

REPORT TO: LICENSING BOARD - 17TH JANUARY 2008

REPORT ON: LICENSING (SCOTLAND) ACT 2005 - TRANSITIONAL ARRANGEMENTS

REPORT BY: CLERK TO THE LICENSING BOARD

REPORT NO: 42-2008

1.0 PURPOSE OF REPORT

1.1 To outline the procedures to be adopted by the Board in relation to the transitional arrangements, to set levels of fees, agree dates for meetings and delegate decision making on certain applications to the Clerk in consultation with the Convener.

2.0 RECOMMENDATIONS

2.1 Consideration of all applications under the Licensing (Scotland) Act 1976 (excluding new applications and regular extensions) and those in Paragraph 4.16 below be delegated to the Clerk in consultation with the Convener.

2.2 That the fees in Appendix 1 be adopted, it being noted that those marked thus * are maximum fees fixed by the Scottish Government.

2.3 That meetings of the Licensing Board throughout the transitional period be held monthly (if required) commencing March 2008 as outlined in Appendix 2.

2.4 That additional meetings be called by the Clerk as required.

2.5 That the appointed day for applications by Social Clubs to ensure "Grandfather Rights" is 31 August 2008.

2.6 That public notice of applications be given on the City Council website.

2.7 Applicants for new licences, permanent transfers or confirmation under the 1976 Act be required to hold a licensing qualification as outlined in the 2005 Act.

2.8 Applications for a new licence or the provisional grant of a new licence under the 1976 Act are not considered unless accompanied by an application in respect of the same premises under Section 20 or 45 of the 2005 Act.

2.9 Layout plans be either A4 or A3 size, wherever possible depending on the size of the premises.

2.10 The Board's regulations be amended as required.

3.0 FINANCIAL IMPLICATIONS

3.1 The costs incurred by the Board will increase due to the statutory requirement to appoint Standards Officers, increased training requirements and administrative costs including the need to neighbour notify and increased IT costs on new software.

3.2 The Board has a duty to recover its costs from time to time and the level of fee as regards new applications should ensure full recovery in Year 2008/2009.

3.2 The maximum annual fees set by the Scottish Government have however been set at a level which will not ensure full recovery in Year 2009/2010 and onwards. Any shortfall will be met from the Support Services Revenue Budget.

4.0 MAIN TEXT

- 4.1 Applications in terms of the Licensing (Scotland) Act 2005 can be accepted from 1 February 2008. This is when the transitional period commences. The transitional period expires on 1 September 2009 when the 2005 Act comes fully into force.
- 4.2 Licensees do not have to apply for renewal of any existing Licences or consents as these will continue in force through the transitional period.
- 4.3 The Board will, however, continue to have to deal with any new applications under the Licensing (Scotland) Act 1976 as Regulations specify that only the Board can deal with applications for new licences and applications for new regular extensions. Consideration of all other 1976 Act applications is to be delegated to the Clerk in consultation with the Convener.
- 4.4 There are new procedures in place for advertising applications under the 1976 Act which are based on how the Board will deal with applications under the 2005 Act. The Board must within 42 days of receiving an application advertise it and specify a date not earlier than 21 days after the date of the notice by which objection must be lodged. Applications must then be considered at a meeting held not later than 119 days after the date specified in the Notice. Neighbours must be notified by the Board and Public Notice given by way of a Notice displayed on the premises and either in the local press or on the Board's website. As the Board's costs will increase significantly due to the neighbour notification process it is recommended that public notice be given on the Council website.
- 4.5 The concepts of last days for lodging applications and fixed dates for board meetings no longer apply and it is therefore intended that meetings to consider such applications, which it is considered will be few, will be held as and when required.
- 4.6 The Board will also require to deal with over 500 applications from existing licensees for premises licences and over 600 applications for personal licences under the 2005 Act.
- 4.7 Whilst there are no last lodging days in the transitional period from 1 February 2008 to 1 September 2009, applications have to be lodged in tranches in March, June, October 2008 and January 2009. If licensees apply by their due date and there are no major changes to their premises or the way that they operate then they can apply for "grandfather rights" which means that they do not require certificates from Planning, Building Control or Food Hygiene and that the ground of over provision for refusal of such an application would not apply. Licensees are being encouraged to apply at their due date to ensure an even spread of applications throughout the year.
- 4.8 The Board will also assume responsibility for licensing Social Clubs. Regulations require the Board to appoint a day by which applications must be lodged to ensure "Grandfather Rights" and it is recommended that the appointed day be 31 August 2008.
- 4.9 In the case of premises licences again notice has to be given within 42 days, a 21 day period for objections is allowed and the Board has 119 days in which to consider the application thereafter.
- 4.10 Officers will require to carefully consider each application to ensure that it complies with legislation, regulations made thereunder and the Board's policies. The level of public objection is unquantifiable.
- 4.11 Having regard to the foregoing it is intended to hold meetings on a monthly basis commencing in March. Should there be a large number of premises with objections it may be necessary to hold further meetings.
- 4.12 Regulations governing fees are now in place. The Board can set fees for certain applications and these should be set at a level to recover costs. Maximum fee levels for new applications and the annual fee have been set by the Scottish Government.
- 4.13 The Board can set fees for transfers and transfers including variations whilst fees for all other applications have been fixed by the Scottish Government.

- 4.14 The maximum fees for new applications and annual fees will have to be charged as it is unlikely that the Board will be in a position to fully recover its costs. Any deficit will be met from the Support Services Revenue Budget. This mirrors the current practice under the 1976 Act.
- 4.15 The Appendix contains the full list of fees. Those marked * are maximum fees fixed by the Scottish Government and those marked † are set fees fixed by the Scottish Government.
- 4.16 The 2005 Act envisages that there will be relatively few meetings of the Licensing Board (outwith the transitional period) and accordingly there is a high level of delegation. It is recommended that consideration of all applications which can be delegated is delegated to the Clerk in consultation with the Convener as undernoted:-

Section 29 - Minor variations

Section 31 - Variation to substitute new premises Manager

Section 33 and 34 - Transfers

Section 35 - Variations on Transfer

Section 56 - Occasional Licence

Section 68 - Extended Hours

- 4.17 This level of delegation is subject to there being no representations received and the Clerk and the Convener agreeing to deal with such applications. Should the Clerk or the Convener decline to consider any application then the application concerned will be referred to the full Licensing Board. Details of applications granted under delegated powers will be reported to the next meeting of the Board for information and record purposes only.
- 4.18 Members should also note that premises licences are not subject to renewal. As a result reports by various technical officers will only be made by way of a request to review the licence - a process similar to requests for hearings under the 1976 Act or if an application for a major variation is made.
- 4.19 The Board currently require applicants to hold a Servewise plus certificate (or equivalent). It is recommended that the Board require applicants for Licences under the 1976 Act to hold a "Licensing Qualification" which is the requirement under the 2005 Act. Such courses are now widely available.

5.0 POLICY IMPLICATIONS

- 5.1 This report has been screened for any policy implications in respect of sustainability, strategic environmental assessment, anti poverty and equality impact assessment.

There are no major issues.

6.0 CONSULTATIONS

- 6.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance) and Head of Finance have been consulted.

7.0 BACKGROUND PAPERS

- 7.1 None.

- 8.0 Name Patricia McIlquham
Clerk to the Licensing Board**

Date: 11th January 2008

APPENDIX 1

LICENSING (SCOTLAND) ACT 2005

F E E S

				<u>New Application</u> <u>Fee</u> <u>£</u>	<u>Annual</u> <u>Fee</u> <u>£</u>
<u>Premises Licences</u>					
		<u>Rateable Value</u>			
* Category 1	(-)			200	180
* Category 2	(1	-	11,500)	800	220
* Category 3	(11,501	-	35,000)	1100	280
* Category 4	(35,001	-	70,000)	1300	500
* Category 5	(70,001	-	140,000)	1700	700
* Category 6	(140,000 +)			2000	900
† Personal Licence				50	-
† Extended Hours				10	-
† Occasional Licence				10	-
<u>Variations</u>					
† Minor Variation(s)				20	-
† Substitution of Manager (and Minor Variation)				31	-
Transfer (at request of licensee) - Sect 33				100	
Transfer (at request of licensee and Minor Variation) - Sect 33				120	
Transfer (at request of person other than licensee) - Sect 34				100	
Transfer (at request of person other than licensee) and Minor Variation - Sect 34				120	
Temporary Premises Licence				100	
† Provisional Licence				200	
† Confirmation of Provisional Licence				Appropriate Category Fee less £200	

* Denotes maximum fees fixed by Scottish Government

† Denotes set fees fixed by Scottish Government

APPENDIX 2

Due to the implementation of new Licensing (Scotland) Act 2005, additional meetings of the Licensing Board (to those already fixed in the Council Diary) will be required during 2008.

Noted below is the full list of dates proposed for 2008:-

- Thursday, 17th January 2008
- Wednesday, 6th February 2008
- Thursday, 20th March 2008
- Thursday, 17th April 2008
- * Thursday 22nd May 2008
- Thursday, 12th June 2008
- Thursday, 10th July 2008
- * Thursday, 21st August 2008
- * Thursday, 18th September 2008
- Thursday, 23rd October 2008
- Thursday, 20th November 2008
- * Thursday, 11th December 2008

- * Additional Dates not already in Council Diary

All meetings to start at 10.00 a.m.