

ANGUS LICENSING BOARD – 18 APRIL 2012

DELEGATION OF POWERS TO CLERK TO THE BOARD – 3 MAY TO 14 JUNE 2012

REPORT BY THE CLERK

ABSTRACT

The purpose of this Report is to seek approval, in light of the impending Local Government Elections, to delegate all powers that can be lawfully delegated to the Clerk to the Board in terms of the Licensing (Scotland) Act 2005 to the Clerk to the Board and that for the period from 3 May to 14 June 2012.

1. RECOMMENDATION

It is recommended that the Board:-

- (i) delegate all powers that can be lawfully delegated to the Clerk to the Board in terms of the Licensing (Scotland) Act 2005 to the Clerk to the Board and that for the period from 3 May to 14 June 2012; and
- (ii) note that notwithstanding the terms of the delegation referred to in (i) above, the Clerk to the Board shall be entitled to elect not to use their delegated powers in which case the matter will be referred to the next meeting of the Board.

2. BACKGROUND

The Local Government Elections take place on 3 May 2012. As at that date, the current members of the Board will cease to be members of the Board (regardless of whether they are re-elected). The Licensing (Scotland) Act 2005 provides that each local authority must, at their first meeting after the Local Government Elections, hold an election of members to the Licensing Board for their local authority area. In addition, the Board is asked to note that prior to a newly elected Board member taking part in proceedings of the Board, they must produce to the Clerk evidence that they have complied with the prescribed requirements as to the training of members of Licensing Boards (members are asked to note that even those members who have previously passed the Mandatory Licensing Board Member Training for Licensing Board Members are, by law, required to attend the training and pass the required test).

The first meeting of the local authority after the Local Government Elections is due to take place on 15 May 2012. Thereafter, arrangements are being put in place to provide the Mandatory Licensing Board Member Training for Licensing Board Members to those Councillors elected to the Board at the first meeting of the Council on 15 May 2012. The first meeting of the Board has been fixed for 14 June 2012.

Given the above, it is submitted that, in order to ensure that the licensed trade is not prejudiced by the above administrative arrangements, it would be prudent to delegate all powers that can be lawfully delegated to the Clerk to the Board in terms of the Licensing (Scotland) Act 2005 to the Clerk to the Board and that for the period from 3 May 2012 to 14 June 2012.

The Board is asked to note that, in terms of the Licensing (Scotland) Act 2012, the following functions must be determined by the Board and cannot, therefore, be delegated:-

- (a) determining the Board's policy for the purposes of a licensing policy statement or supplementary licensing policy statement,
- (b) determining, for the purposes of any such statement, whether there is overprovision of licensed premises, or licensed premises of any particular description, in any locality,

- (c) determining a premises licence application,
- (d) determining a premises licence variation application where the variation sought is not a minor variation,
- (e) determining an application for the transfer of a premises licence where the applicant has been convicted of a relevant offence or a foreign offence,
- (f) determining—
 - (i) a personal licence application, or
 - (ii) a personal licence renewal application,
 where the applicant has been convicted of a relevant offence or a foreign offence,
- (g) conducting a hearing under this Act including (at a review hearing):-
 - (i) issuing a written warning to the licence holder,
 - (ii) revoking or suspending the licence, or
 - (iii) making a variation of the licence, or
 - (b) making an order revoking, suspending or endorsing a personal licence.
- (h) making a closure order,
- (i) refusing an application for confirmation of a provisional premises licence.
- (j) granting an occasional licence application where there is notice of objection or representations in relation to the application.

If the Board agrees the recommendation contained within this report then all other determinations required in terms of the Licensing (Scotland) Act 2005 will be delegated to the Clerk to the Board from 3 May 2012 to 14 June 2012.

The Board is specifically asked to note that whilst delegation is sought to delegate all powers that can be lawfully delegated to the Clerk to the Board in terms of the Licensing (Scotland) Act 2005 to the Clerk to the Board and that for the period from 3 May to 14 June 2012, the Clerk is not obliged to exercise this delegation. If the Clerk elects not to use their delegated powers then the matter will be referred to the next Board meeting

3. FINANCIAL IMPLICATIONS

There are no financial implications arising directly from this report.

4. HUMAN RIGHTS IMPLICATIONS

There are no Human Rights issues arising directly from this report.

5. EQUALITIES IMPLICATIONS

The issues contained in this Report fall within an approved category that has been confirmed as exempt from an equalities perspective.

6. CONSULTATION

The Head of Finance and the Chief Constable have been consulted in the preparation of this report.

**SHEONA C HUNTER
CLERK TO THE LICENSING BOARD**

L&A/SCH/DT