

ABERDEENSHIRE LICENSING BOARDS

**REPORT TO SOUTH, CENTRAL AND NORTH DIVISIONAL LICENSING BOARDS
– 6 June, 27 June and 22 June 2018**

PREPARATION OF ANNUAL FUNCTIONS REPORT

1 Recommendations

1.1 The Divisional Licensing Boards are asked to delegate the task of preparing and publishing the Annual Functions Report for each of the three Boards to the Depute Clerks in consultation with the respective Convenor to each Board.

2. Background

2.1. Section 9A of the Licensing (Scotland) Act 2005 requires each Licensing Board to prepare and publish a report to be known as an Annual Functions Report (“AFR”) by 30 June in each year. This is a recent addition to the duties of Licensing Boards and 2018 will be the first year that such a report must be prepared.

2.2. The AFR must contain a statement explaining how the Board has had regard to:-

(i) the licensing objectives, and

(ii) their licensing policy statement

together with a summary of the decisions made by (or on behalf of) the Board during the financial year, and information about the number of licences held under the Act in the Board's area (including the number of occasional licences granted).

2.3. It had been understood that the Scottish Government would produce detailed guidance on the form of the AFR. Officers had been holding off preparing the AFR pending receipt of this guidance, but the Scottish Government has now advised that the guidance will not contain any great detail and in any case it is unlikely to be available in time for end of June deadline for publication of the AFR.

2.4. The delegation of this task to the Depute Clerks in consultation with the respective Convenors ought to ensure that the AFR for each Board can be published by the end of June 2018

3. Governance

3.1. Paragraph 10 of Schedule 1 to the 2005 Act allows a Licensing Board to delegate any of its functions subject to certain stipulated exceptions. The preparation and publication of the AFR is not one of these exceptions. The delegation sought is therefore permissible in terms of the 2005 Act.

4. Implications and Risk

4.1. The preparation and publication of the AFR will require to be carried out by the Depute Clerks in addition to their existing duties.

4.2. An Equality Impact Assessment is not needed in this case because the publication of the AFR will not result in any differential impact on people sharing the same protected characteristics.

4.3. The report 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: 24 May 2018**

Update of The Licensing (Procedure) (Scotland) Regulations 2007 February 2018

1 Consultation on: Update of The Licensing (Procedure) (Scotland) Regulations 2007

Background

- 1 The Scottish Government is responsible for regulating the powers of Scottish local authorities and Licensing Boards in relation to licensing the sale of alcohol.
- 2 The main piece of legislation that controls the sale of alcohol is the Licensing (Scotland) Act 2005 (the 2005 Act). The 2005 Act balances the rights of the majority of people who drink responsibly against the need to protect local communities from nuisance and crime associated with misuse of alcohol.
- 3 A Licensing Board is a quasi-judicial body and consists of locally elected councillors, with support from local authority staff. However, a Licensing Board is an entirely separate legal entity from a local authority.
- 4 Licensing Boards are primarily responsible for regulating the sale of alcohol to the public within their particular area. The Boards carry out a range of functions, including granting and reviewing licences to sell alcohol.
- 5 This consultation relates to the update of The Licensing (Procedure) (Scotland) Regulations 2007 (Procedure Regulations), which came into force on 1st February 2008. This secondary legislation sets out procedural matters. The individual elements of the Procedure Regulations are numbered, and termed regulations (lower case). For example regulation 1, is entitled *Citation and Commencement*.
- 6 The Scottish Government continues to work towards simplifying and improving licensing law and practice, which includes updating guidance and Regulations to bring them up to date and ensure that they are fit for purpose. The Procedure Regulations have not been amended since their introduction.
- 7 We are committed to reviewing the Procedure Regulations, including carrying out this consultation to properly evaluate the likely costs and benefits of any potential changes, and to ensure that they are workable and proportionate. The Procedure Regulations may then be updated to best reflect modern needs and practice.
- 8 There are parts of the Procedure Regulations which refer to transitional arrangements around the time when the Licensing (Scotland) 2005 Act was

being implemented, such as regulations 8(3) and 9(2). These are no longer relevant/accurate and can be deleted/amended, as appropriate, as part of the update.

- 9 The Scottish Government is still to bring into effect section 61 (deemed grant of application) of the Air Weapons and Licensing (Scotland) Act 2015 which will modernise and expand the requirement for Licensing Boards to deal with matters expeditiously. Failure to do so will have the result that the application will be deemed to have been authorised.

2 We therefore intend to review and where necessary amend the wording associated with the existing timelines that are provided within the Procedure Regulations so that they are compatible with section 61.

Community Engagement.

10. Concerns have been raised about community engagement with the licensing process, for example during parliamentary consideration of the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill, there were calls for more community involvement in licensing decisions.
11. In March 2016 NHS Scotland, in their report on Monitoring and Evaluating Scotland's Alcohol Strategy highlighted that, in terms of public access, there was limited involvement, and thus scrutiny, from the public in the licensing system. Although, the report did acknowledge there were isolated examples of action to improve public access that could be built on.
12. In September 2016, Alcohol Focus Scotland hosted a series of regional seminars to provide an opportunity for licensing stakeholders to come together to reflect upon and share their experiences. Attendees were invited to identify areas of ongoing challenge. A lack of public participation in the licensing process was a concern shared by stakeholders across the four regional seminars. There was consensus that new ways to engage with the public were required, and the need to improve public notification of licensing applications was highlighted.
13. Further recent engagement with stakeholders has also identified that there is a desire to encourage better community engagement in licensing.
14. The relevant provisions on neighbour notification are included within the Procedure Regulations. It is therefore intended to seek views on whether the Procedure Regulations can be amended to improve community engagement.
15. Regulations 3, 4, 6, 7, 8, 9 and 18 of the Procedure Regulations outline provisions on neighbour notification. These particular regulations respectively relate to –
 - Meaning of “notifiable interest”

- Meaning of “Neighbouring land”
- Publicity to applications
- Display of notice
- Periods for Board to notify applications
- Documents to accompany notice of premises licence application
- Occasional licences

3 Purpose of Consultation

16. The purpose of this consultation is to invite views from stakeholders and members of the public to assist the Scottish Government in our considerations when reviewing The Licensing (Procedure) (Scotland) Regulations 2007.
17. There have been suggestions that updating public notification of licensing applications could help with encouraging people to have their say on licensing matters.
18. We would like to seek views, in particular, regarding the sections of these Regulations which relate to the public notification process. However, feedback will be accepted from respondents on other sections of these Regulations.

Questions

Neighbour notification

19. Regulations 3, 4, 6, 7, 8, 9 and 18 of the Licensing (Procedure) (Scotland) Regulations 2007 outline the relevant provisions on neighbour notification that we would particularly welcome views on, in this consultation. These particular regulations respectively relate to –
 - Meaning of “notifiable interest”
 - Meaning of “Neighbouring land”
 - Publicity to applications
 - Display of notice
 - Periods for Board to notify applications
 - Documents to accompany notice of premises licence application
 - Occasional licences

Q1 Should the provisions in the current Licensing (Procedure) (Scotland) Regulations 2007, specifically relating to neighbour notifications, be updated?

Yes

No

Please explain your answer below, giving consideration to the following:

- Are the current provisions relating to neighbour notifications fit for purpose?
- In what way should parts relating to neighbour notifications be amended?
- What would be the likely impact for local communities, the trade and the public?

4 Other provisions

Q2 Should any of the provisions in the current Licensing (Procedure) (Scotland) Regulations 2007, other than those specifically relating to neighbour notifications, be updated?

Yes

No

Please explain your answer below, giving consideration to the following:

- Are the other provisions fit for purpose?
- In what way should any of the other provisions be amended?
- What would be the likely impact for local communities, the trade and the public?

Additional concerns

Q3 Do you have any additional concerns regarding the Licensing (Procedure) (Scotland) Regulations 2007? If yes, please provide details below.

Yes

No

Q4 Are you aware of any examples of good practice relative to the Licensing (Procedure) (Scotland) Regulations 2007? If so, please provide details below.

Yes

No

Responding to this Consultation

20. We are inviting responses to this consultation by 06/06/2018.