

Cunninghame House  
Irvine  
KA12 8EE

4 December 2018

**North Ayrshire Licensing Board**

You are requested to attend a Meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, Ground Floor, Cunninghame House, Irvine on **Monday 10 December 2018 at 10.00 A.M.** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

**1. Minutes**

Submit Minutes of the Board Meetings held on 1 October 2018.

**2. Licences and Applications under the Licensing (Scotland) Act 2005**

Submit report by the Clerk to the Licensing Board on applications under the Licensing (Scotland) Act 2005. (copy enclosed)

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## Licensing Board

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Sederunt: Ronnie McNicol (Convenor)  
Todd Ferguson (Vice-Convenor)  
Robert Barr  
John Easdale  
Scott Gallacher  
Jean McClung  
Davina McTiernan  
Donald L Reid  
Angela Stephen

Chair:

Apologies:

Meeting Ended:

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## **Agenda Item 2**

**10 December 2018**

### **North Ayrshire Licensing Board**

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**Title:** **Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005.**

**Purpose:** To advise the Board of the Law and the factual background.

**Recommendation:** That the Board determines whether or not to grant the Applications listed.

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#### **1. Executive Summary**

- 1.1 The Licensing Board is responsible for determining Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005 (such as Review Hearings involving holders of Premises Licences and Personal Licences).
- 1.2 The Board has approved a Scheme of Delegation whereby certain matters can be delegated to the Clerk and other licensing staff. Matters which cannot be delegated, or where the officers have declined to exercise the delegation, are referred to the Board.

#### **2. Background**

- 2.1 The Applications and other matters before the Board are detailed in the attached appendices. Each appendix contains a Report prepared by licensing staff for each individual case before the Board. These Reports set out the particular factual and legal issues which licensing staff consider arise in each case, and set out the action which the Board would be entitled to take.
- 2.2 Where relevant, the reports have been copied to the Applicants or Licence-Holders. Where objections or representations are competent, these have been copied to the Applicant so that a response might be made at the Board Hearing.

#### **3. Proposals**

- 3.1 In each case, after considering the Application and after hearing any submissions for the Applicant and persons making objections or representations, the Board should determine whether or not to grant the Application or take appropriate action.

## 4. Implications

<b>Financial:</b>	There are possible financial implications in relation to any Licensing decision.
<b>Human Resources:</b>	None.
<b>Legal:</b>	There are possible legal implications in relation to any licensing decision. Many Board decisions may be appealed against, but not all, and not all parties to a case have a right of appeal.
<b>Equality:</b>	The Clerk has considered the "Public Sector Equality Duty" in preparing this Report and the appendices. There are no significant equalities impacts to be considered.
<b>Children and Young People:</b>	None.
<b>Environmental &amp; Sustainability:</b>	None.
<b>Key Priorities:</b>	An effective licensing system (for example monitoring the 'fit and proper' status of licence-holders and the compliance with the statutory Licensing Objectives in Section 4 of the 2005 Act) helps achieve Priority 4 of the North Ayrshire Council Plan 2015-2020, ("Supporting all of our people to stay safe, healthy and active").
<b>Community Benefits:</b>	Not applicable, as the Report does not relate to tendering or procurement exercises.

## 5. Consultation

- 5.1 Consultation has taken place in line with statutory requirements. The requirements vary depending on the particular issue raised, and where appropriate these are detailed in the report for each case.

Aileen Craig  
Clerk

For further information please contact **William O'Brien, Solicitor (Licensing)** on **01294-324305**.

### Background Papers

See attached list

## APPENDIX A

### Premises Licence Applications or any other Applications requiring a Hearing

Case No.	Licence No.	Applicant/Licence Holder	Premises	Comments
1.	0429	Mounir Hanna Sabti	News Stand 29/31 Dockhead Street Saltcoats KA21 5ED	Application for Variation of Premises Licence – Section 29
2.	0154	Martin McColl Limited	McColls 21/27 Old Raise Road Saltcoats KA21 5RB	Application for Variation of Premises Licence – Section 29
3.	0164	Wm Morrison Supermarkets plc	Morrisons 4 Irvine Road Largs KA30 8JT	Application for Variation of Premises Licence – Section 29
4.	0163	Wm Morrison Supermarkets plc	Morrisons Hawkhill Farm Kilwinning Road Stevenston KA20 3DE	Application for Variation of Premises Licence – Section 29
5.	0089	William Gibson	The Twa Dugs 71 Main Street West Kilbride KA23 9AW	Application for Variation of Premises Licence – Section 29 Continued from 01/10/18
6.	0472	Gail Burton	The Corner Café 73 Main Street West Kilbride KA23 9AW	Premises Licence Review Application – Section 36
7.	0124	Largs Convenience Store Ltd	Day-Today 20/22 Nelson Street Largs KA30 8LW	Premises Licence Review Application – Section 36
8.	0216	GCB Events Limited	Fiddlers & Oceans 4 Townhead Close Main Street Largs KA30 8JL	Premises Licence Review Application – Section 36
9.	0442	T.J. Morris Ltd t/a Home Bargains	Home Bargains Unit 5A Riverway Riverway Retail Park Irvine KA12 8AG	Premises Licence Review Application – Section 36
10.	NA2520	Richard James Blackley		Application for Grant of Personal Licence – Section 74

## Application for Variation of Premises Licence - Section 29

Applicant	Mr. Mounir Hanna Sabti.
Premises	"The News Stand", 29-31 Dockhead Street, Saltcoats KA21 5ED
Ref.	429

### **Preliminary**

*This Report has been prepared provisionally before the Applicant has lodged the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.*

### **1. Summary of Variation Request(s)**

No.	Variation
1	Increase Capacity from 8.8 sq.m. to 13.8 (about 56%)

### **Note to Applicant**

The Board's decision will not act as permission or certification under other legislation (the Board's decision is not, for example, Planning Permission, Building Warrant, Roads Consent or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Board only deals with licensing legislation.

### **2. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with Licensing Objectives or Board Policy are highlighted.

#### ***Variation 1: Increase Capacity from 8.8 sq.m. to 13.8 (about 56%)***

Advice: The Board has a discretion to grant or refuse the Application. In all Applications, whether or not there are third-party objections, the Board must consider whether or not any of the potential Ground(s) for Refusal set out below exist:

##### **(b) Overprovision may result from the grant of the Variation**

If any Ground for Refusal applies, the Board must refuse. If no Ground for Refusal applies, the Board must grant.

Any variation decision may be later reviewed if the Board is satisfied that the

operation of the Premises is not consistent with any of the Licensing Objectives (Sections 36 - 39). The Board may then take such steps as it considers necessary or appropriate for the purposes of any of the Licensing Objectives. The available actions are:

- (a) to issue a Written Warning to the Licence Holder,
- (b) to make a Variation of the Licence,
- (c) to Suspend the Licence for such period as the Board may determine,
- (d) to Revoke the Licence.

### **Overprovision**

#### **The general approach to Overprovision throughout North Ayrshire**

1. Section 30(5) is:

*"(5) The Grounds for Refusal are— ...*

*(d) that the Board considers that, if the Application were to be granted, there would, as a result, be Overprovision of Licensed Premises, or Licensed Premises of the same or similar description as the subject premises (taking account of the variation), in the locality."*

Section 30(5) was amended by the Air Weapons and Licensing (Scotland) Act 2015, Section 55(3) with effect from 30 September 2016 (Commencement Order 4, S.S.I. 2016-132).

2. There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2018-22, Annex D). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

3. The application of the Board's Overprovision Policy in a particular case is affected by two issues:

(a) the 'Locality' of the Premises (The Board has determined that there are 6 'Localities' in their area, coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

(b) the 'Function Type' of the Premises (there are 6):

- 1. Off-sales Premises;
- 2. Nightclubs (or parts of Premises which operate as nightclubs);
- 3. Other On-sales Premises (Public Houses);

4. Hotels, Restaurants and other On-sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment and the supply of alcohol for consumption is only ancillary to that purpose;

5. Members' Clubs which are entitled to the Special Treatment allowed by Section 125;

6. Members' Clubs which have chosen to give up their entitlement to that Special Treatment.

4. The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:

- (a) the existing number and capacities of Premises in that 'Locality' and in that 'Function Type' is already sufficient,
- (b) Overprovision would result if the Application was to be granted, and
- (c) the Application should be refused.

5. The starting-point of any consideration of an Application for a new Licence (or for an increase in capacity in an existing Licence) is that there is a presumption of refusal. This presumption applies anywhere in North Ayrshire, regardless of the type of licensed Premises, but the presumption becomes stronger in certain parts of North Ayrshire and certain types of Premises.

6. While there is a presumption of refusal of all Applications, the presumption in a particular case is strengthened if one of the Additional Factors relating to 'Locality' or 'Function Type' is present. The presumption of refusal is further strengthened if both Additional Factors occur.

### **The Present Case**

7. Applying the Policy here:

- (a) The Subject Premises are in the "Three Towns" Locality (Ardrossan, Saltcoats & Stevenston) (Locality 2);
- (b) Additional Factor (Locality): The Premises are in a Locality where Applications are especially unlikely to be granted (regardless of the Function Type);
- (c) The Subject Premises are in Function Type 1 (Off-sales);
- (d) Additional Factor (Function Type): any Application for Premises in FT 1 (Off-sales) is especially unlikely to be granted (regardless of the Locality).



8. Since both Additional Factors are present here, the presumption of refusal is especially strong.

9. The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

10. The Board has accepted that it is legitimate to consider the whole 'Locality' generally when assessing Overprovision, and that is what the Board has done. The Board is satisfied that throughout North Ayrshire there has for many years been a significant negative causal link between alcohol provision and Public Health. This leads to a presumption of refusal against any grant of either a new Licence or the increase in capacity in an existing Licence.

11. The LPS, Annex D includes:

*"2.4. ... The Board encourages inclusive growth, as long as this promotes the Licensing Objectives. For example, while new premises may bring immediate jobs, in the longer term increased availability of alcohol is likely to have a detrimental impact on alcohol-related harms, and impact on the objective of 'Protecting and Improving Public Health'. The Board is unlikely to accept the suggestion that it is necessary to include an off-sales alcohol sale facility within a convenience store selling general groceries.*

*3.5. ... the Board:*

- accepts that the consumption of alcohol in any circumstances has the potential to injure health, and*
- endorses the view that "alcohol is not an ordinary commodity", ...*

*3.6. The Board will expect Applicants who are seeking the grant of a new Premises Licence or a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application."*

### **3. Effect on Licence Conditions (Section 30(6))**

No variation of the Conditions is appropriate.

### Application for Variation of Premises Licence - Section 29

Applicant	Martin McColl Ltd.
Premises	"McColl's", 21-27 Old Raise Road, Saltcoats, KA21 5RB
Ref.	0154

#### **Preliminary**

*This Report has been prepared provisionally before the Applicant has lodged the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.*

#### **1. Summary of Variation Request**

<b>No.</b>	<b>Variation</b>
1	<i>Amend Operating Plan to allow trading outside Licensed Hours</i>

#### **2. Issues**

### ***Variation 1: Amend Operating Plan to allow trading outside Licensed Hours***

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

Note:

Question 5(f) of Operating Plans is often detailed. This is done in order to comply with one of the Mandatory Conditions of the Premises Licence. The 2005 Act licenses the sale of alcohol but also states that any activity (other than the sale of alcohol) can be carried on only in accordance with the Operating Plan (2005 Act, Schedule 3, Paragraph 3). Unlike the unlicensed sale of alcohol, there would be no prosecution for unauthorised non-alcohol activity, but failure to cover everything which was to happen on the Premises might mean that the Board would hold a Review Hearing if the Board considered that action was necessary or appropriate for the purpose of any of the Licensing Objectives.

The proposal is to add the following to Question 5(f) in the Operating Plan:

*"The convenience store will operate outside of and during Core Hours selling grocery products, drinks, tobacco, sandwiches, confectionery etc.."*

#### **3. Effect on Licence Conditions**

No variation of the Conditions is appropriate.

## Application for Variation of Premises Licence - Section 29

Applicant	Wm Morrison Supermarkets PLC
Premises	"Morrison's Supermarket", 4 Irvine Road, Largs, KA30 8JT
Ref.	0164

### **Preliminary**

*This Report has been prepared provisionally before the Applicant has lodged the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.*

### **1. Summary of Variation Request**

<b>No.</b>	<b>Variation</b>
1	<i>Allow tastings</i>

### **2. Issues**

#### ***Variation 1: Allow tastings***

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

Note:

The proposal is to add the following to Question 5(f) in the Operating Plan:

*"Products other than alcohol will be sold and ancillary consumer services provided during all or part of the period between 6.00 a.m. and 12 midnight each day subject to customer demand and other statutory consents where required.*

*The Premises Licence Holder may offer occasional free samples/tastings of alcohol products to its customers over 18 within the alcohol display area within Core Licensed Hours."*

### **3. Effect on Licence Conditions**

No variation of the Conditions is appropriate.

**Application for Variation of Premises Licence - Section 29**

Applicant	Wm Morrison Supermarkets PLC
Premises	"Morrison's Supermarket", Hawkhill Farm, Kilwinning Road, Stevenston, KA20 3DE
Ref.	0163

**Preliminary**

*This Report has been prepared provisionally before the Applicant has lodged the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.*

**1. Summary of Variation Request**

<b>No.</b>	<b>Variation</b>
1	Allow "Restaurant Facilities"
2	Allow tastings

**2. Issues*****Variation 1: Allow "Restaurant Facilities"***

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

Note:

The proposal is to amend Question 5(a) in the Operating Plan (the list of activities not involving the sale of alcohol) to reflect the fact that the Premises have a customer cafe providing "Restaurant Facilities" both during and outside Core Licensed Hours.

***Variation 2: Allow tastings***

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

Note:

The proposal is to add the following to Question 5(f) in the Operating Plan:

*"Products other than alcohol will be sold and ancillary consumer services provided during all or part of the period between 6.00 a.m. and 12 midnight each day subject to customer demand and other statutory consents where required.*

*The Premises Licence Holder may offer occasional free samples/tastings of*

## CASE 4

*alcohol products to its customers over 18 within the alcohol display area within Core Licensed Hours."*

### **3. Effect on Licence Conditions**

No variation of the Conditions is appropriate.

**Application for Variation of Premises Licence - Section 29***CONTINUED FROM 1 OCTOBER 2018*

Applicant	William Gibson
Premises	"The Twa Dugs", 71 Main St., West Kilbride, KA23 9AW
Ref.	089

**Preliminary**

*This Report has been prepared provisionally before the Applicant has lodged the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.*

**1. Summary of Variation Request(s)**

<b>No.</b>	<b>Variation</b>
1	<i>Vary Layout Plan</i>
2	<i>Allow access by accompanied 16-17 year-olds</i>

The background to the variations is the redevelopment of the Premises. The Premises formerly traded as "The Kilbride Tavern". They did not have a kitchen and excluded all under-18s. The Premises now have a kitchen and propose allowing access by accompanied 16-17 year-olds.

The Board's decision will not act as permission or certification under other legislation (the Board's decision is not, for example, Planning Permission, a Building Warrant, or a Roads Consent). The Board only deals with licensing legislation.

**2. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with Licensing Objectives or Board Policy are highlighted.

***Variation 1: Vary Layout Plan***

Advice: the Board is legally obliged to grant this request (as this is a 'Minor Variation').

***Variation 2: Allow access by accompanied 16-17 year-olds***

Advice: the Board has a discretion to grant or refuse this request and should make a decision after hearing the Applicant and any objectors, and taking into account the considerations set out below.

### Considerations:

The proposal relates to people aged 16-17 (the statute calls them "Young People", in contrast to under-16s who are called "Children").

Currently the Premises do not permit under-18s at all. The proposal is to allow them access to about half of the Premises:

- part of the Public Bar (to the right on entering by the main door)
- the Games Area
- the toilets

They would continue to be excluded from the rest of the Public Bar, which includes the servery.

Access would be subject to conditions:

- the young people must be accompanied by and be under the supervision of a person of or over 18 years of age
- the young people will only be given access to designated areas of the Premises (shown coloured yellow on the proposed Layout Plan). This is not in direct view or vicinity of the servery.
- access would only be permitted to 10.00 p.m. (the Premises are licensed with the Board's terminal hours, and close at midnight or 1.00 a.m. depending on the day of the week).

The Board should consider whether or not this Application is inconsistent with two Licensing Objectives:

#### L.O. (a): 'preventing crime and disorder'

If the Premises are treated as a "young persons' part" and an "adult part", the servery faces the "adult part". There is no line-of-sight between the servery and the "young persons' part". The Applicant should tell the Board how the "young persons' part" would be supervised by staff, to avoid the possibility of under-age drinking or the under-age gambling (the Gaming Machine, marked "GM" on the proposed Layout Plan) is in the "Games Area".

#### L.O. (e): 'protecting Children and Young Persons from harm'

The considerations are similar.

### **3. Effect on Licence Conditions**

The Licence was granted subject to an earlier Edition of the Board's Standard Conditions - before the most recent revision. The existing Conditions should be replaced by the current Edition 5.

# CASES 6 - 9

## Report to North Ayrshire Licensing Board

by

Solicitor (Licensing)

<b>Subject</b>	Premises Licence Review Application by Licensing Standards Officer in relation to Unpaid Annual Fees (Section 36).
<b>Purpose</b>	To update Members on the current position.
<b>Recommendation</b>	That, in relation to each of the cases described in Appendix A Cases 6-9, the Board determines the Review Application and decide what steps, if any, should be taken in relation to the respective Premises Licences.

### **1. Background**

It is a condition of all Premises Licences that the Holder ("PLH") should pay an Annual Fee in early October (1st October each year or, where that date falls on a Saturday or Sunday, on the immediately following Monday).

In relation to the Premises detailed in Appendix A, Cases 6 - 9, these remain unpaid at the time of this Report, despite the Board giving advance notice and then the Licensing Standards Officer serving a Breach of Condition Notice on the PLH.

### **2. Ground for Review**

The 'Ground for Review' is that the following Licence Condition has been breached:

*"Any annual or other recurring fee must be paid if required by the regulations."*

(NALB Standard Condition A.7, which repeats one of the Mandatory Conditions: 2005 Act, Schedule 3, Paragraph 10).

- All Premises Licences are subject to the Mandatory Conditions set out in Licensing (Scotland) Act 2005, Schedule 3.
- One of these Mandatory Conditions is that an annual or other recurring fee must be paid as required by the Fees Regulations (Paragraph 10).
- The Licensing (Fees) (Scotland) Regulations 2007 No. 553 include:

*"7.—(1) Where a Premises Licence is in effect or is suspended, the holder of that Licence must make payment of an Annual Fee in respect of the performance in relation to that Licence of functions by the Relevant Board, the council within the area of which the Premises are situated and that council's Licensing Standards Officers (other than functions in respect of which a separate fee is specified under these Regulations)."*



- The amount of the Annual Fee due is determined by Regulation 8.
- The Board must notify each PLH of the fee payable and no later than 30 days before the due date (Regulation 9).

### **3. Procedure**

The Board must hear the PLH, and decide the following questions:

#### ***Question (a): "is a Ground for Review established?"***

If 'no', the case ends.

If 'yes', the Board must consider the appropriate action (the range of available actions are called "Steps").

The Board is not obliged to take any of these Steps, and it may decide that although a Ground for Review is established, no action is required.

The Steps available are:

(A) Written Warning:

(B) Variation

The Variation can be either indefinite or for a specific time, and can relate to any part of the Licence, for example:

- (i) the operating hours for the Premises (or any part);
- (ii) the Premises Manager can be removed;
- (iii) the activities which may be carried on on the Premises (or any part);
- (iv) the terms for access by persons under 18 to the Premises (or any part);
- (v) the Licence Conditions (the Variation cannot alter the statutory Mandatory Conditions);

(C) Suspension

The Suspension must be for a specific time. While the Licence is suspended, Annual Fees continue to be charged.

(D) Revocation.

#### ***Question (b): "are any (one or more) of the Steps A to D necessary or appropriate for the purposes of any of the Licensing Objectives?"***

The Board may take those Steps either on the basis of the original Review Procedure, or on the basis of information obtained in the course of the Review Procedure. The Board may take into account any previous default in the obligation to pay the Annual Fee or to comply with any other requirement of a Licence.

***Question (c): "if 'yes', what Licensing Objectives are relevant?"***

The Board might consider that:

- (i) the PLH's action in continuing to breach a Mandatory Licence Condition makes one or more Steps appropriate for the purposes of the "preventing crime and disorder" Licensing Objective;
- (ii) the Fee is an essential part of the Licensing system as only if Boards are properly-funded can they maintain the system of regulation required to ensure that all of the Licensing Objectives are observed.

***Question (d): "if the Licence is Varied, Suspended or Revoked: when should the order take effect?"***

A Variation (Step B) may have immediate effect.

A Suspension or Revocation (Steps C and D) should not have immediate effect unless the Board consider this is necessary in the public interest. Usually these Steps should be postponed to give the PLH the opportunity to appeal to the Sheriff Court:

- unless the Board postpones the Order, it takes effect immediately and is not postponed by an appeal (unlike the 1976 Act), but
- the PLH can ask the Sheriff to recall a Suspension or Revocation pending appeal (this does not apply to a Variation).

The length of the postponement is in the Board's discretion, but 7 days would be a reasonable period.

***Question (e): "if the Licence is Varied, Suspended or Revoked: how long should the order last?"***

***Question (f): "Should the Board delegate to the Clerk the power to revoke any Variation or Suspension (Steps B and C) imposed now or previously if the arrears of Annual Fee are paid in full (whenever those arrears arose, before or after the Board's decision)"***

The Board can revoke a decision to Vary or Suspend if:

- (a) the Holder requests this, and

## **CASES 6 - 9**

(b) the Board is satisfied that, by reason of a change of circumstances, the Variation or Suspension is no longer necessary.

A decision to issue a Written Warning or to Revoke a Licence (Steps A and D) cannot later be revoked.

If revocation is not delegated, the Application for Revocation would have to call at a future Board Meeting and the Variation or Suspension would remain in force meantime, whereas if it is delegated the Variation or Suspension could be lifted as soon as the arrears were paid.

**Application for Grant of Personal Licence - Licensing (Scotland) Act  
2005, Section 74**

Applicant	Richard James Blackley
Ref.	2520

### **1. Summary**

The Applicant has applied for the grant of a new Personal Licence. The Application is not advertised and the only consultation involves:

(a) the Chief Constable - He must give the Board with a Notice confirming whether or not the Applicant has been convicted of "relevant or foreign offences". The Chief Constable may also recommend refusal and/or give the Board any information he considers may be relevant (Sections 73(3) to 73(5));

(b) Licensing Standards Officer - the LSO may provide the Board with any information that she considers may be relevant (Section 73A(2)).

If there is a Notice confirming a "relevant or foreign offence", and/or an Information Report, the Board must hold a Hearing.

### **2. Chief Constable's Notice**

The Chief Constable has supplied information which, although it does not establish that the Applicant has been convicted of a "relevant or foreign offence" (as defined by the Licensing (Relevant Offences) (Scotland) Regulations 2007-513, as amended by "The Consumer Protection from Unfair Trading Regulations" 2008-1277), is still information which has a bearing on the 'fit and proper person' test. The information was also supplied by the Applicant.

### **3. Police Recommendation**

If the Chief Constable considers that it is necessary for the purposes of any of the Licensing Objectives that the Application should be refused, he may recommend this under Section 73(4). He has not done so.

### **4. Procedure**

A copy of the Police Notice and this Report have been sent to the Applicant, together with Intimation of the Board Hearing. The Members will have copies.

At the Hearing, the Board must have regard to

- (a) the Police Notice
- (b) any Information Reports
- (c) any comments made by the Applicant.

### **5. Board's Powers**

If the Board is satisfied:

- (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; and/or
- (b) that it is otherwise necessary to refuse the Application for the purposes of any of the Licensing Objectives,

the Board must refuse the Application. Otherwise, it must grant the Application.

All Personal Licences are valid for 10 years, and can be renewed indefinitely at 10 year intervals. The Board cannot limit the length of the grant or attach conditions.

### **6. Subsequently**

The Applicant can appeal to the Sheriff if the Application is refused. The Chief Constable cannot appeal if the Application is granted.

After a decision to grant, if any of these occur:

- (a) the Holder is convicted of an offence, or
- (b) the Board, while dealing with a Premises Licence Review, makes a finding that a Personal Licence Holder has acted in a manner which was inconsistent with any of the Licensing Objectives, or
- (c) the Chief Constable or the LSO considers that the Holder has acted in a manner which is inconsistent with any of the Licensing Objectives,

the Board will be entitled to hold a Hearing which may lead to the Revocation, Suspension for up to 6 months, or the Endorsement of the Licence.

If three Endorsements are imposed within a 5-year period, the Board may Suspend or Revoke the Licence.

## **CASE 10**

The Holder must obtain a "Refresher" Licensing Qualification every 5 years, failing which the Licence is automatically revoked, without a Hearing at the Board or the possibility of Appeal to the Sheriff (Section 87).