

Agenda Item 7

Statutory Functions Report 2017/18

Falkirk Council Licensing Board

Subject: Licensing (Scotland) Act 2005
Statutory Functions Report 2017/18
Meeting: Licensing Board
Date: 26 June 2018
Author: Consumer Protection Manager

1. Purpose of Report

- This purpose of this report is to seek approval of the Statutory Annual Functions Report 2017/18.

2. Recommendations

Members are requested to:-

- (1) note the contents of the report; and**
- (2) approve the Statutory Functions Report 2017/18 proposed in Appendix 1.**

3. Background

- 3.1 In August 2015, members considered a report outlining the numerous and significant changes to the Licensing (Scotland) Act 2005 that would take effect following the enactment of the Air Weapons and Licensing Bill on 24 June 2015. One of these changes is the introduction of a requirement for Licensing Boards to prepare and publish an annual functions report by no later than 3 months after the end of each financial year. The report must:
- state how, in the exercise of their functions under the Act during the financial year, the Board has had regard to the licensing objectives and their licensing policy statement, including any supplementary policy statement and the Board's overprovision statement, and
 - summarise the decisions made by or on behalf of the Board during the financial year and state the number of licences held under the Act in the Board's area, including the number of occasional licences issued during the year.
- 3.2 The Board may include any other such information in the report about the exercise of their functions under the Act as it considers appropriate. Although Scottish Ministers may make regulations detailing the form and content of the report and its publication, they have not done so.

- 3.3 The first Functions Report, in relation to the financial year 2017/18 must be published by the end of June 2018. It is attached as Appendix 1.

4. Implications

Financial and Resources

- 4.1 The main implication is in relation to staffing resources required to prepare the Functions Report.

Legal

- 4.2 The Board has a statutory duty to publish a Functions Report within 3 months of the end of the relevant financial year.

Risk

- 4.3 Failure to publish a Functions Report within 3 months of the end of the relevant financial year will be statutory failure and may lead to reputational damage to the Licensing Board.

Equalities

- 4.4 The Board's continued commitment to equalities issues is demonstrated in the strategy and reports that have been published since 2013.

Sustainability/ Environmental Impact

- 4.5 None.

5. Conclusion

- 5.1 It is concluded that the information contained in the Functions Report meets the statutory requirement.

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Consumer Protection Manager
Date: 20 June 2018

Contact Officer: Alison Barr, Consumer Protection Manager (telephone 501265)

Appendices

Appendix 1 –Statutory Functions Report 2017/18.

Nil

LIST OF BACKGROUND PAPERS

Falkirk Council Licensing Board

Functions Report

2017 / 18

Clerk to the Licensing Board
Municipal Buildings
West Bridge Street
Falkirk
FK1 5RS

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Appendices

Appendix 1 – Liquor Licensing Statistics 1 April 2017 to 31 March 2018

Appendix 2 – Draft Minute of the joint meeting of the Board and the Forum.

1. Introduction – Falkirk Council Licensing Board

1.1 Falkirk Council Licensing Board ("the Board") is the licensing authority for the local government area of Falkirk for the purposes of the Act.

1.2 The current Board is made up of 10 members, all of whom are elected members of Falkirk Council. While the Board is made up of members elected to Falkirk Council, it is independent of the Council, being a separate legal entity with its own constitution and statutory procedures.

1.3 A list of members currently sitting on the Board is available on the Council's website at:

<http://www.falkirk.gov.uk/services/council-democracy/councillors-decision-making/committees/committee.aspx?committee=132>

1.4 Falkirk is situated right at the centre of Scotland and has a growing population of over 154,000, with just under 60,000 people working in the area. The population is expected to grow yet further to over 168,000 by 2035 making it one of the fastest growing areas in Scotland. The principal town of Falkirk is centrally located and provides the main shopping, service and employment. Separated by a narrow green belt are the urban areas of Larbert/Stenhousemuir, Polmont and Grangemouth. The former two are largely residential in character, while Grangemouth is home to the largest petrochemical complex in Scotland, as well as a major port on the River Forth. In the western reaches of the area lie the settlements of Denny/Dunipace, Bonnybridge and Banknock, while to the east, overlooking the Forth, sits the town of Bo'ness. There are 18 smaller villages scattered across the rural parts of the area.

1.5 The Licensing (Scotland) Act 2005 as amended ("the Act") makes provision for regulating the sale of alcohol and for regulating licensed premises and other premises on which alcohol is sold.

1.6 Under the Act, Licensing Boards are responsible for considering applications for:-

- premises licences
- occasional licences
- provisional licences
- temporary licences
- personal licences
- transfer of premises licences
- variation of premises licences
- extensions of licensing hours in respect of:

- the sale of alcohol by retail; and
- the supply of alcohol in members clubs

2. The Licensing Objectives

2.1 The Act sets out the following five licensing objectives (“the licensing objectives”):

- preventing crime and disorder
- securing public safety
- preventing public nuisance
- protecting and improving public health
- protecting children and young persons from harm

2.2 The licensing objectives provide a basis for the administration of the licensing regime. They also provide potential reasons for refusal of an application for the grant or variation of a premises licence or an occasional licence. Breach of the licensing objectives may provide grounds for reviewing a premises licence. Conditions attached to a premises licence or an occasional licence may be based on any one or more of the licensing objectives.

2.3 In exercising its functions under the Act, the Board are required to have regard to the licensing objectives as well as the statutory Section 142 guidance and their Statement of Licensing Policy.

3. Annual Functions Report

3.1 Between 1 April 2017 and 31 March 2018, the Board met on a monthly basis, with the exception of May, July and January to determine the applications. Appendix 1 provides the statistics in relation to applications determined by both at Board meetings and under delegated powers.

3.2 Applications before the Board were dealt with in an open and transparent manner in accordance with licensing legislation and its current statement of licensing policy. The Board's statement of licensing policy is on the Falkirk Council website:

<http://www.falkirk.gov.uk/services/law-licensing/licensing/alcohol/docs/statement-policy/Statement%20of%20Licensing%20Policy.pdf?v=201611281317>

3.3 Information and assistance was made available to persons wishing to apply for a licence, make representations or lodge objections or a review. Application forms are available to be downloaded from the Council's website as well as guidance notes. The Licensing Office is located in Falkirk and is open Monday to Friday 9am to 12. No appointment is necessary. Special provision can be made if these times are unsuitable.

3.4 At the monthly meetings, the Board attempted to make the process as informal as possible and consistent with the carrying out of the Board's quasi-judicial function. The Board always attempts to follow best practice in enforcement including adoption of standards, which, in its actions, will be proportionate,

accountable, consistent, transparent and targeted.

- 3.5 Reports to the Board are written, as far as possible, in Plain English.
- 3.6 The Licensing Board set up a sub group in August 2017 to undertake a root and branch review of the current Statement of Licensing Policy. The sub group is working closely with the Local Licensing Forum and other stakeholders. As part of the review, the sub group has consulted on a supplementary policy on festive trading reducing the length of the period and introducing a general extension of hours on certain days over the festive period, eg. Christmas Day and Hogmanay. A key consideration was the licensing objective of protecting and improving public health. It is anticipated that the supplementary policy on festive trading will be approved by the Board in June 2018 and will be published on the Council's web site.

4. Decisions of the Board 2017/18

- 4.1 The Board is required to determine applications for new and provisional premises licences and those variations that do not fall within the definition of "minor" variation. In addition, the Board determines applications for occasional licences, transfers, extended hours and personal licences to which objections or representations have been made and reviews of premises and personal licences.
- 4.2 Each application is determined on its own merits and the Board looks to its statement of licensing policy and the five licensing objectives to underpin their decision-making. Most objections and representations are submitted by Police Scotland and neighbouring properties/local residents. It is interesting to note that only on one occasion since the commencement of the Act in September 2009 has the local Health Board such a submission.
- 4.3 During the period 1 April 2017 to 31 March 2018, the Board determined applications for 26 non-minor variations, 4 new premises licences, 2 provisional premises licences, 7 occasional licences, 27 extended hours and 4 personal licences. All applications were granted.
- 4.4 In relation to the applications for new premises licences (including provisional applications) and non-minor variations, 1 objection and 2 representations were received from Police Scotland and 7 objections were received from local residents. These were received in relation to 5 of the applications and were mainly based on concerns in relation to perceived noise nuisance, anti-social behavior, under-age drinking and the location of the premises. The representations received suggested specific conditions to be added to the licences to address such issues as stewarding and restrictions on the terms of access for children and young persons. The Board visited two of the premises whose applications has been objected to by neighbours.
- 4.5 A further two site visits were carried out by the Board during this period. The visits were to premises that were seeking outdoor drinking. The Board is mindful of the licensing objective of preventing public nuisance and therefore, where genuine concerns are raised in relation to outdoor drinking, the Board makes a specific condition on the licence that outdoor drinking ceases at 10pm. The Board actively seeks information from sources such as the Environmental Health Noise Team, Community Wardens and Police Scotland when assessing such matters.

- 4.6 Where applications are received to amend the terms, times or parts of the premises children and young person can access, the Board frequently carries out a site visit to assess whether or not what is sought complies with its policy position and the licensing objective of protecting children and young persons from harm.
- 4.7 The Board considered 7 applications for occasional licences during this period; 4 had objections submitted from local residents and 3 were outwith policy in terms of the hours sought. All applications were granted. The Board imposed conditions on 2 of the applications in order to address concerns raised by the objector regarding public nuisance.
- 4.8 The Licensing Standards Officer contacts all those who submit an objection or representation to discuss their concerns. It was found that in many cases, there was a lack of understanding in relation to what was being applied for and that objections were being made based on an assumption of what might happen.
- 4.9 The Board determined 27 applications for extended hours all of which were outwith the Board's policy. The majority of applications were for the during the Festive Period. All applications were granted.
- 4.10 In the course of Board business, applications for Personal Licences are also heard where an objection has been submitted. During this period, there were 4 such application. Police Scotland submitted objections on the grounds that the applicant had been convicted of relevant offence (s). All applications were granted by the Board. All application where no objection is submitted are determined using delegated powers.

5. Licensing Board Training

- 5.1 As stated at the beginning of this report, our current Licensing Board comprises 10 members who were elected in the local elections in May 2017. 5 members has served previously on the Licensing Board, although 1 subsequently resigned and was replaced by a new member. As required by the Act, all members received training, provided by from Alcohol Focus Scotland, and passed the exam.
- 5.2 The Board recognises the need for continuous development of understanding and awareness of licensing law and practices, as well as wider issues. This is essential to making informed licensing decisions. With this in mind, Board members are asked to undertake on-line training in relation to equality legislation and are regularly updated by officers and partners in relation to changes in legislation and other relevant matters. During this period, Police Scotland gave a presentation on the use of CCTV in licensed premises.

6. Licensing Forum

- 6.1 The role of Licensing Forum is to keep under review the operation of the Licensing Act in the Falkirk area and to give advice and make recommendations to the Board in relation to those matters as the Forum considers appropriate. The Forum is the community's voice on alcohol licensing issues.
- 6.2 The composition of the Forum is statutory and whilst it has always attracted

nominations from members of the trade and the public, there has been little interest shown by young persons and there has previously been no young person on the Forum. The Board is therefore pleased to see that a member of the Scottish Youth Parliament is a member of the current Forum and welcomes the views that this, and all the other members, bring.

6.3 There are 18 members of the Forum which is an increase of 3 from the previous Forum.

6.4 Information on the role of the Forum is available to the public on the Falkirk website:

<http://www.falkirk.gov.uk/services/law-licensing/licensing/alcohol/licensing-board/licensing-forum.aspx>

Information on the dates, times and venue of their meetings can be accessed via the above link. The Falkirk Licensing Forum meets quarterly and up to now has always been held at the council headquarters in Falkirk alternating meeting times between the afternoon and evening. Discussions have taken place in relation to holding the meetings in venues across the area and the Board would welcome this as it would raise the profile of the Forum.

6.4 Over the last few years, there have been long periods where the attendance at Forum meetings has been very low and therefore the meetings have been inquorate. This is due to competing demands on members' time and other commitments.

6.5 Although not a member of the Forum, the manager of the Licensing Team attends the meetings to advise the Forum of any emerging issues in the area, changes in legislation, consultations etc. Board members are also invited to attend.

6.6 The sub group of the Board reviewing the current statement of licensing policy has invited representatives of the Forum to canvas their views. Both the Board and the Forum are keen to work closely in relation to all matters. It should be noted that the Forum is not permitted to express views on individual applications.

6.7 The Act states that the Licensing Board and Licensing Forum must meet annually, although there is nothing stopping them from meeting more often. A copy of the draft minute of the meeting held in February 2018 is appendix 2.

7. Reviews

7.1 Any person may apply to the Licensing Board for a review of a premises licence. Grounds for review are that one or more of the conditions on the licence have been breached or for any other ground relevant to the licensing objectives. Where an application for a review is submitted, a hearing must be held. The majority of such applications have been submitted by Police Scotland with other applications received from the Licensing Standards Officer, the Border Agency and local residents.

7.2 In the period 1st April 2016 to 31st March 2017 there was only one premises licence review brought before the Board. The request for review was

submitted by the Licensing Standards Officer and related to a small independent off-sales premises. The Board was satisfied, having heard submissions from both the premises licence holder and the Licensing Standards Officer, that grounds for review were established relating to the following licensing objectives:

- preventing crime and disorder
- securing public safety
- preventing public nuisance
- protecting children and young persons from harm

The Board considered that it was necessary for the purposes of the foregoing objectives to revoke the licence.

7.3 In the same period there were no Personal Licence reviews.

8. Conclusion

8.1 As can be seen from the information in this report, this has been a busy and challenging year for the Board. It has also been a year of change with legislative changes coming into force, a number of new Board members, a new Convener and a new Clerk. All members of the Board have participated positively in the work of Board and have collectively achieved the aim of providing fair, consistent and transparent decision making

Liquor Licensing Statistics for Year Period 01/04/2017 to 31/03/2018

Premises Licence Statistics	
Licences in Force on 31 March 2018	351
(a) on license only	125
(b) off license only	139
(c) both	87
Applications received during 2017-18	
(a) on sale	3
(b) off sale	1
(c) both	Nil
Applications refused during 2017-18 under section 23	Nil
Applications granted during 2017-18 under section 23	6
Applications for review of premises licence during 2017-18 under S36 & S37 resulting in:-	
(a) written warning	Nil
(b) variation	Nil
(c) suspension	Nil
(d) revocation	1
(e) no action	Nil
Applications Received:	
Non Minor Variations to Premises Licences	32
Minor Variations to Premises Licences	116
Transfers of Premises Licences	31
Extended Hours Applications	89
Occasional Licence Statistics	
Number of Occasional Licences granted during 2017-18	391
Personal Licence Statistics	
Personal Licences in Force on 31 March 2018	1350
Applications during 2017-18 under section 72:-	
(a) refused	Nil
(b) granted	126
Proceedings taken during 2017-18 under section 83 (notice of conviction) resulting in:-	
(a) endorsement	Nil
(b) suspension	Nil
(c) revocation	Nil
(d) no action	Nil
Proceedings taken during 2017-18 under section 84 (conduct inconsistent with licensing objectives) resulting in:-	
(a) endorsement	Nil
(b) suspension	Nil
(c) revocation	Nil
(d) no action	Nil
Proceedings during 2017-18 under section 86 (multiple endorsements) resulting in:-	
(a) endorsement	Nil
(b) suspension	Nil
(c) revocation	Nil
(d) no action	Nil

Revocations of personal licences during 2017-18 under section 87(3) (failure to provide evidence of having undertaken refresher training)	82
Staff employed at 31 March 2018	
Number (full-time equivalent) of licensing standards officers employed	1

FALKIRK COUNCIL

Minute of Joint Meeting of Falkirk Licensing Board and the Falkirk Local Licensing Forum held in the Municipal Buildings, Falkirk on Monday 19 February 2018 at 15.30 p.m.

Present: Councillor James Kerr (Convener of Falkirk Licensing Board); Councillors David Balfour, Lorna Binnie, Gordon Hughes and Ann Ritchie (Members of Falkirk Licensing Board); Carol Carmichael (Member of the public); Gordon Emslie (Personal Licence Holder- Trade); John Hamilton (Personal Licence Holder- Trade); Aileen Holliday (NHS Forth Valley- Health); Madelene Hunt (Member of the public); Andrew Kane (Member of the public); Ruth McDonald (Falkirk Alcohol and Drug Partnership- Health); Thomas Ross (Licensing Standards Officer); Liam Slaven (Scottish Youth Parliament- Young Persons); and Mark Stevenson (Personal Licence Holder- Trade)

Chair: Councillor Kerr

Council Officers

Present: Alison Barr, Consumer Protection Manager; Colin Moodie, Chief Governance Officer; Stuart Murray, Trainee Governance Assistant; and Antonia Sobieraj, Committee Services Officer.

Also Present: Licensing Sergeant, Claire Mackenzie, Police Scotland.

1. Apologies

Apologies were intimated on behalf of Provost William Buchanan; and Councillor John Patrick

2. Minute

The Minute of Joint meeting between Falkirk Licensing Board and the Falkirk Local Licensing Forum held on 22 November 2016 was approved.

3. Licensing Board Annual Report – 1 January to 31 December 2017

There was submitted Report (circulated) dated 19 February 2018 by the Clerk to the Licensing Board (a) setting out the work undertaken by the Board since 1 January 2017 in relation to activity under the Licensing (Scotland) Act 2005; (b) an outline of the main provisions that have come into force and work undertaking to mainstream changes from the Air Weapons and Licensing Act 2015, attaching, at Appendix 1, the report considered by the Licensing Board on 12 August 2015 which detailed the main changes to the Licensing (Scotland) Act 2005; (c) summarising the provisions of the 2015 Act which amend sections 6 and 7 of the 2005 Act, statement of licensing

policy: licensing policy periods and overprovision which came into force on 30 September 2016, attaching, at Appendix 2, the current Statement of Licensing Policy; (d) an outline of the annual financial report which was considered by the Licensing Board at their June 2017 meeting, attaching, at Appendix 3, the Statutory Annual Income and Expenditure Report 2016/17; (e) summarising the duty on Licensing Boards to prepare an annual functions report, with the first report due for publication by the end of June 2018; (f) summarising the “Fit and Proper” Test, which came into force on 15 May 2017 and stating that the Board has refused one application for a personal licence under the test; (g) outlining the Alcohol (Minimum Pricing) (Scotland) Act 2012 and the Scottish Government plans to introduce Minimum Unit Pricing for alcohol on 1 May 2018; (h) summarising the Immigration Act 2015 and stating that the provisions have not yet come into force regarding alcohol licensing; (i) outlining the budgetary information regarding the annual retention fee under the 2005 Act and that the Board approved the 2017/18 annual fee at the Board meeting on the 21 June 2017; (j) Providing a detailed overview of all Licence Applications, Reviews and Revocations in 2017.

After hearing from Alison Barr in summary of the Report, the Board **Noted** the Report and thereafter highlighted the undernoted issues:-

- The overprovision section on the Statement of Licensing Policy;
- The enforcement of premises licences and annual fees;
- The definition of minor and non-minor variations;
- The licencing of functions over the festive period;
- The guidance around when revocation of personal licences come into effect; and
- The legislation regarding occasional licences.

Councillors Balfour, Binnie, Hughes and Ritchie left to attend the SNP budget meeting at 16:00 p.m.

4. Any Other Competent Business

The following issues were discussed:-

- The Licensing Board sub-group and representatives from the Forum attending the next meeting;
- The Statement of Licensing Policies of other Boards;
- The licensing objectives in relation to alcohol and health;
- The purchase of alcohol and the use of social media; and
- The enforcement of licensing conditions.