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SCOTTISH BORDERS LICENSING BOARD/LOCAL LICENSING FORUM TUESDAY, 29TH NOVEMBER, 2022

A JOINT MEETING of the SCOTTISH BORDERS LICENSING BOARD AND LOCAL LICENSING FORUM will be held VIA MICROSOFT TEAMS on TUESDAY, 29 NOVEMBER 2022 at 4.00 pm

All Attendees, including members of the public, should note that the public business in this meeting will be livestreamed and video recorded and that recording will be available thereafter for public view for 180 days .

J. J. WILKINSON,
Clerk to the Council,

22 November 2022

BUSINESS		
1.	Welcome by Convener of Scottish Borders Licensing Board	
2.	Apologies for Absence	
3.	Order of Business	
4.	Declarations of Interest	
5.	Minute (Pages 3 - 6) Consider the Minute of the Joint Meeting of 30 November 2021. (Copy attached.)	5 mins
6.	Licensing Board Annual Report - 2021 - 2022 (Pages 7 - 10) Consider report by the Clerk presenting a summary of the work of the Scottish Borders Licensing Board and the staff supporting the Board (copy attached).	10 mins
7.	Licensing Forum Annual Report - 2021 - 2022 (Pages 11 - 14) (Copy attached.)	10 mins
8.	Chief Constables Report to the Scottish Borders Licensing Forum for the Period 1 April 2021 to 31 March 2022	10 mins

	(Copy to follow.)	
9.	Recruitment Update	10 mins
10.	Equalities Training Training by Simone Doyle, HR Equalities and Diversity Officer.	45 mins
11.	Any other items previously circulated	
12.	Any other items which the Convener decides are Urgent	

NOTES

1. **Timings given above are only indicative and not intended to inhibit Members' discussions.**
2. **Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.**

Membership of Board:- Councillors M. Douglas (Convener), N. Richards, T. Weatherston, P. Brown, D. Parker, F. Sinclair, J. PatonDay, E. Small and J. Cox

Membership of Forum:- S. Bell, S. Elliot, S. Dalrymple, S. Mabon, R. Mackay, R. McIntyre, M. Wynne and Sgt R. Stark (Police Scotland)

Please direct any enquiries to Fiona Henderson Tele: 01835 826502
E-mail: fhenderson@scotborders.gov.uk

MINUTE OF JOINT MEETING OF THE
SCOTTISH BORDERS LICENSING BOARD
AND THE LOCAL LICENSING FORUM held
remotely via Microsoft Teams on 30
November 2021 at 4.00 p.m.

- Present:- Licensing Board:- Councillors J. Greenwell (Convener), J. Brown, N. Richards, S. Scott (from para 4), R. Tatler, E. Thornton-Nicol, G. Turnbull and T. Weatherston.
Forum:- S. Dalrymple, S. Elliot, M. Wynne and J. Scott.
- Apologies:- Licensing Board:- Councillor D. Paterson.
Forum: S. Bell, S. Mabon, R. MacKay, R. McIntyre, G. Todd.
- In Attendance:- Managing Solicitor (Property and Licensing), PC Lackenby – Police Scotland, Democratic Services Officer (F. Henderson).

1. **WELCOME BY CONVENER OF SCOTTISH BORDERS LICENSING BOARD**
The Convener of the Licensing Board, Councillor Greenwell welcomed everyone to the meeting.

ORDER OF BUSINESS

The Chairman varied the order of business as shown on the agenda and the Minute reflects the order in which the items were considered at the meeting.

2.0 **LICENSING FORUM RECRUITMENT UPDATE**

Mr Wynne, LSO reported that due to COVID restrictions there had been just been one meeting of the Forum in 2021. There had subsequently been resignations received from three Forum Members and the Forum was now at a critical stage in respect of achieving its quorum for meetings. A recruitment drive was therefore being planned for early January 2022 and a media plan was already in place. Mr Wynne further advised that Alcohol Focus Scotland had produced an easy to read booklet which would be used in the recruitment of new Members. In response to a question about the statutory requirement in respect of the Licensing Forum, Mr Wynne advised that there was a statutory requirement to have a Forum and they should meet 4 times per year, although some other Local Authorities had reported that they no longer had a Licensing Forum.

- 2.1 In response to a question about who was eligible to join the Forum, Mr Wynne advised that anyone could apply to join the Forum. It was hoped younger people may join to get their perspective and the media recruitment campaign would include involving contacting secondary schools to attract senior pupils. Susan Elliot proposed that Alcohol Focus Scotland training be organised for all Members of the Licensing Forum.

**DECISION
NOTED.**

3.0 **UPDATE ON IMPACT OF COVID ON LICENSING**

With reference to paragraph 6 of the Minute of 2 December 2020, Mr Wynne advised that although a reduction in licensed premises had been anticipated, this had not come to fruition and only 2 had surrendered their licence, although not due to covid. It would appear that Government funding made available to the licence trade had managed to sustain them and the Annual Fees were being paid.

- 3.1 There had been an increase in enquiries for the sale of on-line alcohol from various premises which required to be licenced and there were some applications in the pipeline. Many Supermarkets had varied their operating plans to include alcohol with delivery of groceries and the click and collect service for alcohol had also increased. Applications for occasional licences for community events were on the rise including for the sale of mulled wine at a number of Bonfire Nights. Occasional licences for Christmas Markets was also on the increase. There had also been an increase in noise complaints from Residents who had become accustomed to the peace and quiet, while venues were closed.
- 3.2 In response to a question about claiming back outside spaces and car parking which had been given over for outdoor drinking areas during covid, it was anticipated that this may prove difficult and there was no guidance at present on when these outdoor drinking areas would cease.

4.0 **MINUTE**

There had been circulated copies of the Minute of Meeting of 2 December 2020.

**DECISION
APPROVED.**

5.0 **LICENSING BOARD ANNUAL REPORT DECEMBER 2020 TO NOVEMBER 2021**

There had been circulated copies of a report by the Clerk to the Licensing Board presenting a summary of the work of the Scottish Borders Licensing Board and the staff supporting the Board, covering the period from December 2020 to November 2021. It was hoped that the report would assist the Forum to facilitate its scrutiny role of how the Board discharged its duties and responsibilities in terms of the Licensing (Scotland) Act 2005 (the Act) as amended. The Managing Solicitor, Ron Kirk, presented the report and highlighted the main points. Since the last joint meeting on 2 December 2020 the Board had met 11 times. At each Board meeting, in addition to determining applications and reviews, Members considered all matters which had been dealt with under the delegated powers of the Clerk where both the Act permitted this method of determination and there had been no objection or representation in respect of the application. The majority of delegated decisions were in connection with grants of occasional licences which were a feature of sporting fixtures and local festivals in the Community. The number of Occasional Licences that had been granted in during the period were 426 compared to 1,340 prior to Covid. Of those 36 were granted to voluntary organisations. Extended hours were granted in response to 3 applications.

- 5.2 Hearings take place as part of the Board's business as narrated in the published agenda. The Licensing (Scotland) Act 2005 requires that hearings are held in public and parties have the right to address the Board or rely solely on their written submissions. However, the initial Covid-19 lockdown in March 2020 meant that holding hearings in public was not possible. The Coronavirus (Scotland) Act 2020 gave Boards the discretion to provide alternative means for persons to be heard such as by telephone, by video conferencing or by written communication including electronic means. As a consequence, the Board had continued to meet by Microsoft Teams Video Conferencing and this had enabled the Board to meet on a monthly basis as it had done prior to the Covid-19 outbreak. The Board arranged review hearings in respect of premises licences as detailed in the report, all were in relation to notices for failure of premises to make a payment of the annual fee apart from 3 which were as a result of applications received from Police Scotland on the grounds of breach of licensing objectives. In 2 of these cases, the Board took no action pending the outcome of a criminal prosecution. In the other case the Licence holder undertook to surrender his licence during the meeting. In the 9 other cases relating to non-payment of annual fees, the Board suspended 4 licences, revoked 3 and took no action in respect of the other 2 as one Licence holder paid the annual fee prior to the hearing and the other licence was surrendered. The Clerk was present and answered members questions.

DECISION
AGREED to:-

- (a) **note the report; and**
- (b) **request that the Clerk continue to provide updates to the joint meeting on an annual basis.**

6.0 CHIEF CONSTABLE'S REPORT TO THE SCOTTISH BORDERS LICENSING BOARD FOR THE PERIOD 1 APRIL 2020 - 31 MARCH 2021

There had been circulated copies of Police Scotland's Annual Licensing Report for 2020/21. PC Lackenby was in attendance to present the report and answer questions. The report explained that Police Scotland continued to work closely with local authorities and partnership agencies to deliver effective regulation in liquor licensing. Preventing alcohol fuelled violence, disorder and antisocial behaviour was a priority and working closely with Licensed Premises and Scottish Government to navigate the challenges of the COVID-19 pandemic through the 4Es approach by engaging, explaining, education and enforcing. Within the Scottish Borders there were currently 47 'on sales' 109 'off sales' and 290 combined on/off premises. There were significant demands on police resources placed in the Scottish Borders area by the Common Riding festivals and Rugby 7s tournaments and there were currently three premises trading until 3 a.m. at the weekend, with the annual occasional extensions for some Common Riding Town Balls extending to 5 a.m. In the Alcohol Outlet Availability and Harm report (April 2018) published by Alcohol Focus Scotland, Scottish Borders was ranked 15th out of 30 local authority areas for alcohol outlet availability in Scotland. Crime rates in the neighbourhoods with the most alcohol outlets were 4.4 times higher than in neighbourhoods with the least. In the Scottish Borders there were 341 recorded incidents in licensed premises between 1 April 2019 and 31 March 2020, this figure showed a slight decrease of 1.15% on the year before. The report went on to outline the well-established Intervention Process whereby incidents connected to premises were identified by Licensing Officers who evaluate the Licensing Objectives to determine if any had been compromised.

- 6.1 The year 1st April 2020 to 31st March 2021 was very unique in many ways, particularly in relation to the licensed trade due to the various restrictions placed on premises on how, when and where they can safely operate throughout the Covid-19 Pandemic. Police Scotland set up 'Operation Talla' in response to the pandemic, ensuring a consistent and measured approach was taken to implementing restrictions throughout the country. Lothian & Scottish Borders Licensing Department worked closely with Operation Talla, as well as Liquor & Civic Licensing Policy Unit to provide clear and consistent advice to operational officers, to enable them to support premises as they introduced special measures in their premises in response to restrictions. Police Licensing, in partnership with Licensing Standard Officers (LSO's) and Environmental Health Officers worked closely with the licensed trade, including legal representatives, throughout this difficult time, providing guidance, advice and support to them and their staff to assist in the safe operation of licensed premises through the unprecedented challenges that faced them over the reporting period. In the Scottish Borders, there were 200 recorded incidents in licensed premises between 1st April 2020 and 31st March 2021, this figure showed a major decrease from 341 recorded incidents equating to 41% on the year before. There continued to be a notable trend in thefts of alcohol from 'off sales' premises over the reporting year, this may be due to the impact that Covid-19 has had on society. Police Scotland carried out 696 recorded inspections of licensed premises in the Borders during the reporting year. The local Police Licensing Officer continued to work alongside the Council's Licensing Standards Officers to maintain effective information sharing procedures and establish good partnership working. This unified approach had resulted in a number of successful resolutions in the Scottish Borders.

DECISION
NOTED the report.

7.0 ANY OTHER COMPETENT BUSINESS

PC Lackenby advised of 'Bystander Training' which was offered by All Bar None which may be of interest to the Board Members. The members agreed that this would be of interest and very positive.

DECISION
AGREED that PC Lackenby liaise with the Licensing Unit to arrange training for Licensing Board and Licensing Forum Members once recruitment for the Forum was complete.

The Convener thanked everyone for their attendance at the joint meeting and encouraged Members of the Licensing Board to attend future meetings of the Forum.

The meeting concluded at 4.40 pm

Scottish Borders Licensing Board

Report by Clerk

Annual Report December 2021 to November 2022

29 November 2022

1 PURPOSE AND SUMMARY

- 1.1 **The purpose of this report is to give a summary of the work of the Scottish Borders Licensing Board and the staff supporting the Board**
- 1.2 **It is hoped that this report will assist the Forum to facilitate its scrutiny role of how the Board discharges its duties and responsibilities in terms of the Licensing (Scotland) Act 2005 (the Act), as amended.**

2 RECOMMENDATIONS

- 2.1 **I recommend that the Board and the Forum note the report and request that the Clerk continues to provide updates to the joint meeting on an annual basis.**

**Nuala McKinlay
Clerk
Scottish Borders Licensing Board**

3 SUMMARY OF ACTIVITY

- 3.1 Since the last joint meeting on 30 November 2021, the Board have met 9 times. At each Board meeting, in addition to determining applications and reviews, members consider all matters which have been dealt with under the delegated powers of the Clerk where both the Act permits this method of determination and there have been no objection or representation in respect of the application.

3.2 Delegated Decisions

The majority of delegated decisions are in connection with grants of occasional licences which are a feature of sporting fixtures and local festivals in the Community, figures are below:

Occasional Licenses granted	1035
Above includes Voluntary Organisations	180
Extended Hours granted	37

The other reported decisions relate to minor variations of premises licences, substitution of premises managers, grants of personal licences and transfers of premises licences.

3.3 **Hearings**

The hearings take place as part of the Board's business as narrated in the published agenda. The Licensing (Scotland) Act 2005 requires that hearings are held in public and parties have the right to address the Board or rely solely on their written submissions. However, the initial Covid-19 lockdown in March 2020 meant that holding hearings in public was not possible. The Coronavirus (Scotland) Act 2020 gives Boards the discretion to provide alternative means for persons to be heard such as by telephone, by video conferencing or by written communication including electronic means. As a consequence, the Board has continued to meet by Microsoft Teams Video Conferencing and this has enabled the Board to meet on a monthly basis as it had done prior to the Covid-19 outbreak. Following the creation of the new Board, as referred to in paragraph 4.1 below, the hearings have been taking place in a blended meeting format whereby the Board Members and Licensing Officers meet in person at Council HQ with applicants and other relevant parties being afforded the opportunity to attend the meetings either in person or via Microsoft Teams Video Conferencing. The meetings have proceeded well in that format with some applicants taking the opportunity to attend in person to address the Board in support of their applications.

3.4 **Variations**

The Board considered applications to vary Premises Licenses. This included both major and minor variation applications which must be determined by the Board and applications which attracted objections or representations.

As in previous years much work has been generated by established businesses who realign their layout and/or operating plans or as a result of transfer of business to a new licence holder or manager. Such applications can be the outcome of visits by the Licensing Standards Enforcement Officer when it is apparent that the current operation does not comply with the Licence or the Licence Holders discuss how they can amend their Licence to move with their perceived training and business needs. When subsequent applications are submitted and processed often these do not generate objections and are granted by the Board at the meetings after due consideration of the application in relation to the statement of policy.

Such non contentious applications can relate to changes in opening hours often relating to the times for sales of alcohol where premises wish the opportunity to open earlier for the sale of breakfasts, coffees etc. Applications are also generated from store refits where national retailers change corporate layout and/or practice such as playing music in store. The majority of these have also contained an increase in the area of alcohol sales

in shops and these have all been within policy and have not attracted objections from the statutory consultees.

3.5 Reviews

Premises Licences and Personal Licences

During the period, the Board arranged a review hearing in respect of one premises licences. This was in connection with a review request received from the Council's Environmental Health section relating to noise issues and seeking a variation to the Premises licence to add a noise related condition. Following the review hearing, the Board decided that no action was required. In addition, during the period the Board arranged two review hearings in respect of personal licences. These were both in connection with review requests received from Police Scotland regarding the licence holders acting in a manner which was inconsistent with the Licensing objectives. Following the first review hearing the Board decided to take no action pending the outcome of an ongoing criminal court prosecution and following the second review hearing the Board decided to remit the matter back to Police Scotland as there was insufficient information to enable the Board to make a decision.

3.6 Grants Including Provisional Grants

The Board must hold a hearing for the Grant or Provisional Grant of a Premises Licence. 11 new Provisional Premises Licences were granted.

4 OTHER MATTERS

- 4.1 Following the Local Government elections at the beginning of May 2022 a new Board was created consisting of nine elected members appointed by Scottish Borders Council. All nine members of the new Board, including Councillors Richards and Weatherston who served on the previous Board have attended the required training course and have attained the statutory qualification covering the key areas of knowledge necessary to support their roles as a Licensing Board member as required by the Act. The new Board met for the first time on 24 June 2022 when Councillor Marshall Douglas was appointed Convenor.
- 4.2 The Covid-19 pandemic has continued to have an effect on the Board's business. As referred to in paragraph 3.3 above. The Licensing (Scotland) Act 2005 requires the Board to hold hearings in public. The initial lockdown in March 2020 meant that this was not possible. In addition, the 2005 Act contains a number of strict timescales and deadlines with little or no discretion available to the Board if they are not adhered to. Recognising the difficulties that this would cause to both the Licensed trade and to Boards, the Scottish Government passed the Coronavirus (Scotland) Act 2020 which allows the Board some flexibility with regard to the timescales and deadlines stipulated in the 2005 Act. In particular, the 2020 Act contains provisions which gave the Board a new discretion to dispense with the requirement to hold meetings in public and to instead provide alternative means for persons to be heard by telephone, video conferencing or by written communication

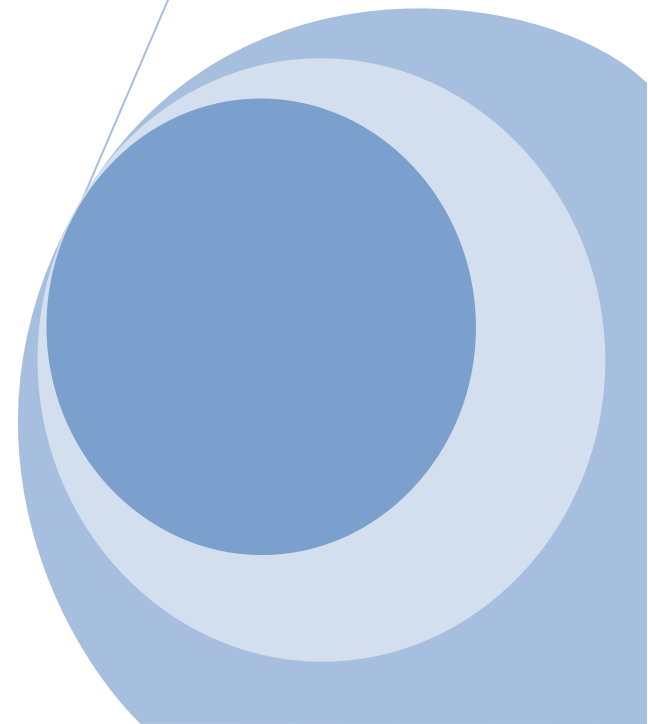
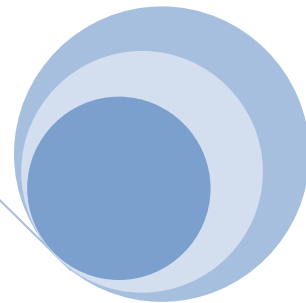
including by electronic means. As a consequence, prior to the local Government elections at the beginning of May 2022, the Board continued to meet by Microsoft Teams Video Conferencing and this enabled the Board to meet on a monthly basis as it normally did prior to the Covid-19 outbreak. As indicated at Paragraph 3.3 above, since the creation of the new Board the hearings have been taking place in a blended meeting format.



Scottish Borders Licensing Forum

Annual Report 2021 – 2022

November 2022



Introduction

Over the previous year the forum has had only one meeting which was the Licensing Board/ Local Licensing Forum annual meeting in November 2021. Due to the pandemic, a number of scheduled meetings were cancelled. Membership has changed over the period with two resignations. In addition, the convener Mark Hay has had to step down from this role although remains an active member. Licensing Standards and Enforcement Officer (LSEO) Mike Wynne has taken on the role as convener on a temporary basis.

The Police Scotland representative P.C. Sharon Lackenby has retired from the Police although now part of Scottish Borders Council Licensing team. A new Police Scotland licensing officer is yet to be appointed.

The Forum was boosted in numbers with the appointment of Licensing Standards and Enforcement Officers John Scott and Hannah Wood who are statutory members.

Overview of activity:

Licensing Board Attendance

Forum members have continued to struggle to attend regular online Licensing Board meetings however the Licensing Board minutes will continue as a standing item at future Forum meetings, which allows discussion on decisions made. The presence of the Licensing Standards and Enforcement Officers at Licensing Board meetings and Forum meetings ensures any questions raised can be answered in full.

Continuous Professional Development

Due to the lack of meetings there has been no training however, Alcohol Focus Scotland have kindly offered an input on recommendations of working practices for the Forum and advice on reviewing the Licensing Board Policy due in 2023. Their support is acknowledged and dates will be scheduled for early 2023 for this training.

Information continues to be circulated by Public Health representative (Susan Elliot) and has included guidance for new members, Local Licensing Forum Survey report, Minimum Unit Pricing updates and the recent report on Marketing by Alcohol Focus Scotland.

At this year's Forum/Board annual meeting, there will be a training session to members on Equalities.

Alcohol Profile

The annual Alcohol Profile was again updated and remains a useful tool for the Board to use in their decision-making particularly with reference to the requirement to consider Overprovision.

The Profile is referenced within Alcohol Focus Scotland's Toolkit as good practice.

General

The normal functions of the Forum have been restricted since the last joint meeting due to the Pandemic and its resulting lock down and associated restrictions.

Membership of the Forum remains at a critical level despite recent media campaigns to recruit members. This will again be reviewed early 2023 when we hope some interest will be generated.

We hope that we can now look forward to getting back to something like normal in the coming year and to continued working together in the interest of all in the Scottish Borders.

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