

ABERDEENSHIRE LICENSING BOARDS

REPORT TO SOUTH, CENTRAL AND NORTH DIVISIONAL LICENSING BOARDS – 2nd April 2018, 18th April 2018 and 25th April 2018 LICENSING (SCOTLAND) ACT 2005

BRIEFING ON FIT AND PROPER PERSON

1 Recommendation

- 1.1 The Divisional Licensing Boards are asked to note the terms of the briefing paper attached to this report.**

2 Background

- 2.1 The concept of “fit and proper person” was formerly part of liquor licensing under the Licensing (Scotland) Act 1976, however, it did not appear in the Licensing (Scotland) Act 2005 as originally enacted. This changed with the amendments to the 2005 Act that were introduced by the Air Weapons and Licensing (Scotland) Act 2015 and there are now provisions in the 2005 Act that require a Licensing Board to apply the test of whether or not someone is a fit and proper person in certain circumstances (for example where an application is being made for a premises licence)
- 2.2 At the annual meeting between the Clerk to the Licensing Board (who is the Head of Legal and Governance) and the Convenors of the three Aberdeenshire Licensing Boards it was agreed that a briefing note on the re-introduction of the “fit and proper person” test into liquor licensing would be circulated to all three Boards for the information of Board members.

Briefing Paper

- 2.3 The Appendix to this report consists of a short briefing paper which outlines the situations in which Board Members may be required to determine whether someone meets the “fit and proper person” test, and some of the considerations to be kept in mind when doing so. Although the three Boards have so far had relatively few occasions on which the test has had to be applied it is hoped that the briefing note will assist Members who might be faced with applications where the matter has to be considered.

3. Governance

- 3.1 Sections 43 to 48 of the Air Weapons and Licensing (Scotland) Act 2015 amend the Licensing (Scotland) Act 2005 and have the effect of requiring Licensing Boards to consider in certain circumstances whether or not someone is a fit and proper person for the purposes of holding a licence. These are matters reserved to the Licensing Board, therefore, the purpose of this report is to provide guidance to Board Members on these matters.

4. Implications and Risk

- 4.1. There are no staffing or resource implications as a result of the recommendations contained in this report
- 4.2. An Equality Impact Assessment is not needed in this case because this report is for noting only and will not have a differential impact on the protected characteristics of any persons.
- 4.3 The report is for the information of the Board and will have no impact on levels of risk at either Corporate or Strategic level.
- 4.4 The Town Centre Principle does not apply in respect of this matter.

Geraldine Fraser
Clerk to the Board

Report Author: Peter Robertson, Depute Clerk to the Board, Senior Solicitor (Governance)
Date: 21 March 2018

BRIEFING PAPER Alcohol Licensing – Fit and Proper Person Test

The Air Weapons and Licensing (Scotland) Act 2015 has introduced a "fit and proper person" test to alcohol licensing that had previously not been part of the Licensing (Scotland) Act 2005.

As a result of the new legislation coming into force on 15 May 2017, there are now provisions in the 2005 Act that the Board must refuse an application if they find that the applicant is not a fit and proper person with regards to the licensing objectives. This applies to applications for premises licenses and their transfer as well as applications for personal licences including renewal. It is also a ground for review of premises licenses.

It's important that members of the Board note that when deciding whether an applicant is a fit and proper person that they do so with reference to the licensing objectives, which are:

- Prevention of crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children and young people

This narrows the scope of the test and if a Board refuses an application on the grounds that the applicant is not a fit and proper person without making reference to one or more of the objectives, then there is a high risk of that decision being overturned on appeal.

Unfortunately for Members, the 2015 Act does not contain a definition of what "fit and proper" means. It is for the Board to decide, assessing each case according to its own merits and taking into account all of its circumstances. Members should be assisted however by keeping in mind the licensing objectives and whether any objections or information put before them by the police for example are relevant to the objectives.

For example, an applicant who has a number of speeding convictions may be considered a fit and proper person as offences of that nature are not necessarily relevant to the objective.

On the other hand, an applicant who has no criminal convictions, but is subject to an Anti-Social Behaviour Order due to excessive noise coming from their premises, may not be considered a fit and proper person. This would be on the basis that his reported behaviour is not compliant with the objective of preventing public nuisance.

If Board Members are not sure how the test should be applied to the facts of a particular case then they should seek advice from their Depute Clerk.

Iain Meredith

Solicitor (Governance)