

## The Highland Licensing Board

Meeting – 2 August 2017

Agenda Item	6
Report No	HLB/082/17

### Amendment to The Highland Licensing Board Scheme of Delegation

#### Report by the Clerk to the Licensing Board

##### Summary

This report invites the Board (A) to approve amendments to the Board's Scheme of Delegation to accommodate changes to the Licensing (Scotland) Act 2005, enacted by the Air Weapons and Licensing (Scotland) Act 2015, which came into force on 17 May 2017, and also (B) to agree that a hearing will be held where a report is received under section 84B of the Act.

#### 1. Background

- 1.1 The Air Weapons and Licensing (Scotland) Act 2015 (the "2015 Act") enacted changes to the Licensing (Scotland) Act 2005 (the "2005 Act") most of which came into effect on 15 May 2017.
- 1.2 These include changes to the procedure to be followed where the Board receives notification of relevant or foreign offences in relation to an existing premises licence holder (or a person connected to the premises licence holder where the licence holder is not an individual) or in relation to an existing personal licence holder.
- 1.3 The 2005 Act previously required the Board to hold a hearing when, following notification by the licence holder of any relevant or foreign offence, Police Scotland confirmed the existence of the relevant or foreign offence. A hearing was required irrespective of whether Police Scotland, in giving notice confirming the relevant or foreign offence, included in their notice a recommendation that any form of sanction should be applied.
- 1.4 "Relevant offence" in this context, and throughout this report, means any offence specified in the Licensing (Relevant Offences) (Scotland) Regulations 2007/513. "Foreign offence" means any foreign offence whatsoever.

The relevant offences listed in the Regulations are set out in full at Appendix 3 to the Board's Licensing Policy Statement which can be accessed at

[http://www.highland.gov.uk/info/1126/licences\\_-\\_alcohol/729/meetings\\_and\\_policies/4](http://www.highland.gov.uk/info/1126/licences_-_alcohol/729/meetings_and_policies/4)

- 1.5 The changes introduced by the 2015 Act, and brought into effect from 15 May 2017, remove the automatic requirement to hold a hearing and amend sections 44 and 83 of the 2005 Act to adopt a more proportionate approach.
- 1.6 This new approach means that when a Board receives a notice from Police Scotland confirming the existence of the relevant or foreign offence, but Police Scotland do not include a recommendation in their notice that a sanction should be applied, the Board now has the option of either holding a hearing or of taking no further action.
- 1.7 In addition, the amendments to the Act include new provisions that where the Board receives a report from Police Scotland advising that the Chief Constable considers that a personal licence holder has acted in a manner which is inconsistent with any of the licensing objectives, the Board must hold a hearing (section 84A). Where, however, such conduct is reported to the Board by a Licensing Standards Officer, the Board has discretion as to whether or not to hold a hearing (section 84B).
- 1.8 The relevant statutory provisions, and the new delegated powers sought, are as follows.

## **2. Premises licence holders**

- 2.1 Where a premises licence holder or any connected person is convicted of a relevant or foreign offence, section 43 of the 2005 Act requires that they notify the Board of the conviction within a month of the date on which it occurred.
- 2.2 Where the Board receives such a notice of conviction, section 44 of the 2005 Act requires that the Board give notice of this to the Chief Constable (section 44(2)).
- 2.3 The Chief Constable must then, within 21 days of receipt of the notice of conviction, respond to the Board by giving notice either
  - (a) that the Chief Constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or foreign offence, or
  - (b) confirming the existence of the conviction and that it relates to a relevant or foreign offence (section 44(4)).
- 2.4 Where the Chief Constable confirms the existence of the conviction and that it relates to a relevant or foreign offence, and the Chief Constable considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of any of the licensing objectives that the premises licence should be varied, suspended or revoked, the Chief Constable may include in the notice a recommendation to that effect (section 44(5)).
- 2.5 If the Board receives notice from the Chief Constable that he is unable to confirm the conviction or that the conviction does not relate to a relevant or foreign offence, the Board may not take any further action in relation to the conviction (section 44(6)).

- 2.6 If the Board receives notice from the Chief Constable confirming the conviction and that it relates to a relevant or foreign offence, and including a recommendation that the licence should be varied, suspended or revoked, the Board must first make a premises licence review proposal and subsequently hold a review hearing (section 44(7)).

**As this is not subject to any discretion, delegated power is sought by the Clerk to make the review proposal under section 44(7) on behalf of the Board and thereafter to refer the matter to the Board for a review hearing. This will avoid the matter having to be referred to two successive Board meetings: one to allow the review proposal to be made and another to hold the review hearing.**

- 2.7 If the Board receives notice from the Chief Constable confirming the conviction and that it relates to a relevant or foreign offence, but not including any recommendation that the licence be varied, suspended or revoked, the Board may either (a) make a premises licence review proposal and subsequently hold a hearing, or (b) decide to take no further action in relation to the conviction (section 44(7A)).

**Delegated power is sought by the Clerk to decide in these circumstances whether a review proposal should be made or no further action taken. It is proposed that this power be exercised in individual cases only with the prior agreement of the Convener, whom failing the Vice-Convener, whom failing any other member of the Board.**

### **3. Personal licence holders**

- 3.1 Where a personal licence holder is convicted of a relevant or foreign offence, they are required under section 82 of the 2005 Act to notify the Board which issued the licence (the "receiving Board") of the conviction within one month of the date on which it occurred. If the receiving Board has reason to believe the licence holder is working in licensed premises situated in another Board's area (the "other Board") the receiving Board must give notice of the conviction to the other Board.
- 3.2 Where the Board receives notice of a conviction relating to a personal licence holder, or becomes aware that a personal licence holder was, during the application period, convicted of a relevant or foreign offence, the Board must give notice of the conviction to the Chief Constable (section 83(2)).
- 3.3 The Chief Constable must then, within 21 days of receipt of the notice of conviction, respond to the Board by giving notice either
- (a) that the Chief Constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or foreign offence, or
  - (b) confirming the existence of the conviction and that it relates to a relevant or foreign offence (section 83(4)).

- 3.4 Where the Chief Constable confirms the existence of the conviction and that it relates to a relevant or foreign offence, and the Chief Constable considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of any of the licensing objectives that the personal licence should be revoked, suspended or endorsed, the Chief Constable may include in the notice a recommendation to that effect (section 83(5)).
- 3.5 If the Board receives notice from the Chief Constable that he is unable to confirm the conviction or that the conviction does not relate to a relevant or foreign offence, the Board may not take any further action in relation to the conviction (section 83(6)).
- 3.6 If the Board receives notice from the Chief Constable confirming the conviction and that it relates to a relevant or foreign offence, and including a recommendation that the licence should be revoked, suspended or endorsed, the Board must hold a hearing (section 83(7)).
- 3.7 If the Board receives notice from the Chief Constable confirming the conviction and that it relates to a relevant or foreign offence, but not including any recommendation that the licence be revoked, suspended or endorsed, the Board may either (a) hold a hearing, or (b) decide to take no further action in relation to the conviction (section 83(7A)).

**Delegated power is sought by the Clerk to decide in these circumstances whether to refer the matter to the Board for a hearing or to take no further action. It is proposed that this power be exercised in individual cases only with the prior agreement of the Convener, whom failing the Vice-Convener, whom failing any other member of the Board.**

- 3.8 Separately, in relation to the new provisions in s84A and s84B regarding reports of conduct inconsistent with any of the licensing objectives, the Board is asked to agree that in the case of receiving such a report from a Licensing Standards Officer under section 84B, while the power to hold a hearing is a discretionary one, a hearing will always be held. This will align the position with cases in which such conduct is reported to the Board by Police Scotland under section 84A, triggering a mandatory hearing.

## **Recommendation**

(A) The Board is invited to amend its Scheme of Delegation to add the following additional subsections at parts 1 and 4 of the Scheme:

### **1. Premises licences**

...

- j) To make a premises licence review proposal under section 44(7) where the Board receives a notice from the Chief Constable under section 44(4)(b) confirming a conviction for a relevant or foreign offence and including a recommendation that the premises licence be varied, suspended or revoked and thereafter to fix a review hearing before the Board under section 83.
- k) After consultation with the Convener, whom failing the Vice-Convener, whom failing any other member of the Board and with their agreement, (a) to make a premises licence review proposal under section 44(7A)(a) and to thereafter fix a review hearing before the Board, or (b) to decide to take no further action in relation to the conviction, where the Board has received a notice from the Chief Constable under section 44(4)(b) confirming a conviction for a relevant or foreign offence but not including a recommendation that the premises licence be varied, suspended or revoked.

...

### **4. Personal licences**

...

- d) After consultation with the Convener, whom failing the Vice-Convener, whom failing any other member of the Board and with their agreement, (a) to fix a hearing before the Board under section 83(7A)(a), or (b) to decide to take no further action in relation to a conviction where the Board has received a notice from the Chief Constable under section 83(4)(b) confirming the conviction and that it is a conviction for a relevant or foreign offence but not including a recommendation that the personal licence be revoked, suspended or endorsed.

(B) The Board is further invited to agree that where a Licensing Standards Officer submits a report to the Board under section 84B advising that the LSO considers that a personal licence holder who is or was working in licenced premises in the Board's area has acted in a manner which is inconsistent with any of the licensing objectives, the Board will hold a hearing.

Date: 19 July 2017

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Background Papers: Licensing (Scotland) Act 2005