

FALKIRK COUNCIL LICENSING BOARD

Subject: Air Weapons and Licensing (Scotland) Bill Provisions for Alcohol Licensing
Meeting: Falkirk Council Local Licensing Forum
Date: 12 August 2014
Author: Clerk to the Licensing Board

1. INTRODUCTION

- 1.1 The purpose of this report is to give an overview of the Air Weapons and Licensing (Scotland) Bill as it impacts on alcohol licensing. The Bill was introduced to the Scottish Parliament on 14 May 2014 and is currently going through the committee stages.

2. BACKGROUND

- 2.1 The objectives of the Bill are to strengthen and improve the current licensing provisions for alcohol and civic matters and to introduce a licensing regime in relation to air weapons, the latter being implemented and enforced by Police Scotland. This report sets out the main changes to the Licensing (Scotland) Act 2005 that are introduced in the bill.
- 2.2 The content of the Bill is predicated on the results of the five separate public consultations that were carried out between November 2012 and September 2013. In relation to alcohol licensing, Falkirk Council Licensing Board responded fully to the consultation "Further options for alcohol licensing." A summary of the results of this consultation was published in October 2013 and can be viewed at:

<http://www.scotland.gov.uk/Publications/2013/10/9066>

3. STATEMENT OF LICENSING POLICY

- 3.1 As members of the Forum are aware, the 2005 Act requires the Licensing Board to publish a statement of Licensing Policy every three years. The new Bill amends this section of the Act by requiring Boards to prepare a new policy statement within 18 months of being appointed. Once agreed, the policy will then have a duration of up to 5 years. The alignment of the publication of the policy with the term of the Licensing Board will assist in preparation and consultation of the policy document. The reviewed timescales introduced in the Bill means that the members of the Board will have a sufficiently long period of time to acquaint themselves with the demographic of the area in terms of the scale and supply of alcohol, the existing Statement of Licensing Policy, issues in relation to the specific locations within the Council Area or types of premises before deciding on how these issues can be addressed by amending the Statement of Licensing Policy.
- 3.2 In relation to overprovision, the amendment to the Act to allow the Board to determine the whole of the Board's area as a single locality is welcomed as are the further amendments in relation to the factors that the Board may take into consideration when determining whether or not there is overprovision in their area. However, the number of occasional licences and their increase in the number of licensed hours is still not taken into consideration.

4 FIT AND PROPER PERSON TEST

- 4.1 The previous alcohol licensing regime under the Licensing (Scotland) Act 1976 included a fit and proper person test which enabled the Chief Constable to object to the grant of an application based on, for example, patterns of behaviour, intelligence received etc. This test was not included in the 2005 Act. One of the most significant changes proposed in the Bill is the reintroduction of this test. In the consultation referred to in paragraph 1.2, two thirds of those who responded were in favour of the test being re- established.
- 4.2 The inclusion of a fit and proper person test will, in theory, provide a broader and more detailed picture of the applicant for the Board to consider when determining applications for premises and personal licences and the transfer of the premises licences. The Chief Constable is currently restricted by the terms of 2005 Act to reporting criminal convictions in relation to these matters. The increased use of fiscal fines, fixed penalties and warnings has meant that there are a growing number of cases reported to the Procurator Fiscal where no criminal case is taken. This can mean that consideration of the relevant offences only is a restricted, narrow view of the applicant. This broader picture will be more in depth as reference can now also be made to spent convictions as the Bill repeals the section which prohibits any consideration of a conviction for a relevant or foreign offence if it is spent for the purposes of the Rehabilitation of Offenders Act 1974.
- 4.3 The Falkirk Licensing Board currently grants transfers of premises licences under delegated powers. Under the 2005 Act, notification of the transfer together with a copy of the application is sent to the Chief Constable who has to respond within a statutory timescale, 21 days, confirming either that the applicant has not been convicted of any relevant or foreign offence or that he has been so convicted. In the case of the latter, if having regard to that conviction, the Chief Constable considers it necessary for the purpose of any of the licensing objectives, he can recommend that the application for the transfer of the licence be refused.
- 4.4 To date, no applications for the transfer of a premises licence has required to be determined by the Board, however, the introduction of the fit and proper person test, which expands the information that can be provided by the Chief Constable to the Licensing Board, may result in the Board having to hold more hearings in relation to this type of application.
- 4.5 One of the potential issues with the use of the fit and proper person test as a ground of refusal is the lack of a definition of “fit and proper person” in the Bill. This may lead to an inconsistency in the way that Licensing Boards in different authorities determine the licence applications where the fit and proper test is applied. Additionally, there may be variations in the quantity and quality of the evidence being presented to the Board. This may lead to an increase in the number of appeals lodged when an application is refused on the grounds of the applicant not being a fit and proper person.

5 ANNUAL FINANCIAL REPORT

- 5.1 The Bill proposes to introduce a duty on Licensing Boards to prepare and publish an annual financial report no later than three months after the end of the financial year and sets out the information to be included in such a report. The intention of this provision is to provide a degree of transparency to the obligation on Boards to ensure that their fee income is broadly equivalent to their costs.
- 5.2 The Bill gives Scottish Ministers power to make further provision about reports in relation to both their style and content and also, most importantly, clarification on what constitutes relevant income and relevant expenditure.

6 CHILDREN AND YOUNG PERSONS

- 6.1 The Bill amends the wording of the licensing objective ‘Protecting Children from Harm’ to include young persons i.e. 16 and 17 year olds.
- 6.2 The Bill proposes offences of supplying alcohol to a child or young person. These additional offences may lead to an increase in the number of applications seeking review of a premises licence submitted by Police Scotland.

7 PERSONAL LICENCES

- 7.1 As members of the Forum are aware, Section 87 of the 2005 Act requires all personal licenceholders to undertake training every 5 years and to produce to the Licensing Board that issued their licence evidence that they have done so within three months of the expiry of that period. The Board **must** revoke the personal licence should the licenceholder fail to comply with this requirement. Furthermore, the licenceholder cannot re-apply for a personal licence for 5 years. The Board is under an obligation to give each person to whom it has issued a personal licence not less than 3 months’ notice of the compliance deadline.
- 7.2 The failure of licenceholders to inform the Board of a change of address can lead to the statutory notification not being received and the requirements of the Act not complied with. The ramifications of this on the individual can be catastrophic particularly if they are the Designated Premises Manager where the holding of a personal licence is mandatory. In Falkirk, approximately 5% of the 690 statutory notices were returned marked “addressee gone away”.
- 7.3 The proposal in the Bill to amend section 74(3)(c) of the Act so that a person who has had their personal licence revoked as detailed in paragraph 6.1 will no longer have to wait for five years to elapse before applying for a new personal licence is far more practical than the current provision of the Act and, together with the proposals in the Bill to increase the timescales in relation to the notification and processing of personal licence mandatory refresher training, will be welcomed by the licenceholders, licensed trade and licensing authority.

8. RECOMMENDATION

- 8.1 For information.

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Clerk to the Licensing Board

Date: 7 August 2014

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