

PERTH AND KINROSS LICENSING BOARD

Board Meeting: 18 January 2023

SCHEME OF DELEGATION

Report by Clerk to the Licensing Board

1. PURPOSE

- 1.1 This report advises of legislative changes on participating in Board meetings and asks the Board to agree a revised scheme of delegation as a result.

2. RECOMMENDATIONS

- 2.1 It is recommended that the Board:
- agrees the revised Scheme of Delegation set out in Appendix 1.

3. STRUCTURE OF REPORT

- 3.1 This report is structured over the following sections:

- Section 4: Background
- Section 5: Proposals
- Section 6: Conclusion
- Annex
- Appendix

4. BACKGROUND / MAIN ISSUES

- 4.1 Prior to the pandemic, all participants in Board meetings attended in person. During the pandemic, emergency legislation allowed a participant to decide to submit a written representation; attend by telephoning in; or attend virtually. That emergency legislation has now ended. Currently, participants are being offered the same methods of participation as well as in person attendance.
- 4.2 New legislation has been brought in that allows a Licensing Board to determine that a hearing is to be held (a) in person, (b) wholly remotely, or (c) partly in person and partly remotely. Method of participation is therefore decided by the Board, not the participant. When determining how a hearing is to be held, the Board must take account of any views of a participant. In determining how to conduct a hearing, a Board can also offer participation by way of submitting a written representation.
- 4.3 A Licensing Board now must decide how persons involved in a hearing will participate before that hearing takes place. This can be done by delegating this function to the Clerk to the Board or Board officers. Officers can ascertain a participant's preferred method of participation before deciding how a hearing

is to take place. The alternative would be for the Board to decide how a hearing is to proceed before the hearing takes place. This would lead to delays in determining Board business.

- 4.4 What method of participation is appropriate for a hearing depends on the nature of the matter that is to come before the Board. For most applications, it is considered that offering the existing full range of options continues to be appropriate. This allows participants that may be working and / or may be based out with Perth to select the method they believe suits them best. Premises licence reviews, on the other hand, are complex and involve the Board having to determine what facts occurred and taking a series of decisions with the possibility that the premises licence is revoked. A premises licence review hearing should be conducted in person, unless there are exceptional circumstances (including premises licence reviews for health and safety and other convictions from outwith Perth and Kinross which are not cited under a previous Board direction and proceed by written submission). That would include Board members attending in person as well. For personal licence applications and personal licence reviews, it will depend on the nature of the conduct and the possibility of the personal licence being revoked as to whether the hearing should be in person or not.
- 4.5 Officers will continue to ascertain a participant's preferred method of participation before a Board meeting. By revising the Scheme of Delegation and delegating the determination of how a hearing is to be held to the Clerk to the Board and Board officers, this will allow Board meetings to proceed without having to take such preliminary decisions.
- 4.6 Three other changes are also proposed to the Scheme of Delegation for clarification purposes.

5. PROPOSALS

- 5.1 It is proposed to revise the Board's Scheme of Delegation as set out in Appendix 1 to:
- (i) delegate the shortening of the period of notice for occasional licence applications. In practice, this is done by the Licensing Manager but it should be entered in the Scheme of Delegation;
 - (ii) remove reference to no notice from the chief constable in respect of occasional licence applications. Notice procedure from the chief constable no longer applies. This is a technical change. The chief constable can still object to an occasional licence application which would mean the application being determined by the Board;
 - (iii) delegate the shortening of the period of notice for extended hours applications. In practice, this is done by the Licensing Manager but it should be entered in the Scheme of Delegation; and

- (iv) Delegate how a hearing is to be held to the Clerk to the Board and Board officers.

6. CONCLUSION

- 6.1 Consideration should be given to revising the Scheme of Delegation as a result of legislative changes and for clarification purposes to allow for the efficient running of Board business.

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Approved

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Statement of Policy	N
Resource Implications	
Financial	N
Workforce	N
Assessments	
Equality Impact Assessment	N
Climate Change	N
Consultation	
Internal	Y
External	Y
Communication	
Communications Plan	Y

1. Strategic Implications

- 1.1 This Report relates to the Board's Scheme of Delegation and does not affect the Board's Statement of Policy.

2. Resource ImplicationsFinancial

- 2.1 There are no financial implications.

Workforce

- 2.2 There are no additional workforce implications.

3. Assessments

- 3.1 Under the Equality Act 2010, the Board is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Board to demonstrate that it is meeting these duties.
- 3.2 A full equality impact assessment has been completed and it was found that there is no significant impact in relation to the revised Scheme of Delegation. The EQIA demonstrates that there are no potentially negative impacts to equality groups as a result of the introduction of a revised Scheme of Delegation.

Strategic Environmental Assessment

- 3.3 Under the Climate Change (Scotland) Act 2009, the Board also has a duty relating to climate change and, in exercising its functions must act:

- In the way best calculated to delivery of the Act's emissions reduction targets;
- In the way best calculated to deliver any statutory adaptation programmes; and
- In a way that it considers most sustainable

The proposals have been assessed as **not relevant**.

4. Consultation

Internal

- 4.1 Internal consideration of this Report has taken place within Licensing.

External

- 4.2 Police Scotland were consulted about attending meetings in person. They will attend if required.

5. Communication

- 5.1 Applicants and agents will be advised of revised arrangements as required. The revised Scheme of Delegation will be published on the Board's webpages.

2. BACKGROUND PAPERS

- 5.1 The Licensing (Scotland) Act 2005, Section 133A and Schedule 1, Paragraph 12

3. APPENDIX

- 1 Revised Scheme of Delegation

Perth and Kinross Licensing Board

Licensing (Scotland) Act 2005

Scheme of Delegation

In terms of the Licensing (Scotland) Act 2005, Schedule 1, Paragraph 10, Perth and Kinross Licensing Board has delegated the following functions under that Act:-

Clerk or Officials

The Clerk of the Board or any member of staff appointed by the Clerk may determine:-

1. Applications for a minor variation of a premises licence as defined by Section 29(6).
2. Whether to cite an Applicant to a hearing for a premises licence variation application which is not a minor variation.
3. Applications for the transfer of a premises licence where a notice under Section 33(6)(a) is received from the Chief Constable.
4. Whether to make a premises licence review proposal under Section 37(1).
5. To exercise the powers under Section 38(5) and (6) for the purposes of a review hearing to obtain further information, request any person to attend to provide information and/or request production of any document at a review hearing.
6. The grant of confirmation of a provisional premises licence under Section 46.
7. Whether to require a premises licence holder to produce the premises licence under Section 49(3).
8. *Whether to shorten the notice period for occasional licence applications under Section 57(5).*
- ~~89.~~ The grant of occasional licence applications where there is no notice of objection or representations in relation to the application, ~~or no notice from the Chief Constable recommending refusal of the application.~~
- ~~910.~~ The imposition of conditions under Section 60.
11. *Whether to shorten the notice period for extended hours applications under Section 69(5).*

- ~~40~~12. The grant of extended hours applications where there is no notice of objection from the Chief Constable under Section 69(2).
- ~~44~~13. Personal licence applications or personal licence renewal applications where a notice is received under Section 73(3)(a) from the Chief Constable.
- ~~42~~14. Whether to hold a hearing on a personal licence application under Section 74(8).
- ~~43~~15. Revocation of personal licences where the personal licence holder fails to comply with Section 87(1).
16. *Determining how to hold a hearing under Section 133A and Schedule 1, Paragraph 12.*
- ~~44~~17. What category a premises falls within in terms of The Licensing (Fees) (Scotland) Regulations 2007.
- ~~45~~18. To institute, defend or appear in any legal proceedings or any inquiry held by or on behalf of any Minister or public body under any enactment (including, for the avoidance of doubt, proceedings before any statutory tribunal, board or authority).
- ~~46~~19. To execute, publish or serve on any person or body, any notice, direction, order, licence, summons, writ or other document which the Board is required or authorised to execute, publish or serve under any Act or any regulation or order made thereunder.

Although an application or decision may fall within the above categories, the Clerk of the Board or any member of staff appointed by the Clerk may decline to exercise delegated powers where it is considered appropriate in the circumstances to remit a particular matter to the Licensing Board.

Approved: *18 January 2023*