

SHETLAND ISLANDS AREA LICENSING BOARD

Clerk: Jan-Robert Riise
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Dear Sir/Madam

Date: 31 October 2018

You are invited to attend the following meeting:

**Shetland Islands Area Licensing Board
Council Chamber, Town Hall, Lerwick
Wednesday 7 November 2018 at 10am**

Apologies for absence should be notified to Leisel Malcolmson at the above number.

Yours faithfully

Depute Clerk to the Board

Clerk to the Board: Jan R Riise

AGENDA

- (a) Hold circular calling the meeting as read.
- (b) Apologies for absence, if any.
- (c) Declarations of Interest.
 - 1. Christmas and New Year Licensing Hours 2018/19. Enclosed.
 - 2. Annual Functions Report. Enclosed
 - 3. Gambling Act 2005. Enclosed
 - 4. Breach of Licensing Conditions. Enclosed

**Shetland Islands Area Licensing Board
7 November 2018
Christmas and New Year Licensing Hours 2018/19**

1. Introduction

1.1 Section 67 of the Licensing (Scotland) Act 2005 allows Shetland Islands Area Licensing Board, if it considers it appropriate to do so, to grant a general extension to licensed hours for a special event of local or national significance.

1.2 In its Statement of Licensing Policy the Board has stated that it will consider annually whether to grant a general extension covering the Christmas and New Year period (the “holiday period”). It further provides that during the period of such a general extension the Board will consider permitting –

(a) all licensed premises to remain open until 02:00, and

(b) nightclub premises already permitted to remain open until 03:00 at weekends to remain open until 03:00

for every day during the period of the general extension, provided such premises meet conditions required to ensure the promotion of the licensing objectives.

2. Discussion

2.1 A benefit of a general extension to licensed hours is the avoidance of potential inconsistency resulting from the Board’s being asked to consider individual applications for extensions. It also addresses the tendency that developed under the previous licensing regime for licence holders to seek increasingly longer extensions to licensed hours during the festive period. The majority of on-sales premises licences formerly included a reference to the holiday period in their seasonal variations in their operating plan but these tended not to be specific in the dates and times.

2.2 In light of the above, in 2009/10 the Board granted a general extension to licensed hours during the holiday period. In 2010/11, 2011/12 and 2012/13, however, the Board decided against granting any general extension.

2.3 The Board again granted a general extension to licensed hours during the holiday period in 2013/14, and has done so for every subsequent year up to and including 2017/18. In each of these years the duration of the general extension was a fortnight. The general extensions have been granted to commence on the Saturday immediately before Christmas Day and ending on the Sunday next following New Year’s Day, although in a year when the Christmas Day occurred on a Sunday (2016) the Board granted a general extension commencing on the second Saturday before Christmas Day and ending on Sunday 1 January.

- 2.4 During the general extensions referred to above all licensed on-sales premises were permitted to remain open until 02:00; nightclubs that were already permitted to stay open at weekends until 03:00 were additionally permitted to remain open until 03:00 on any night during the period of the general extension.
- 2.5 The Board has not received any application from individual premises licence holders for extensions during the 2018/19 holiday period. The local Licensed Trade Association has, however, made an informal inquiry in that regard.
- 2.6 The Board is, therefore, invited to consider whether it wishes to issue a general extension for the holiday period in 2018/19, to permit –
- (a) all licensed on-sales premises to remain open daily until 02:00;
 - and
 - (b) all licensed nightclub premises that are already permitted to remain open for any part of the week until 03:00, to remain open daily until 03:00.

Some premises already specify as normal licensing hours in their operating plans that they will be able to open to 02:00 on Saturdays and Sundays during the festive period.

- 2.7 Alternatively, it is open to the Board may adopt the same approach as in 2010, 2011 and 2012, when no general extensions were granted (paragraph 2.2 above).
- 2.8 In the event that the Board grants such an extension, the Board will, at its own expense, require to intimate such extension to holders of premises licences.

3. Recommendation

- 3.1 I recommend that the Board considers whether it wishes to grant a general extension to licensing hours covering the Christmas and New Year period in 2018/19.
- 3.2 In the event that the Board determines in terms of 3.1 to grant a general extension, to resolve to permit –
- (a) all licensed on-sales premises to remain open daily until 02:00 during the period from Saturday 22 December 2018 until Sunday 6 January 2019, both dates inclusive, and
 - (b) all licensed nightclub premises that are already permitted to remain open on a specified day or days of the week until 03:00, to remain open daily until 03:00 during the same period,
- or to permit such extensions during such other period and to such other hours as to the Board seem appropriate.

Depute Clerk to the Board

SHETLAND ISLANDS AREA LICENSING BOARD

7 November 2018 Licensing (Scotland) Act 2005 Annual Functions Report

1. Introduction

- 1.1 The purpose of this report is to present to the Board an Annual Functions Report for consideration for publication.

2 Statutory Requirements

- 2.1 The Licensing (Scotland) Act 2005 was amended with effect from 20 December 2017, by the addition of an obligation to publish an annual functions report. The purpose of this report is to draw together information regarding the Board's use of the licensing objectives and their Licensing Policy Statement in their decision making; a summary of the decisions made by or on behalf of the Board and the number of licences held under the Act.
- 2.2 The Clerk has collated a draft report to fulfil this statutory requirement which is attached as Appendix 1 to this report.

3 Recommendation

- 3.1 I recommend that the Board approve the draft Annual Functions Report and instruct the Clerk to publish it on the Board's website.

Depute Clerk to the Licensing Board

Ref: Z/0/18 SB

25 October 2018

Shetland Islands Area Licensing Board

Licensing (Scotland) Act 2005

Annual Functions Report 2017 – 2018

Clerk to the Licensing Board
Shetland Islands Council
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1. INTRODUCTION

1.1 This Annual Functions Report has been prepared by Shetland Islands Area Licensing Board (the “Board”) in terms of Section 9A of the Licensing (Scotland) Act 2005 (the “Act”). The Act requires this report to include –

1. A statement explaining how the Board has had regard to:
 - a. The licensing objectives.
 - b. Their licensing policy statement and any supplementary licensing policy statement (including the Board's statement under section 7(1) (duty to assess overprovision)).
2. A summary of the decisions made by (or on behalf of) the Board during the financial year.
3. Information about the number of licences held under the Act in the Board's area (including information about the number of occasional licences issued during the year).

1.2 This Annual Functions Report has been prepared for the financial year 2017-2018.

1.3 The Board’s [Annual Financial Report](#)¹ required in terms of Section 9B of the Act has been published separately.

2. BACKGROUND INFORMATION

2.1 When it undertakes its functions, the Board has regard to the licensing objectives as well as to its own Licensing Policy Statement published in accordance with Section 6 of the Act. The Licensing Policy Statement that was effective during the time of this report was approved and published [on-line](#)¹ in November 2013; the Board published no supplementary licensing policy statement in the intervening period.

- 2.2 The licensing objectives set out in Section 4 of the Act are –
- a. preventing crime and disorder;
 - b. securing public safety;
 - c. preventing public nuisance;

¹ https://www.shetland.gov.uk/about_introduction/LegalLicensing.asp

- d. protecting and improving public health; and
- e. protecting children from harm.

2.3 The Board's Licensing Policy Statement is available on the [liquor licensing](#)¹ page of Shetland Islands Council's website. Under the Licensing Policy Statement, matters dealt with at a meeting of the Board are the consideration and granting of applications for –

- premises licences
- personal licences
- occasional licences
- provisional licences
- extensions of licensing hours
- temporary licences
- transfers of licences
- variations of licences

in respect of the sale of alcohol by retail and the supply of alcohol in Members' clubs.

2.4 The Board has delegated to the Clerk (and the duly appointed Depute and Assistant Clerks) authority to grant certain specified descriptions of application under the Act, namely –

- (a) minor variations of premises licence (section 29).
- (b) variations to substitute new premises manager – where the applicant has not been convicted of any relevant or foreign offence (section 31 and with reference to section 54).
- (c) transfers of premises licence – where the transferee has not been convicted of any relevant or foreign offence (reference to sections 33 to 35).
- (d) grants of a provisional licence when the Board has held a hearing, has proposed a modification to the operating plan and the applicant has accepted the modification, as proposed by the Board.
- (e) confirmation of a provisional premises licence – where no objections or representations have been received (section 46).
- (f) grants of occasional licence – when all the following criteria are met –
 - i. no objections or representations have been received;
 - ii. Police Scotland have not recommended refusal;
 - iii. the proposed licensed hours are within the guideline licensing hours of 11 am to am; and
 - iv. the hours applied for do not cover a period in excess of 48 hours.
- (g) extensions of licensed hours – within the Board's guideline licensing hours of 11 am to am – where no objections or representations have been received, Police Scotland have not lodged a notice recommending refusal

of the application and the report by the Licensing Standards Officer does not recommend refusal (section 68).

- (h) personal licence or renewal of a personal licence where the applicant has not been convicted of a relevant or foreign offence.
- (i) revocation of personal licence when a licence holder has failed to comply with the statutory retraining requirements.
- (j) general extension for Fire Festival and Up Helly Aa events - within the Board's Policy Statement and provided no adverse comments have been received from Police Scotland or the Licensing Standards Officer.
- (k) general extension for premises hosting the Shetland Folk Festival, Shetland Fiddle and Accordion Festival and the Simmer Dim Motorcycle Rally within the Board's Policy Statement and provided no adverse comments have been received from any person.

2.5 The data in the following table apply to the reporting period ending 31 March 2018 –

Premises licences			
	Premises licences in force		153
	• on-sales licences	67	
	• off-sales licences	46	
	• both on- and off-sales	40	
Premises licence applications received			
	• on sale		2
	• off sale		2
	• both on- and off-sales		1
Applications for premises licences refused²			0
Applications granted²			3
Applications for review of premises licence³			0
Occasional licences granted			118

Personal Licences			
	Personal Licences in force		383
	Applications made		19
	Applications refused	0	
	Applications granted	19	
Proceedings taken⁴ resulting in:-			
	• endorsement		1
	• suspension		0
	• revocation		0

² Section 23 of the Act.

³ Sections 36 and 37 of the Act.

⁴ Section 83 (following conviction)

	• no action		0
	Proceedings taken ⁵ in respect of conduct inconsistent with licensing objectives		0
	Proceedings ⁶ in respect of multiple endorsements		0
	Revocations ⁷ of personal licences		16
Staffing			
	Number (full-time equivalent) of licensing standards officers employed		0.2

3. PUBLISHED DOCUMENTATION

3.1 The Board publishes its relevant documentation on the website of Shetland Islands Council at https://www.shetland.gov.uk/about_introduction/LegalLicensing.asp. This web page contains contact information and the current Licensing Policy Statement and Statutory reports and includes links to –

- Licensing board documents;
- Register of premises licences;
- Register of occasional licences;
- Application forms under the Act and guidance notes;
- Notices required to be published under the Act;
- Agendas and Minutes of Board Meetings⁸.

4. THE LICENSING OBJECTIVES AND THE BOARD'S LICENSING POLICY STATEMENT

4.1 The Act requires the Board to publish a statement of its licensing policy with respect to the exercise of its functions under the Act and that has regard to the licensing objectives⁹. The Board's policy statement outlines the way it intends to exercise its functions under the Act and to promote the licensing objectives.

4.2 The licensing objectives provide a basis for the Board's proper and reasonable determination of an application for the grant of a premises licence or of an occasional licence; an act or omission by a holder of a licence under the Act that is contrary to the licensing objectives may lead to the imposition of sanctions on a

⁵ Section 84 (conduct inconsistent with licensing objectives)

⁶ Section 86

⁷ Section 87(3) (failure to provide evidence of having undertaken refresher training)

⁸ From the Beginning of 2018 Minutes and Agendas are published only on the Council's Committee Information Pages:

<http://www.shetland.gov.uk/coins/committee.asp?bodyid=181&bodytitle=Shetland+Islands+Area+Licensing+Board>

⁹ Paragraph 2.2 above

personal licence holder or provide grounds for the review of a premises licence. The attachment of conditions to a premises licence or occasional licence may be based on any of the objectives.

4.3 Reports by the Clerk to the Board regarding applications for determination and advice to be tendered by the Clerk to the Board during Board meetings refer the Board to its policy provisions, the licensing objectives and grounds for objection, as well as grounds for refusal. In the same way, advice is also given that applications must be refused if they are inconsistent with any of the licensing objectives. The Board's attention is drawn by way of guidance to pertinent provisions of the Board's statement of licensing policy.

4.4 The Board can provide a summary of decisions made, as provided in the section on Background Information above¹⁰, it is more difficult for it to provide detailed analysis of all decisions. It is, however, of relevance that –

- the Board's Licensing Policy Statement sets out the Board's approach;
- Board meetings are held in public;
- agendas and reports are published;
- minutes of meetings are published; and
- Statements of Reasons, which are very detailed documents, can be requested in accordance with the Act for specific decisions on applications.

5. CONCLUSION

5.1 The Board is satisfied that it and its officers have, in all decisions taken in the exercise of the Board's functions under the Act during the reporting year, had regard to the Licensing Objectives and the Board's Licensing Policy Statement. The Board is fully mindful of its duties under the Act, but is also willing to encourage and support the local licensed trade to adopt and maintain best practices in relation to their businesses and premises as are for the benefit of Shetland society.

5.2 The Board is mindful of the challenges brought by changes to law in relation to the sale, use and abuse of alcohol and has regard to national policy as societal attitudes in the performance of its duties.

Reported by

Clerk to the Shetland Islands Area Licensing Board

¹⁰ Section 2 above

SHETLAND ISLANDS AREA LICENSING BOARD

7 November 2018 Gambling Act 2005 New Three Year Policy Statement - 2019/2022

1. Introduction

- 1.1 The purpose of this report is to invite the Board to initiate a review of the Policy Statement under the Gambling Act and to carry out a public consultation to identify any areas of concern.

2. Background

- 2.1 In terms of the Gambling Act 2005, Section 349, the Board is required to review every three years their statement of the principles that they propose to apply in exercising their functions under the Gambling Act 2005. The Policy Statement has to conform to the terms of the Gambling Act 2005 (Licensing Authority Policy Statement) (Scotland) Regulations 2006. The Policy Statement is important as it provides potential applicants with information on local practices and can be referred to in compliance action. The Policy Statement can be accessed here:
https://www.shetland.gov.uk/about_introduction/documents/PolicyStatementofGamblingLicensingPrinciples.pdf
- 2.2 The reality is that this Board has had little business to consider under the Gambling Act 2005. There has only ever been one licensed premises under the Act within the area since the Act came into force (Shetland Turf Accountants). In addition there are of 7 Gaming Machine Permits; 1 Club Gaming Machine Permit; 1 Club Gaming Permit and 104 Small Society Lotteries (i.e. raffles) which are administered under this Act. In these circumstances where there is very little business under the Act there has been no particular issues identified from practice with respect to the current Gambling Act Policy Statement.
- 2.3 This review ought to be completed by 3 January 2019 and should come into force on 31 January 2019. However the last review of the policy was only completed on 24 August 2017. There have been very few changes or developments within the area which have any impact on the Policy Statement. No further changes to the Policy Statement are proposed.
- 2.4 Guidance from the Gambling Commission suggests that the consultation period can be less than the recommended twelve weeks when changes have been made within the statutory review period of three years. I am therefore proposing that the consultation should end on 31 December 2018 and a further report be submitted to the Board at their meeting on 15 January 2019 with a view to completing the review and having a reviewed Policy Statement in place for the 31 January 2018.

3. Recommendation

- 3.1 I recommend the Board open a consultation on the Gambling Act Policy Statement with a closing date of 31 December 2018.

Depute Clerk to the Licensing Board

Ref: Z/0/20 SB

25 October 2018

SHETLAND ISLANDS AREA LICENSING BOARD

7 November 2018

Breach of Licensing Conditions

1. Introduction

1.1 Premises Licences issued under the Licensing (Scotland) Act 2005 are due for renewal annually on 1 October. Each licence is subject to an annual fee specified in the Act. Failure to pay the fee is a breach of the conditions under which the premises licence is granted. When a premises licence holder is in breach of the terms of their licence Shetland Islands Area Licensing Board may consider whether they wish to review the licence.

2. Detail – Statutory Provision

2.1 Section 37(1) of the Licensing (Scotland) Act 2005 states that the appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect may, on their own initiative, propose to review the licence on any of the grounds for review.

2.2 A proposal under section 37(1) is referred to as a “premises licence review proposal”.

2.3 The powers of the Board at a licence review are specified in Section 39. If the Board are satisfied that the grounds of review are established the Board can, in order to promote the licensing objectives, take the following steps:

- (a) Issue a written warning to the licence holder.
- (b) Make a variation of the Licence.
- (c) Suspend the Licence.
- (d) Revoke the Licence.

2.4 The grounds for review under section 37(1) are:

- (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.

2.5 A premises licence review proposal must specify the alleged ground for review, including in particular – (a) where the ground is that specified in subsection 36(3)(a), the condition or conditions alleged to have been breached.

2.6 It is a mandatory condition of any premises licence that the annual or other recurring fee to be paid by virtue of the regulations made under section 136(1) of the Licensing (Scotland) Act 2005 must be paid as required by the regulations. Regulation 7 of the Licensing (Fees)(Scotland) Regulations 2007 states that the holder of a premises licence which is in effect or is suspended 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.

- 2.7 It is also a mandatory condition of any premises licence that alcohol is not to be sold on the premises when there is no premises manager in respect of the premises.

3. Detail - Facts

- 3.1 Enjoy the Fruit Limited has been the holder of the premises licence for the Spiggie Hotel since 30 November 2017. The total annual fee for these premises is £280. The previous licence holder had opted to pay the annual fee by instalments and had paid the first instalment of £70. Three further instalments were due on 1 January 2018, 1 April 2018 and 1 July 2018.
- 3.2 Enjoy the Fruit Limited paid the second instalment on time. However there were delays in paying the third instalment and repeated reminders were issued before payment was received in June 2018. It is not the Board's usual practice to issue reminders for instalment payments.
- 3.3 The final instalment of £70 was due on 1 July 2018. Two letters have been sent seeking payment (11 July and 14 August) but no response received. The sum due remains outstanding.
- 3.4 Enjoy the Fruit Limited's representative paid the annual fee for 2018/19 in full on 19 October 2018. He was reminded of the outstanding instalment from the previous year but declined to pay it.
- 3.5 The premises manager for the Spiggie Hotel remains the previous owner, Mr Keith Massey. Mr Massey's address is given on the licence as the Spiggie Hotel. Mr Massey indicated he sold the premises on 25 November 2017 and had understood that all relevant changes to the licence were to be made by the solicitors dealing with the transaction. He no longer resides at the Spiggie Hotel and what he has said indicates that he is no longer works on the premises. I await formal confirmation from Mr Massey that he is no longer the premises manager.
- 3.6 In terms of Section 54(2) the Licence Holder must advise the Board within seven days when the Premises Manager ceases working at the premises and make an application for a change of manager within six weeks.
- 3.7 I wrote to the Licence Holder on 17 October 2018 by recorded delivery letter reminding him of the outstanding instalment of licensing fee and seeking clarification of the position with respect to the premises manager.
- 3.8 Whilst the position with respect to the premises manager still requires clarification there does seem to be evidence to suggest that there is a breach of the licensing conditions in respect of the need to have a premises manager.
- 3.9 The Board is therefore entitled to consider whether a premises licence review proposal should be carried out.

4. Decisions Required

4.1 The Board is asked to consider the information provided and decide whether:-

1. The Board wishes to propose to review the premises licence for the Spiggie Hotel on the basis that one or more of the licensing conditions have been breached in that:
 - a) The Licence Holder has failed to pay the whole licensing fee for 2017/18
 - b) The premises do not have a premises manager but have continued to sell alcohol.
2. If the Board wishes to hold a review, the Board are asked to consider whether they wish to request the attendance of any specified person at the review hearing.

Depute Clerk to the Licensing Board

23 October 2015