

ANGUS LICENSING BOARD – 19 JANUARY 2023

NEW PERSONAL LICENCE APPLICATION – NOTICE OF CONVICTION

REPORT BY THE CLERK

ABSTRACT

The purpose of this report is to present an application for a Personal Licence and correspondence received giving notice of a conviction in terms of section 73(3)(b) of the Licensing (Scotland) Act 2005 (“the 2005 Act”) in respect of the application and additional comments.

1. RECOMMENDATION

It is recommended that the Board considers the correspondence received from the Chief Constable giving notice of conviction and hold a hearing to determine the application.

2. BACKGROUND

The Clerk has received an application for a personal licence. Having consulted on the application the Clerk has received correspondence from the Chief Constable giving notice of conviction in terms of section 73(3)(b) of the 2005 Act in respect of a new application for a personal licence. **A copy of that correspondence shall be circulated to Board members in advance of the meeting.** The Clerk has also received a response on behalf of the Licensing Standards Officer.

3. LEGAL

3.1 Where a Licensing Board receives a personal licence application, the Board must give notice of it, together with a copy of the application to the Chief Constable.

3.2 The Chief Constable must, within 21 days of the date of receipt of the personal licence application, respond to the application by giving the Licensing Board one or other of the notices noted in paragraph 3.3.

3.3 The notices available are:-

(i) a notice, in terms of section 73(3)(a), stating that, as far as the Chief Constable is aware, the applicant has not been convicted of any relevant offence or foreign offence.

(ii) a notice, in terms of section 73(3)(b), specifying any convictions of the applicant of any such offence.

3.4 On giving either type of notice, if the Chief Constable considers that it is necessary for the purposes of any of the licensing objectives that the personal licence application be refused, the Chief Constable may include in the notice a recommendation to that effect.

3.5 On giving either type of notice, the Chief Constable may also provide to the Licensing Board any information in relation to the applicant that the Chief Constable considers may be relevant to consideration by the Board of the application.

3.6 Where a Licensing Board receives a Personal Licence application, the Board must also give notice of it, together with a copy of the application, to a Licensing Standards Officer for the Board’s area. A Licensing Standards Officer may, within 21 days of the date of receipt of a notice, respond to the notice by giving the Licensing Board any information in relation to the application that the Officer considers may be relevant to consideration by the Board of the application. **A copy of the LSO Report shall be circulated to Board members in advance of the meeting.**

- 3.7 In terms of section 74(3), the Applicant must:
- a) be aged 18 or over;
 - b) possess a licensing qualification;
 - c) not already hold a personal licence: and
 - d) not have had a personal licence revoked within the period of 5 years ending on the day when the application was received.
- 3.8 In terms of section 74 (5) if the conditions at 3.7 are met in relation to the applicant, the Board has received a notice under subsection 73(3)(a) or 73(3)(b), and the notice includes a recommendation under section 73(4), the Board must hold a hearing for the purpose of considering and determining the application.
- 3.9 At a hearing under subsection 74(5), the Licensing Board must, after having regard to the chief constable's notice and any information provided under section 73(5) or by the Licensing Standards Officer under section 73A(2):-
- (a) if satisfied that a ground for refusal applies, refuse the application, or
 - (b) if not so satisfied, grant the application.
- 3.10 The grounds for refusal are: -
- (a) that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence; or
 - (b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

5. HUMAN RIGHTS IMPLICATIONS

In dealing with the applications as set out in this report the Board will have regard to any human rights issues in relation to the Applicant.

6. NOTIFICATION

The applicant has been notified of the terms of this Report. They have also been advised of their entitlement to attend the Board should they wish.

REPORT AUTHOR: Jennifer Burns, Solicitor

E-MAIL: LEGDEM@angus.gov.uk