

ANGUS COUNCIL

SPECIAL CIVIC LICENSING COMMITTEE – 12 JUNE 2013

LATE HOURS CATERING LICENCES

REPORT BY THE STRATEGIC DIRECTOR – RESOURCES

ABSTRACT

The purpose of this report is to advise the Committee of the response which has been received to a consultation on proposed amendments to the Council's licensing regime for Late Hours Catering Licences.

1. RECOMMENDATION

It is recommended that the Committee:-

- (i) notes that changes to the Civic Government (Scotland) Act 1982 mean that the Council can now licence the sale of food rather than meals or refreshment;
- (ii) notes that the Council has advertised its proposal to make a resolution to extend the scope of Late Hours Catering Licensing to govern premises operating between the hours of 11.00 pm to 5.00 am for the sale to or consumption by the public food;
- (iii) notes that one response to the consultation exercise was received; and
- (iv) agrees that the Council should approve the new resolution to introduce the new licensing regime as soon as reasonably practicable after the statutory leading time.

2. BACKGROUND

- 2.1 Until relatively recently, the Civic Government (Scotland) Act 1982 required premises to obtain from the local authority a Late Hours Catering Licence for the sale to or consumption by the public of meals or refreshments. A licence was only required when the premises were open between the hours of 21.00 pm to 05.00am with effect from 1 October 2012, the 1982 Act has been changed and premises which now require to be licensed are premises which are used for the sale of to or consumption by the public of food.
- 2.2 The Committee meeting held on 4 October 2012 took a principal decision to introduce the new licensing provision to all premises operating with all relevant operating within the Angus area.
- 2.3 In accordance with the 1982 Act, the Council's proposals were advertised and one response was received to the Consultation. The response was received from Messrs R and J M Hill Brown & Co, Solicitors, Glasgow. The response indicated that the new licensing provisions were discretionary, as had been confirmed in correspondence between Messrs R and J M Hill Brown & Co and the Scottish Government and the firm of solicitors considered that "supermarkets and convenience stores should be exempted in the absence any demonstrable problems".
- 2.4 The terms of the letter from Messrs R and J M Hill Brown & Co have been considered with the letter from the Scottish Government. It is correct to state that the new licensing provisions are optional, but the Task Group which reviewed the terms of the 1982 specifically felt that the principal justification for licensing premises related to the potential for large numbers of people leaving pubs/nightclubs etc. causing disturbance and that this potential exists regardless of whether or not food is being sold has been cooked or prepared in anyway. Whilst it may be desirable to consider that certain premises could be exempted from the legislation, it would be difficult to determine which premises should be exempted. The Committee is perhaps aware of certain difficulties which have arisen as a result of similar exemptions in terms of the Licensing (Scotland) Act 2005 regarding filling stations. The 2005 Act has a general provision

preventing alcohol sales from filling stations but within the legislation allowing certain filling stations to sell alcohol has largely rendered the general exclusion meaningless.

- 2.5 There is therefore a concern that similar problems could be experienced with the 1982 Act if the Council determines that exemptions should be introduced for certain premises because, inevitably, many premises with attempt to fall within the definition of any exemption and this could then frustrate the whole point of the new legislation.
- 2.6 The Committee is therefore asked to note the terms of the single response which was received to the consultation, but ratify its earlier in principal decision to introduce a new resolution to the effect that Late Hours Catering Licence will be required for all premises operating between the hours of 21.00pm to 05.00am for the sale to or consumption by the public of food. The effect of the resolution will mean that premises such as hot food outlets, burger vans, supermarkets, convenient stores and petrol stations will require to be licensed from a date to be determined by the Council.
- 2.7 The Committee is asked to note that a Late Hours Catering Licence will 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 the Public Entertainment Licence issued under the 1982 Act. This exemption will only apply whilst the premises are being used in accordance with the specific licence issued under the 2005 Act or the 1982 Act. Members should also note that there is a provision allowing specific premises to apply for an exemption in respect of a particular occasion or during a specified period not exceeding two months in any period of 12 months.
- 2.8 The Council is therefore asked to approve the attached resolution (Appendix I) and the conditions which will apply to Late Hours Catering Licences will be in accordance with Appendix II.

3. RISKS

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

4. FINANCIAL IMPLICATIONS

There will be not specific financial implications arising from this report.

5. 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.

6. HUMAN RIGHTS IMPLICATIONS

There are no human right implications in connection with this report.

7. CONSULTATION

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

MARK ARMSTRONG
Strategic Director - Resources

NOTE: Background Papers – Other than any containing any confidential exempt information (which were relied on to any material exempt while preparing the above Report are:- Civic Government (Scotland) Act 1982 (as amended) correspondence received from Messrs R and JM Hill Brown & Co and Appendix I Resolution Angus Council Late Hours Catering Licence, Civic Government (Scotland) Act 1982 (“resolved Act”)

APPENDIX I

RESOLUTION

Angus Council has, in accordance with the provisions of the Act varied its resolution to licensed premises being used for the purposes of late hours catering. The effect of this resolution will mean that from 1 June 2014, a licence to be known as a Later Hours Catering Licence shall be required for the use of premises between the hours 11.00pm and 5.00am the following morning for the sale to or consumption by the public of food.

APPENDIX II

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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.