
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.