

ANGUS LICENSING BOARD – 4 OCTOBER 2012

PREMISES LICENCES
UNDER THE LICENSING (SCOTLAND) ACT 2005 – LICENCES CEASED

REPORT BY THE CLERK

ABSTRACT

The purpose of this Report is to provide information on licences which have ceased to have effect due to dissolution or insolvency.

1. RECOMMENDATION

It is recommended that the Board note that the premises licence(s) detailed in the attached appendix have ceased to have effect due to the premises licence holder :-

- (a) being an individual, partnership or company, becoming insolvent; or
- (b) being a person other than an individual, partnership or company, is dissolved

and that no application to transfer the licence has been made within the prescribed 28 day period required under the Act from the date of insolvency or dissolution.

2. BACKGROUND

Section 28 of the Licensing (Scotland) Act 2005 ("the 2005 Act") provides, amongst others, that a premises licence ceases to have effect where:

- (a) the premises licence is revoked under any provision of the 2005 Act;
- (b) the licensed premises cease to be used for the sale of alcohol;
- (c) the premises licence holder being an individual:
 - (i) dies; or
 - (ii) becomes incapable within the meaning of Section 1(6) of the Adults with Incapacity (Scotland) 2000;
- (d) the premises licence holder, being an individual, a partnership or a company becomes insolvent;
- (e) the premises licence holder, being a person other than an individual, a partnership or a company is dissolved;
- (f) the Licensing Board receives from the premises licence holder a notice surrendering the licence, accompanied by the premises licence or a statement of reasons for failure to produce the licence.

There are exceptions to the above. A premises licence does not cease to have effect in respect of the insolvency, dissolution, death or incapacity of the premises licence holder if an application to transfer the premises licence is received by the Clerk within 28 days of the date of the insolvency, dissolution, death or incapacity of the premises licence holder as the case may be.

3. LEGAL IMPLICATIONS

The licences referred to in the appendix have respectively ceased to have effect in terms of the 2005 Act. No applications to transfer these licences have been received and the Board is asked to treat the licences as having ceased to have effect.

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 Section 28 of the 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, the Director of Infrastructure Services and the Chief Constable, Tayside Police have been consulted in the preparation of this Report.

7. NOTIFICATION

Notification of the terms of this Report has been sent to the licence holders at their last known address.

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:

Licensing (Scotland) Act 2005
Licensing (Transitional and Saving Provisions) (Scotland) Order 2007

PREMISES LICENCES WHICH HAVE CEASED TO HAVE EFFECT

(a) LICENCE NO. 144 – SMUGGLERS TAVERN, LADYBRIDGE STREET, ARBROATH

Members are advised that the licence holder was sequestrated in July 2011 and the trustees KMPG, Glasgow were appointed in September 2011. It is believed that the premises closed in and around late 2011.

The trustees were advised in November 2011 that unless a transfer application was made quickly the licence would cease to have effect. No transfer application has been received and the licence has ceased to have effect.