amount
30	The Park Bar	19-21 Park Road, Brechin, DD9 7AE	£280
127	The Workhouse	37-43 West High Street, Forfar, DD8 1BE	£220
135	The Ashvale Fish Restaurant and Takeaway	14 Trinity Road, Brechin, DD9 6BE	£220
146	The Crown Inn	49 High Street, Monifieth, DD5 4AA	£280
163	Corner Newsagent	6-8 Barry Road, Carnoustie, DD7 7QL	£220
183	Sinclair's Kitchen (Forresterseat)	Arbroath Road, Burnside, Forfar, DD8 2RY	£280
231	Brown Horse	62 Market Street, Brechin, DD9 6BD	£280
317	7 Sins (Rug Bug Bennys)	2 Hume Street, Montrose, DD10 8JD	£280
408	Old Bean Coffee Shop	1B Millgate, Arbroath, DD11 1NN	£220
		TOTAL OUTSTANDING	£2280