

**ANGUS LICENSING BOARD – 9 NOVEMBER 2023**

**REQUEST TO RELIEVE THE FAILURE TO COMPLY WITH A PROCEDURAL REQUIREMENT**

**REPORT BY CLERK TO THE BOARD**

**ABSTRACT**

The purpose of this report is to request that the Board determines whether to relieve an applicant of a failure to comply with procedural requirements in terms of Section 135 of the Licensing (Scotland) Act 2005 (“the 2005 Act”).

**1. RECOMMENDATION**

It is recommended that the Board: -

- (i) note that the Clerk has received a request from an applicant for relief from failure to comply with procedural requirements of the 2005 Act, which require to be determined by the Board; and
- (ii) determine whether to relieve the failure to comply with the procedural requirements and if so, whether to impose any order to enable the proceedings to continue as if the failure had not occurred.

**2. BACKGROUND**

- 2.1 A request has been received for relief from failure to comply with procedural requirements of the 2005 Act so that an application may be considered by the Board.
- 2.2 The request for relief is in respect of an application for transfer of a premises licence under section 34(1) of the 2005 Act, from a person other than the licence holder.

**3. LEGAL**

- 3.1 Section 135 of the 2005 Act provides that the Board may relieve any applicant or other party to proceedings before the Board of any failure to comply with a procedural provision if: -
  - (a) The failure is due to a mistake, oversight or other excusable cause; and
  - (b) The Board considers it appropriate in all the circumstances to relieve the failure.
- 3.2 Where the Board exercises this power it may make such order as appears necessary or expedient to enable the proceedings to continue as if the failure had not occurred.
- 3.3 In terms of section 34 of the 2005 Act, persons of a prescribed description may apply to the appropriate Licensing Board for the transfer to that person of the licence, within 28 days of the occurrence of any of the following events:-
  - (a) the premises licence holder, being an individual -
    - (i) dies, or
    - (ii) becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000,
  - (b) the premises licence holder, being an individual, a partnership or a company, becomes insolvent,
  - (c) the premises licence holder, being a person other than an individual, a partnership or a company, is dissolved, and
  - (d) the business carried on in the licensed premises to which the licence relates is transferred (whether by sale or otherwise) to another person.

- 3.4 The Clerk, on receiving an application to transfer as described in the Appendix, must give notice of it to the Chief Constable, who in turn is required to respond by giving the Board one or other of the following notices under Sections 33(6)(a) or 33(6)(b) respectively: -
- s.33(6)(a) a notice stating that neither:
    - the transferee, nor where the transferee is neither an individual nor a council, any connected person, has been convicted of any relevant offence or foreign offence, or
  - s.33 (6)(b) a notice specifying any convictions of: -
    - the transferee, and where the transferee is neither an individual nor a council, any connected person, for a relevant offence or a foreign offence.
- 3.5 If the chief constable considers that it is necessary for the purposes of any of the licensing objectives that the application for transfer of the licence to the transferee be refused, the chief constable may include in his notice a recommendation to that effect under section 33(7).
- 3.6 On giving notice under section 33(6)(a) or 33(6)(b), the chief constable may also provide to the Licensing Board any information under section 33(7A) in relation to:-
- (i) the transferee,
  - (ii) where the transferee is neither an individual nor a council, a connected person, or
  - (iii) any person who would be an interested party in relation to the licensed premises if the application for the transfer of the licence to the transferee were to be granted,
- that the chief constable considers may be relevant to consideration by the Board of the application.
- 3.7 Where the Board receives a notice from the Chief Constable under section 33(6)(a) and, the notice does not include a recommendation under section 33(7); and no information has been provided under section 33(7A), the Board must grant the application.
- In any other case, the Licensing Board must hold a hearing for the purpose of considering and determining the application.
- 3.8 Where a hearing requires to be held, the Licensing Board must, having regard to the Chief Constable's notice and any information provided under section 33(7A);
- (i) if satisfied that a ground for refusal applies, refuse the application, or
  - (ii) if not so satisfied, grant the application.
- 3.9 The grounds for refusal are:-
- (i) that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence; or
  - (ii) 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. NOTIFICATION**

The applicants have been notified of the terms of this Report. They have also been invited to attend the Board.

NOTE: No background papers were relied on to a material extent in preparing the above report.

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ANGUS LICENSING BOARD – 9 NOVEMBER 2023

**(a) Lic. No. 39, The Foundry Bar, 5/7 East Mary Street, Arbroath**

**Name of Licence Holder: Dianne Walker, The Barn, Mill of Pert, Laurencekirk, AB30 1QS**

**Type of Licence: On and Off Sales**

Ms Dianne Walker is currently the named premises licence holder of the Foundry Bar, 5/7 East Street, Arbroath.

An email was received from Ms Dianne Walker on 7 December 2022 intimating that she wished to surrender the premises licence. Despite a request for return of the licence (required in terms of section 28(6) of the 2005 Act), this has not been received, nor explanation for failure to do so.

On 16 August 2023, an application to transfer under Section 34 of the 2005 Act in respect of the Foundry Bar was received from Ms Christine Yvonne Iveson requesting the transfer of the premises licence from Dianne Walker to Ms Christine Iveson.

Licensing sought clarity from Ms Iveson on a number of points concerning transfer of the business to her and in particular the timing of such a transfer. Ms Iveson has advised that she is a joint owner of the premises provided a copy lease with the current licence holder which indicated an end date of 21 November 2022.

On 29 August 2023 Ms Iveson, having been informed of the statutory time frame for such a transfer application, requested that the Board relieve her failure to comply with timing requirements.

The transfer application was subsequently processed. **Police Scotland's notice dated 18 September 2023 will be submitted to members in advance of the meeting.**

The transfer application was accompanied by a minor variation application to change the Premises Manager, usually granted by the Clerk under delegated powers. In terms of the 2005 Act the transfer application shall be considered first.