

The Highland Licensing Board

Meeting – 28 March 2017

Agenda Item	6
Report No	HLC/021/17

Election period arrangements

Report by the Principal Solicitor – Regulatory Services

Summary

This report invites the Board to note and agree arrangements for the conduct of licensing functions under the Licensing (Scotland) Act 2005 and the Gambling Act 2005 during the period 29 March 2017 to 8 June 2017.

1.0 Background

- 1.1 As a result of the local authority elections on 4 May 2017, there will be no scheduled meeting of the Highland Licensing Board in the 11-week period 29 March 2017 to 8 June 2017 (inclusive).
- 1.2 Both the Licensing (Scotland) Act 2005 and the Gambling Act 2005 restrict the licensing functions which may be delegated to the Clerk to the Board.
- 1.3 The Scheme of Delegation to officers already delegates to the Clerk authority to carry out all functions which can competently be delegated under the 2005 Acts, albeit in some cases this authority is granted subject to the Clerk first consulting with the Convener or Vice Convener of the Board.
- 1.4 It is accordingly not possible for extended delegated powers to be granted to cover certain matters which may arise during the election period which normally require to be dealt with by way of a hearing before and determination by the Board. The following interim arrangements are, however, proposed.

2.0 Election period arrangements

2.1 Matters which may require special meetings of the Board

- 2.1.1 While the deadlines for determination of applications under both Acts are in most cases sufficiently lengthy to allow for applications being held back until the Board meeting on 9 June 2017, there are certain situations under the Licensing (Scotland) Act 2005 in which the need for an earlier determination may arise.
- 2.1.2 In particular, there is a requirement to hold a hearing within 42 days of the occurrence of certain events. These events are:

- In respect of applications for the transfer of a premises licence under sections 33 or 34, receipt of a notice from Police Scotland that the transferee or applicant has relevant convictions or advising that Police Scotland recommend that the application be refused.
- Receipt of a premises licence review application, unless the Clerk rejects the application as vexatious, frivolous or not disclosing any matter relevant to a ground of review.
- In respect of personal licences, receipt of a notice from Police Scotland confirming a conviction for a relevant offence or foreign offence.

2.1.3 Members should note that it may therefore be necessary to convene special meetings of the Board in the run up to the election on 4 May 2017 to deal with any of the above matters.

2.2 Consultations with and referrals to the Convener and Vice Convener

2.2.1 There will be a period between the election on 4 May 2017 and the mandatory training and exam for all appointed members of the Board (including returning members) scheduled for 6 June 2017 and the appointment of a Board Convener and Vice Convener on 9 June 2017 during which the provisions of the Scheme of Delegation requiring the Clerk to consult the Convener or Vice Convener on certain matters, or refer certain matters to them for decision, cannot be met. Members are accordingly asked to note and agree the following interim arrangements.

2.2.2 The Clerk has delegated authority to reject a premises licence review application under section 36 of the Licensing (Scotland) Act if of the view that the application is vexatious, frivolous or does not disclose any matter relevant to a ground of review, but the Clerk must first consult with the Board Convener whom failing the Vice Convener. During the period 4 May 2017 to 9 June 2017 such consultation will not be possible. Members are accordingly invited to agree that this consultation requirement may be dispensed with during that period.

2.2.3 Similarly, the Clerk must consult with the Convener whom failing the Vice Convener before granting a temporary premises licence under section 47. Again, members are invited to agree that this consultation requirement be dispensed with during the period 4 May 2017 to 9 June 2017.

2.2.4 The Clerk has authority to grant occasional licences and extended hours where the hours applied for are within policy and, in the case of an occasional licence, there is no notice of objection or representation or, in the case of an extended hours application, there is no notice of objection from Police Scotland.

Where the hours sought are outwith policy and there is a notice of objection or representation, or objection by Police Scotland, the Scheme requires that the application be referred to the Convener of the Board, whom failing the Vice Convener, whom failing any member of the Board.

However, until the members appointed to the Board following the election have produced to the Clerk evidence of compliance with the prescribed training requirement and have passed the relevant examination, the Act prohibits them from taking part in any proceedings of the Board.

The Scheme accordingly already provides that, in the period between the election of Highland Councillors and members of the Board producing evidence of compliance with the prescribed requirements as to training, the Clerk is not required to refer such occasional licence and extended hours applications to a member of the Board for decision. Members are merely invited to note this existing arrangement.

3.0 Recommendation

3.1 The Board is invited to note and agree the election period arrangements set out in this report.

Officer Reference: Susan Blease

Date: 10 March 2017

Background Papers: Licensing (Scotland) Act 2005, Gambling Act 2005