

ANGUS LICENSING BOARD – 4 OCTOBER 2012

THE LICENSING OF BEER GARDENS/ OTHER EXTERNAL AREAS UNDER THE LICENSING  
(SCOTLAND) ACT 2005

REPORT BY THE CLERK

**ABSTRACT**

The purpose of this report is to consider whether the licensing of previously unlicensed beer gardens or other external areas requires a new application for a Premises Licence or a Non Minor Variation to a Premises Licence.

**1. RECOMMENDATION**

It is recommended that the Board:-

- (i) note the decision of the Board, at its meeting on 4 May 2011, in respect of the licensing of beer gardens/external areas;
- (ii) note that, following representations from premises licence holders and their agents regarding the requirement that, unless an application fell within certain categories, all applications to licence previously unlicensed beer gardens or other external areas would require to be the subject of an application for a new Premises Licence, research was undertaken to ascertain the practice of other Boards in this regard; and
- (iii) agree that where a Premises Licence holder is seeking to extend a Premises Licence to include a beer garden or other external area then they will be entitled to make such an application by way of an Application for a Non Minor Variation to a Premises Licence.

**2. BACKGROUND**

2.1 The Board, at its meeting on 4 May 2012, considered a report by the Clerk in respect of the licensing of Beer Gardens/Other External Areas. In respect of that report, the Board determined to:-

- “(i) agree that where a Premises Licence holder is seeking to extend a Premises Licence to include a beer garden or other external area then they will be entitled to make such an application by way of an Application for a Non Minor Variation to a Premises Licence so long as the following conditions apply:-
  - (a) the beer garden or other external area is contiguous with, and adjacent to, the premises which are the subject of a Premises Licence;
  - (b) both the beer garden or other external area and the premises which are the subject of a Premises Licence are enclosed by an established boundary wall, fence or hedge and that access to the public can be restricted; and
  - (c) the beer garden or external area was or had been used for the consumption of alcohol prior to 1 September 2009 and in connection with premises licensed under the Licensing (Scotland) Act 1976.
- (ii) agree that all other applications to licence beer gardens or other external areas would require to be the subject of an application for a new Premises Licence; and

- (iii) note that all applications for new Premises Licences or for Non Minor Variations of Premises Licences must be determined in accordance with the relevant provisions of the Licensing (Scotland) Act 2005.”
- 2.2 This issue arose as a result of the terms of the Licensing (Scotland) Act 2005 (“the Act”). Section 50 of the Act provides that a Premises Licence application must be accompanied by a planning certificate, a building standards certificate, and, if food is to be supplied on the premises, a food hygiene certificate. In particular, the planning certificate must state either that planning permission under the Town and Country Planning (Scotland) Act 1997 in respect of any development of the subject premises in connection with their proposed use as licensed premises has been obtained, or that no such planning permission is required. The procedure for making non minor variations to Premises Licences does not provide for the submission of the certificates referred to in Section 50 of the Act. Given this, it was considered that the licensing of previously unlicensed beer gardens or other external areas required a new application for a Premises License.
- 2.3 Since this decision of the Board, the office of the Clerk has received representations from Premises Licence holders and their agents as to the requirement to apply for a new Premises Licence in respect of a proposal to extend a Premises Licence to include a beer garden or other external area. Following receipt of those representations, research was undertaken to ascertain the practice of other Boards in this regard. The outcome of that research was that it appeared that other Boards, whilst noting the anomalous situation, are of the view that the licensing of previously unlicensed beer gardens or other external areas only required a non minor variation of Premises License.
- 2.4 It is anomalous that whilst an application for a Premises Licence must be accompanied by a planning certificate, an application to vary a Premises Licence by extending the footprint of licensed premises to include another building, beer garden or other external area does not. In the circumstances, it is submitted that, until such time as the Act is amended, the licensing of previously unlicensed beer gardens or other external areas requires a Non Minor Variation to a Premises Licence.

### **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 dealt with in this report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment is not required.

### **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**

**NOTE:** No background papers were relied on to any material extent in preparing the above report.

L&A/SCH/DT