

CIVIC LICENSING COMMITTEE – 4 OCTOBER 2012

LICENSING OF LATE HOURS CATERING

REPORT BY THE DIRECTOR OF CORPORATE SERVICES

ABSTRACT

The purpose of this report is to advise Committee of amendments to the Civic Government (Scotland) Act 1982, and to invite Committee to determine whether the use of premises between the hours of eleven o'clock in the evening and five o'clock the following morning for the sale to or consumption by the public of food requires a late hours catering licence.

1. RECOMMENDATIONS

It is recommended that the Committee:-

- (i) notes that changes to the Civic Government (Scotland) Act 1982 means that the Council can determine that a late hours catering licence shall be required for the use of premises between the hours of eleven o'clock in the evening and five o'clock the following morning for the sale to or consumption by the public of food;
- (ii) agrees that the Council make a resolution that the use of premises between the hours of eleven o'clock in the evening and five o'clock the following morning for the sale to or consumption by the public of food requires a late hours catering licence;
- (iii) agrees that steps should be taken to publish in a newspaper or newspapers circulating in their area the terms of the proposed resolution together with a notice stating—
 - (a) that the Council intend to make the resolution; and
 - (b) that representations about the resolution may be made in writing to the Council within 28 days of the first publication of the notice; and
- (iv) notes that any resolution of the Council in respect of this matter must specify a date when the requirement to obtain a licence commences and that this date must not be before the expiration of the period of nine months beginning with the day on which the resolution was made.

2. BACKGROUND

- 2.1 Section 42 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”), as presently worded, provides that a licence, to be known as a “late hours catering licence”, shall be required for the use of premises between the hours of eleven o'clock in the evening and five o'clock the following morning for the sale to or consumption by the public of meals or refreshment. With effect from 1 October 2012, changes to the Civic Government (Scotland) Act 1982 brought about by the Criminal Justice and Licensing (Scotland) Act 2010 mean that it is open to the Council to determine that a late hours catering licence is required for the sale of not only meals or refreshment but also food. Food is very widely defined and includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment.

- 2.2 The Council has resolved that late hours catering licences shall be required for the sale to or consumption by the public of meals or refreshment during the specified hours and does licence qualifying establishments. A copy of the standard conditions attached to late hours catering licences is attached hereto as Appendix 1. If the Council resolves that late hours catering licences shall be required for the sale to or consumption by the public of food during the specified hours then it is anticipated that this will impact upon all premises selling food after 11pm at night and before 5am in the morning (i.e. supermarkets, convenience stores and petrol stations).
- 2.3 Committee is asked to note that a late hours catering licence shall not be required in respect of the use as such of licensed premises within the meaning of the Licensing (Scotland) Act 2005 or premises being used in accordance with a public entertainment licence. In addition, the Council may, on application made to them, exempt the use of premises requiring a late hours catering licence from the requirement to have such a licence in respect of any particular occasion or during a specified period not exceeding 2 months in any period of 12 months.
- 2.4 If the Committee is minded to resolve that late hours catering licences shall be required for the sale to or consumption by the public of food during the specified hours then, because the scope of the previous resolution is to be increased, then there is a statutory requirement to advertise details of the proposed resolution. The Council would be required to publish in a newspaper or newspapers circulating in their area the terms of the proposed resolution together with a notice stating that the Council intend to make the resolution and that any representations about the resolution may be made in writing to the Council within 28 days of the first publication of the notice. The Council is legally obliged to consider any representations made prior to making any resolution.
- 2.5 Any resolution of the Council in respect of this matter must specify a date when the requirement to obtain a licence commences and that this date must not be before the expiration of the period of nine months beginning with the day on which the resolution was made. Until such time as the resolution comes into effect, there will still be a requirement to obtain a late hours catering licence in respect of the sale to or consumption by the public of meals or refreshment during the specified hours.

3. RISKS

This report does not require any specific risk issues to be addressed.

4. FINANCIAL IMPLICATIONS

There are no significant financial implications arising from this report.

5. HUMAN RIGHTS IMPLICATIONS

There are no human rights implications arising from this report

6. EQUALITIES IMPLICATIONS

The issues dealt with in this report have been the subject of consideration from an equalities perspective. An equalities impact assessment is not required.

7. CONSULTATION

The Chief Executive, Head of Law and Administration, Head of Finance, Chief Constable and the Director of Infrastructure Services have been consulted in the preparation of this report.

COLIN MCMAHON
DIRECTOR OF CORPORATE SERVICES

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

ANGUS COUNCIL

CONDITIONS APPLICABLE TO LATE HOURS CATERING LICENCES

1. The licenceholder shall be permitted to trade in or from the premises named in the licence and no other premises.
2. The licenceholder shall be permitted to trade during the hours specified in the licence for the sale of meals or refreshments.
3. The licenceholder shall provide a litter receptacle within the premises and shall also provide such receptacles within a reasonable distance outwith the premises for the use of customers. The licenceholder shall also ensure that litter from the licensed premises which has accumulated within a reasonable distance outwith the premises shall be cleared up after the close of licensing hours specified on the licence to which these conditions relate.
4. The licenceholder shall store goods to be used in connection with his catering only in premises approved by the licensing authority from time to time.
5. The licenceholder shall provide and maintain in proper working order equipment necessary for the proper cleaning and sterilising of all utensils and vessels used in connection therewith and comply at all times with the Food Safety Act 1990 and any regulations made thereunder.
6. The licenceholder shall comply with any instruction given by any Constable for the prevention of annoyance to the public or to the occupiers of any premises or in connection with any emergency or disturbance (including an order or instruction to close the premises for a limited period) or on any occasion when such Constable in his discretion may consider it necessary in the public interest to give such order or instruction.
7. The licenceholder shall not in any way alter, erase or deface his licence.
8. Any trader who ceases to act as such for the unexpired period of his licence or whose licence has been suspended by the licensing authority has expired shall, within seven days thereafter, deliver his licence to the Director of Law and Administration, Angus Council, Forfar.
9. The licensing authority may, at any time, vary the terms of a licence on any grounds which they consider reasonable. Notice will be given to the licence holder at least seven days before any proposed variation is considered. The licenceholder will be given an opportunity to be heard before any variation is made.
10. The licensing authority may order the suspension of a licence if in their opinion:
 - (a) the holder of the licence or, where the holder is not a natural person, any director of it or partner in it or any other person responsible for its management, is not or is no longer a fit and proper person to hold the licence;
 - (b) the activity to which the licence relates is being managed by or carried on for the benefit of a person, other than the licenceholder, who would have been refused the grant or renewal of the licence under paragraph 5 (3) of Schedule 1 of the Civic Government (Scotland) Act 1982;
 - (c) the carrying on of the activity to which the licence relates has caused, is causing or is likely to cause undue public nuisance or a threat to public order or public safety; or
 - (d) a condition of the licence has been contravened.