

SHETLAND ISLANDS AREA LICENSING BOARD

27 September 2016

Occasional Licences

1. Introduction

1.1 The purpose of this report is twofold. Firstly the report provides the Board with information regarding the occasional licences applied for, and issued under the delegated authority by the Clerk to the Licensing Board. It also provides an opportunity for the Board to consider whether any issues arise from this information which the Board wishes to have taken into account in the re-drafting of the Licensing Policy which is the subject of a separate report.

2. Detail – Statutory Provision

2.1 Section 56 of the Licensing (Scotland) Act 2005 provides that a Licensing Board may grant a licence, referred to as an *occasional licence*, authorising the sale of alcohol on otherwise unlicensed premises.

2.2 The following persons can apply for an occasional licence:

- (a) the holder of a premises licence;
- (b) the holder of a personal licence; and
- (c) a representative of any voluntary organisation.

2.3 A voluntary organisation may only be issued with occasional licences for a total of 56 days in any 12 month period. There is no other limitation on the number of occasional licences any individual premises licence holder or personal licence holder may apply for.

2.4 An occasional licence has effect for such period of not more than 14 days as the Licensing Board may determine.

3. Current Delegation

3.1 The vast majority of occasional licences are dealt with under delegated authority by the Clerk. The current delegation provides that the Clerk can issue a licence where all the following criteria have been met –

- no objections or representations have been received;
- the Police Service of Scotland have not recommended refusal;
- the proposed licensed hours are within the guideline licensing hours of 11:00 to 01:00; and

- the hours applied for do not cover a period in excess of 48 hours.

3.2 Information regarding applications for occasional licences is publicly available on the Board's website at www.shetland.gov.uk/about_introduction/Legallicensing.asp.

3.3 Table 3.3.1 below shows the occasional licences, broken down according to the category of applicant, that were applied for, and were granted under the delegated authority for the twelve-month period from 1 September 2015.

Category of Applicant ▼	Number of applications rec'd	Granted at SIALB hearing	Granted under clerk's delegated authority
Premises Licence Holders	11	1	10
Personal Licence Holders	50	14	36
Representatives of Voluntary Organisations	15	0	15
Totals	76	15	61

Table 3.3.1

4. Decisions Required

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

4.1.1. requires to continue to receive annual submissions from the Clerk regarding the number and type of occasional licences granted under delegated authority; and

4.1.2. wishes to make any amendments to its Policy on the granting of occasional licences or the delegation granted to the Clerk.

Depute Clerk to the Licensing Board

Ref: Z/Gen/DKA

19 September 2016

SHETLAND ISLANDS AREA LICENSING BOARD

27 September 2016

Report regarding Premises Licence for the Pierhead Restaurant and Bar

1. Summary

1.1 The Premises Manager for the Pierhead Bar and Restaurant has stopped working at the premises. No application has been made to the Board to replace the Premises Manager. According to the standard conditions of their Premises Licence no alcohol can be sold from the premises. The Board is also obliged in terms of Section 54(6) to vary the licence to no longer specify a premises manager.

2. Statutory Background

2.1 Section 54 of the Licensing (Scotland) Act 2005 provides that:

54 Dismissal, resignation, death etc. of premises manager

- (1) This section applies where any of the events specified in subsection (2) occurs in relation to any licensed premises in respect of which a premises licence has effect.
- (2) Those events are—
 - (a) the premises manager ceases to work at the premises,
 - (b) the premises manager becomes incapable for any reason of acting as premises manager,
 - (c) the premises manager dies, or
 - (d) the personal licence held by the premises manager is revoked or suspended.
- (3) The premises licence holder must, not later than 7 days after the occurrence of the event, give notice of it to the appropriate Licensing Board.
- (4) Subsection (5) applies if—
 - (a) subsection (3) is complied with, and
 - (b) within the period of 6 weeks beginning with the day on which the event occurs, a premises licence variation application is made seeking a variation of the premises licence in respect of the premises so as to substitute another individual as the premises manager.
- (5) Any breach of the conditions specified in paragraphs 4 and 5 of schedule 3 in the period beginning with the occurrence of the event and ending with the receipt by the Licensing Board of the application referred to in subsection (4)(b) is, so far as it is attributable to the occurrence of the event, to be disregarded.
- (6) If no such application as is mentioned in paragraph (b) of subsection (4) is made within the period mentioned in that paragraph, then, at the end of that period, the

Licensing Board must vary the premises licence so that there is no longer any premises manager specified in it.

2.2 The standard mandatory conditions for a Premises Licence specify that:

4 (1) Alcohol is not to be sold on the premises at any time when—

- (a) there is no premises manager in respect of the premises,
- (b) the premises manager does not hold a personal licence,
- (c) the personal licence held by the premises manager is suspended, or
- (d) the licensing qualification held by the premises manager is not the appropriate licensing qualification in relation to the premises.

(2) In sub-paragraph (1), “*appropriate licensing qualification*” in relation to any licensed premises means any licensing qualification prescribed as such in relation to licensed premises of that description in regulations under section 91(2)(d).

(3) Nothing in sub-paragraph (1) or paragraph 5 is to be read as requiring the premises manager to be present on the premises at the time any sale of alcohol is made.

5. Every sale of alcohol made on the premises must be authorised (whether generally or specifically) by—

- (a) the premises manager, or
- (b) another person who holds a personal licence.

2.3 The Scottish Government Guidance on the Licensing (Scotland) Act 2005 describes the role of the Premises Manager as follows:

“164. The named premises manager will be responsible for the day to day running of the premises, responsible for the training and supervising of the staff, and ensuring the premises is run in accordance with the requirements of the licence. The Act requires a named premises manager for each premises since this carries a greater responsibility, as the sale and supply of alcohol can have a wide impact on the wider community and on crime and anti-social behaviour. It is therefore important to have one responsible person who will require to be knowledgeable of the law and experienced in the supervision and training of staff and suitably qualified. Ultimately the designated premises manager will be held responsible by the Licensing Board.”

3. Factual Background

3.1 A Premises Licence for the Pierhead Bar and Restaurant was issued to William Arthur Anderson on 1 September 2009. This Premises Licence was subject to the standard mandatory conditions and specified the Premises Manager as Denise Anne Anderson.

- 3.2 At a visit to the premises on 2 August 2016 an Environmental Health Officer established that Denise Anne Anderson no longer works at the Pierhead Bar and Restaurant and has not done so for some considerable period of time.
- 3.3 A Licensing Standards Officer wrote to the Licence Holder, William Arthur Anderson on 3 August 2016 and reminded him of the obligation under Section to advise the Board of a change of Premises Manager and offered assistance, if required, to make the necessary application.
- 3.4 At the date of writing this report no application for a change of Premises Manager has been received.

4. Conclusions

- 4.1 The Premises Manager's role is key in ensuring that the terms of the Licensing (Scotland) Act 2005 are applied to a licensed premises and is responsible for authorising the sale of alcohol. When the Premises Manager ceases to be employed there is no person available to carry out this vital role and the Act therefore suspends the right to sell alcohol until there is an appropriate person in place.
- 4.2 The Licensing Board is obliged to vary the terms of the Premises Licence so that it no longer shows a Premises Manager when the Premises Manager has ceased to be employed and no application to replace them has been made. This will bring the currently named Premises Manager's responsibility for activities on the premises to an end.
- 4.3 Any sale of alcohol from the premises whilst there is no Premises Manager will be a breach of the licensing conditions which might lead to a Licensing Review. A Licensing Review could result in the Premises Licence being endorsed, suspended or revoked.
- 4.4 The Licence Holder can make an application under S. 31 to substitute a new Premises Manager to remedy the situation.

5. Decision Required

- 5.1 The Board is asked to:
 1. In implement of their obligation under S. 54(6) vary the Premises Licence for the Pierhead Restaurant and Bar by removing the name of Denise Anne Anderson as the Premises Manager.
 2. Consider whether to add to the Scheme of Delegation the task of varying a Premises Licence when the conditions specified in S.54(6) are met.

Depute Clerk to the Licensing Board
31 August 2016

SHETLAND ISLANDS AREA LICENSING BOARD**27 SEPTEMBER 2016
Licensing (Scotland) Act 2005
Statement of Licensing Policy
Overprovision Assessment****1. Introduction**

1.1 The purpose of this report is to advise Members as to the current situation with respect to the review of the Statement of Licensing Policy. Legislative changes introduced into the Licensing (Scotland) Act 2005, which will take effect from 30 September 2016, mean that there is no current need to review the Licensing Policy.

2. Detailed Background

2.1 Section 6 of the Licensing (Scotland) Act 2005 requires all Licensing Boards to publish a Statement of Licensing Policy every three years. The Licensing Board began the process of reviewing their Statement of Licensing Policy on 24 February 2016, with a view to being in a position to publish a new three year Statement of Licensing Policy by 30 November 2016 in accordance with the current statutory requirements.

2.2 In terms of Section 7 of the 2005 Act the Board must include a statement in their Policy as to the extent to which the Board considers there to be overprovision of:

- (a) licensed premises; or
- (b) licensed premises of a particular description, in any locality within the Board's area

2.3 The Air Weapons and Licensing (Scotland) Act 2015, introduced amendments to the terms of Section 6 of the Licensing (Scotland) Act 2005. The amendment substitutes a new licensing policy period tied to the election of councillors for local government areas. A new policy must be produced within 18 months of each election.

2.4 The Board's current Statement of Licensing Policy was intended to have effect until 30 November 2016. As the next local government election is scheduled for May 2017, the amendment will change the date by which the next review of the Statement of Licensing Policy is due to November 2018 at the latest.

2.5 It should be noted that the Board shall continue to have the power to publish a supplementary licensing policy statement at any time if it chooses to do so. The Board may also decide that the licensing policy period should begin before November 2018. However it must be after the time of the next local government election.

2.6 The Board had carried out a formal consultation exercise for the review of the Licensing Statement. The response had been fuller than has been achieved on previous occasions. These responses will be acknowledged and taken into

account during the next formal review. In addition, these interested parties will be given an opportunity to update their comments.

3. Decision required

The Board is asked to NOTE the change to the legislation and the impact on the review period for the Statement of Licensing Policy.

Depute Clerk to the Licensing Board

Ref: Z/Gen SB/AM

Date: 23 September 2016