

# **SHETLAND ISLANDS AREA LICENSING BOARD**

**14 September 2009**

## **LICENSING (SCOTLAND) ACT 2005 – IMPLEMENTATION UPDATE**

### **1. Introduction**

1.1 The purpose of this report is to provide an opportunity for the Board to consider and confirm the arrangements under the 2005 Act, now that it is fully in force, in relation to the Scheme of Delegation for dealing with a variety of applications under the Act, for the payment of annual fees in respect of premises licences which have been granted, and for the policy on seasonal variations and the extensions of licensed hours.

### **2. Scheme of Delegation / Extension of Licensed Hours / Seasonal Variations**

2.1 The Board approved a Scheme of Delegation as part of its first statement of Licensing Policy under the 2005 Act (for the period November 2007 – 2010) at a meeting on 26 November 2007. In terms of the Scheme the Board has delegated to the Clerk (which includes such Depute or Assistants as may be appointed by the Clerk for the purpose) authority to grant a variety of minor or non-contentious applications under the 2005 Act. The description of delegated applications are as follows:

- (a) minor variation of premises licence – where no objections or representations have been received (section 29)
- (b) variation 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) transfer of premises licence – where the transferee has not been convicted of any relevant or foreign offence (reference to sections 33 to 35)
- (d) confirmation of a provisional premises licence – where no objections or representations have been received (section 46)
- (e) occasional licence – where no objections or representations have been received and the Northern Constabulary have not lodged a notice recommending refusal of the application (section 56)

- (f) extension of licensed hours – within the Board’s normal licensing hours policy – where no objections or representations have been received, the Northern Constabulary have not lodged a notice recommending refusal of the application and the report by the Licensing Standards Officer does not recommend refusal (section 68)
- (g) personal licence or renewal of a personal licence where the applicant has not been convicted of a relevant or foreign offence

2.2 I have proceeded in terms of the Scheme of Delegation to deal with a number of applications made during the transitional period, principally the personal licence applications which now take effect. I have also dealt with a number of occasional licence applications for events taking place after 1 September 2009. A occasional licence application can be made in respect of premises which are not otherwise licensed and can be made either by the holder of a premises licence or the holder of a personal licence or by a representative of voluntary organisation. For the latter category, the event to which the application relates must arise from or relate to the activities of the organisation. The process for dealing with an occasional licence application involves notifying it to the Police and the Licensing Standards Officer and if the Police do not recommend refusal and the Licensing Standards Officer has no objections to the application then in terms of Section 59 of the 2005 Act the application must be granted. As indicated a few such applications have now been made and following the process have been granted, including for example that from the Accordion and Fiddle Festival Committee in respect of the October Festival event at Islesburgh Community Centre.

2.3 As indicated above, the Scheme of Delegation (at item (f)) includes provision for dealing with extension of licensed hours applications under Section 68 of the Act. The Scheme makes reference to the Board’s normal licensing hours policy. The previous policy under the 1976 Act contained guidelines on extended hours in terms of which applications could be granted under delegated authority where the hours applied for were within the range of 11am – 2am and the application related to a significant genuine one off or annually recurring event. The 2005 Act policy made reference to the previous guidelines on extended hours and also set out guideline core opening and terminal hours for premises licences, the guideline hours being from 11am – 1am for the generality of premises and 2am for premises which meet the criteria for operating as nightclubs. It would be appropriate to propose that the Board clarify in relation to extended hours applications under the 2005 Act that the guideline terminal hour for those to be dealt with under the delegation scheme would be 2am. In terms of Section 68 of the 2005 Act an extended hours application would require to be made in connection with a special event or occasion to be catered for on the premises or a special event of local or national significance.

2.4 At recent Board meetings to consider initial premises licence applications, where the applicant had indicated “seasonal variations” within the operating plan, the Board has decided that this would be considered separately. In line with the suggestions in paragraph 2.3 above regarding extended hours applications, it may be appropriate to propose that seasonal variations could

apply to special events or occasions to be catered for on the premises or special events of local or national significance and that the guideline terminal hour should be 2am. In relation to national events such as Christmas / New Year celebrations it may also be appropriate for the Board to give guidance as to the appropriate period of any seasonal variation, such as from 21 December to the following 3 January, or such other period as may be appropriate.

### 3. Fees

3.1 The Board previously set the fees payable in relation to premises licence applications, in accordance with the fees regulations, at a meeting on 21 January 2008. The fees which were set included not just the initial premises licence application fees but also the annual fees which are payable in respect of premises for which a premises licence has been granted. The first annual fee is due on 1st October 2009. The following table sets out the level of fees which were approved by the Board in accordance with the fees regulations:

Initial Premises Licence Fee	Annual Premises Licence Fee
Category 1 - £200	Category 1 - £180
Category 2 - £800	Category 2 - £220
Category 3 - £1,100	Category 3 - £280
Category 4 - £1,300	Category 4 - £500
Category 5 - £1,700	Category 5 - £700
Category 6 - £2,000	Category 6 - £900

3.2 The fees levels were subject to subsequent discussion by the Board, and although the Board did not alter the levels it did decide in relation to certain types of premises that they would be categorised in the special category 1 relating to clubs, visitor attractions etc, such that this would include rural shops and village halls. The annual fees payable would be according to the same categories.

3.3 I am now required to proceed with notification to the premises licence holders of the amount of annual fees. The fees regulations allow the Board to agree that payment can be made in instalments, either 4 or 12 equal instalments over the course of the year following the due date. I would propose to offer this option to any licensee who so requests.

### 4. Letter from Cabinet Secretary

4.1 Finally I attach for noting a copy of a letter from the Cabinet Secretary for Justice.

5. Recommendation

- 5.1 I recommend that the Board note and approve the arrangements and proposals set out in this report with respect to the Scheme of Delegation, extensions of licensed hours and seasonal variations and fees.

Depute Clerk  
4 September 2009