

ANGUS LICENSING BOARD – 15 NOVEMBER 2012

**PREMISES LICENCES UNDER THE LICENSING (SCOTLAND) ACT 2005 – LICENCE REVIEW
PROPOSAL**

REPORT BY THE CLERK

ABSTRACT

The purpose of this report is to advise members of the non payment of Annual Fees under the Licensing (Scotland) Act 2005 (“the 2005 Act”) as detailed in the Appendix to the Report which the Board may wish to consider and take action.

1. RECOMMENDATION

It is recommended that the Board considers and determines to hold a review (“a premises licence review proposal”) in respect of those premises detailed in the attached appendix.

2. BACKGROUND

In terms of the 2005 Act it is a mandatory condition applicable to all premises licences that the annual fee must be paid.

Despite requests for payment and reminders one or more of the annual fees in respect of the licensed premises detailed in the attached appendix have not been paid.

In terms of Section 38 of the 2005 Act, the Licensing Board may, on its own initiative, propose to review a premises licence. The grounds for the Licensing Board making such a premises licence review proposal are:

- a) that one or more of the conditions to which the premises licence is subject has been breached; or
- b) any other ground relevant to one or more of the licensing objectives.

3. LEGAL IMPLICATIONS

In terms of the 2005 Act a premises licence review proposal must specify the alleged ground for review, in particular the condition or conditions alleged to have been breached or the licensing objective/s to which the ground of review relates. In these particular cases, the condition alleged to have been breached is that the licence holders have failed to pay their annual fee.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

5. HUMAN RIGHTS IMPLICATIONS

In dealing with the matters as set out in this report, the Board will have regard to any human rights issues in relation to the licence holders.

Members are advised that Article 1 of the First Protocol of the European Convention of Human Rights (i.e. protection of property) applies in relation to this Report. The licence holder is considered to be the owner of the licence and as such is entitled to the peaceful enjoyment of his/her possession. However, Angus Licensing Board may take such action as it deems

necessary to control the use of the property in accordance with the general interest and subject to the conditions provided for by law. Article 14 requires non-discriminatory treatment of individuals in the enjoyment of their rights.

The legal basis for taking any action in connection with this Report is in terms of the 2005 Act.

Any actions considered by the Licensing Board must be proportionate, i.e. there should be as little intervention as possible to achieve the Board's desired aim. If the Board is minded to suspend the licence, members must first consider the Board's desired aim in imposing a period of suspension and must also consider an appropriate period of suspension taking into account the guidance on proportionality and must ensure that their decision does not discriminate against the licence holder.

6. CONSULTATION

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

7. CONCLUSION

The Board is requested to agree to make a premises licence review proposal in respect of the premises detailed in the appendix and to fix a review hearing date or dates to consider the proposals. The Board is asked to agree that any hearing would be cancelled should the outstanding fees be paid prior to the hearing.

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

NOTE: The background papers (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are: The Licensing (Scotland) Act 2005

NON PAYMENT OF ANNUAL FEES

(a) LICENCE NO. 94 – OLD BREWHOUSE, 1-5 HIGH STREET, ARBROATH, DD11 1BH

Unpaid Annual Fees for 2011/2012 - £280.00

Unpaid Annual Fees for 2012/2013 - £280.00

The Board is asked to note that the licence holder has been advised that it is a Mandatory Condition of the Premises Licence that the annual fee must be paid and that Section 36(3) of the Licensing (Scotland) Act 2005 provides that breach of a licensing condition is a ground on which a Premises Licence can be reviewed.