

The Highland Licensing Board

Meeting – 12 August 2014

Agenda Item	7
Report No	HLB/087/14

PERSONAL LICENCE HOLDER REFRESHER TRAINING

Report by the Clerk to the Licensing Board

Summary

This Report updates the Board with regard to the requirement for Personal Licence Holders to undergo refresher training and recommends granting the Clerk delegated powers to issue revocations where such training has not been undertaken and to refuse applications for new Personal Licences where the Personal Licence has been revoked.

1. Background

- 1.1 An applicant for a Personal Licence must have undertaken prescribed training and be in possession of a licensing qualification.
- 1.2 Although a Personal Licence has effect for 10 years the Licence holder must undertake refresher training after 5 years. Personal Licence holders must complete prescribed refresher training during the period of 5 years beginning with the date when the Licence was issued (and during each subsequent period of 5 years). Evidence of completion of the training must be produced to the Board not later than 3 months after the expiry of the 5 year period.
- 1.3 The majority of Personal Licences were issued with effect from 1 September 2009 upon transition from the old licensing regime to the one under the Licensing (Scotland) Act 2005. Therefore anyone holding a Personal Licence which was issued with effect from 1 September 2009, requires to complete refresher training by 31 August 2014 with notification to the Board being required by 30 November 2014.
- 1.4 In Highland there are 1638 Personal Licence holders who must undertake the refresher training and produce evidence of this to the Board if their Licence is not to be revoked. As at 30 July only 606 had submitted evidence of completion of the refresher training.

2.0 Consequences

- 2.1 It is the duty of the Personal Licence holder to arrange and undertake the refresher training and notify the Board within the prescribed time limits.

- 2.2** If a Personal Licence holder has not undertaken the refresher training or, even if he or she has, but does not produce evidence of this to the Board by 30 November 2014 then section 87 (3) of the 2005 Act states that the Board **must** revoke the Licence. This is mandatory and allows for no discretion on the Board's part. Consequently a Licence holder has no right to be heard by the Board in this regard.
- 2.3** The consequences of revocation are severe and could mean that premises are not permitted to sell alcohol on their premises, unless appropriate steps are taken to name an alternative Personal Licence holder as the designated premises manager. In addition, Personal Licence holders, who have their licences revoked, will no longer be allowed to authorise sales of alcohol or conduct the mandatory staff training.
- 2.4** Recognising the serious consequences of failure to undertake the refresher training, the following action has already been undertaken:
- all Personal Licence Holders have been written to;
 - a press release was issued;
 - a notice was posted on our website;
 - Designated Premises Managers have been reminded when the Licensing Standards Officers make their regular visits;

One of the major concerns is that Personal Licence holders will have moved address without notifying the Board as is their statutory obligation. This will mean that there is a real danger that they will not have received a letter.

3.0 Revocation and refusal to consider applications

- 3.1** As mentioned previously, revocation under section 87(3) is automatic and without discretion or any requirement to hold a hearing. In addition, an application for a new Personal Licence cannot be granted if the applicant has had a Personal Licence revoked within the previous 5 years. The Act provides for this by stating in section 74 that the Board **must** refuse such an application. Again there is no discretion or right to be heard.
- 3.2** There is a proposal in the Air Weapons and Licensing (Scotland) Bill which is making its way through Parliament (the subject of a separate Report to the Board) that the 5 year period referred to in paragraph 3.1 above will not apply where a Personal Licence was revoked for failing to submit evidence of having completed refresher training. However it is not known when this Bill will become law.

- 3.3** Given the absence of discretion, there is no need to refer to the Board either (1) decisions on revoking Personal Licences where evidence of refresher training has not been produced or (2) applications for a Personal Licence from a person who has had a Personal Licence revoked within the previous 5 years. It is suggested that delegated powers be granted to the Clerk to:
- (a) refuse applications for personal licences under s74(4) where one or more of the conditions specified in s74(3) are not met (as the Act directs that the Board must refuse applications in those circumstances), and
 - (b) revoke personal licences under s87(3) where a licence holder has failed to comply with s87(1) (as the Act directs that the Board must revoke personal licences in these circumstances).

4.0 Recommendation

4.1 It is recommended that the Board:

- (a) note the position with regard to Personal Licence holders and the requirement to undertake refresher training; and
- (b) grant delegated power to the Clerk to
 - (i) revoke a Personal Licence in terms of section 87(3) of the Licensing (Scotland) Act 2005; and
 - (ii) refuse an application in terms of section 74(4) of the Licensing (Scotland) Act 2005.

Designation: Clerk to the Licensing Board

Date: 10 July 2014

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