

**SCOTTISH BORDERS LICENSING BOARD FUNCTIONS AND
FINANCIAL REPORTS 2022/2023**

Report by the Clerk to the Licensing Board

SCOTTISH BORDERS LICENSING BOARD

15 DECEMBER 2023

1 PURPOSE AND SUMMARY

This report seeks approval from the Licensing Board for the Annual Functions Report and Annual Financial Report.

2 RECOMMENDATIONS

2.1 It is recommended that Members:

- (a) approve the annual Functions Report set out in Appendix 1 to this report;
- (b) approve the annual Financial Report set out in Appendix 2 to this report; and
- (c) authorise the Clerk to the Board to proceed with the publication of the Annual Functions Report and Annual Financial Report.

3 BACKGROUND

- 3.1 In terms of Section 9A of the Licensing (Scotland) Act 2005 (“the 2005 Act”) Licensing Boards are required to provide an Annual Functions Report. In addition, in terms of Section 9B of the 2005 Act, Licensing Boards are also required to produce and publish an Annual Financial Report. As a consequence, Licensing Boards have a statutory duty to publish these reports within three months of the end of each financial year. However, as a result of the Covid-19 outbreak, Schedule 5 Paragraph 4 of the Coronavirus (Scotland) Act 2020 extended the timeframe for the preparation and publishing of annual finance and functions reports and allowed Licensing Boards to prepare and publish their annual reports no later than 31 December 2023 due to the coronavirus pandemic.
- 3.2 The Board’s Annual Functions Report must include a statement explaining how the Board has had regard to the licensing objectives and the Board’s Policy Statement in the exercise of its functions under the Act as well as a summary of decisions made by the Board and information about the number of licences held in the Board’s area, including occasional licences.
- 3.3 The draft report at Appendix 1 hereto therefore provides all the required information as an accurate representation of the Board’s functions for the period 1 April 2022 to 31 March 2023.
- 3.4 The Financial Report must include:
- (a) a statement of:
 - (i) the amount of relevant income received by the Licensing Board during the financial year; and
 - (ii) the amount of relevant expenditure incurred in respect of the Board’s area during the year; and
 - (b) an explanation of how the amounts in the statement were calculated.
- 3.5 The draft report at Appendix 2 hereto therefore provides all required financial information and is an accurate representation of the Board’s financial position for the period 1 April 2022 to 31 March 2023.
- 3.6 Members are asked to note that the Licensing Board income cannot be guaranteed in any financial year, this being completely dependent on the number of licensed premises which continue to operate as the vast majority of Board income stems from annual Premises Licence fees. The impact of the Covid-19 pandemic which in the previous two years had a major impact on the Board’s income abated considerably during the year as the Licensed trade began to recover. In particular, the number of Occasional Licence applications received greatly increased during the period from the previous year.
- 3.7 It is also the case the Board income and expenditure is kept under review on a regular basis.

4 IMPLICATIONS

4.1 Financial

There are no costs attached to any of the recommendations contained in this report.

4.2 Risk and Mitigations

The information provided within these reports ensures transparency and helps to mitigate reputational risk to the Council by allowing further scrutiny of its income and expenditure.

4.3 Integrated Impact Assessment

There is no impact or relevance to Equality Duty or the Fairer Scotland Duty for this report.

4.4 Sustainable Development Goals

There are no sustainable development goals arising from the proposals contained in this report.

4.5 Climate Change

There are no climate change impacts arising from the proposals contained in this report.

4.6 Rural Proofing

There are no rural proofing impacts arising from the proposals contained in this report.

4.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

4.8 Changes to Scheme of Administration or Scheme of Delegation

No changes to either the Scheme of Administration or the Scheme of Delegation are required as a result of the recommendations in this report

5 CONSULTATION

- 5.1 The Director of Corporate Governance, the Chief Officer Audit and Risk, Director of People, Performance and Change, the Clerk to the Council and Corporate Communications have been consulted and any comments received have been incorporated into the final report.

Approved by

Name Nuala McKinlay

Title Clerk, Scottish Borders Licensing Board Signature

Author(s)

Name

Ron Kirk

Designation and Contact Number

Managing Solicitor, Property and Licensing. 01835 826764

Background Papers: None

Previous Minute Reference: None

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APPENDIX 1.

SCOTTISH BORDERS LICENSING BOARD

**LICENSING (SCOTLAND) Act 2005
SECTION 9A: ANNUAL FUNCTIONS REPORT
1 APRIL 2022 - 31 MARCH 2023**

1 INTRODUCTION – SCOTTISH BORDERS LICENSING BOARD

- 1.1 Scottish Borders Licensing Board (“the Board”) is the Licensing Authority for the local government area of the Scottish Borders for the purposes of the Act. The current Board which was formed in May 2022 comprises nine Members all of whom are elected members of Scottish Borders Council. The Board is responsible for the functions set out in paragraphs 1.3 and 1.4 below within the Scottish Borders.
- 1.2 The Council boundaries cover 4,742 square kilometres. The estimated population as identified by the 2011 Census is 113,870. The area is divided into ten Wards of three Councillors and one Ward of four Councillors totalling 34 Councillors of whom nine sit on the Board. All have completed the statutory training required under the Act.
- 1.3 The Licensing (Scotland) Act 2005 (as amended) (“the Act”) makes provision for regulating the sale of alcohol and for regulating licensed premises and other premises on which alcohol is sold. The number of licensed premises within the Board’s area averaged 456 in number during the period.
- 1.4 Under the Act, Licensing Boards are responsible for considering applications for:
- Premises Licences
 - Occasional Licences
 - Provisional Licences
 - Temporary Licences
 - Personal Licences
 - Transfer of Premises Licences
 - Variation of Premises Licence
 - Extensions of licensing hours in respect of:
 - The sale of alcohol by retail, and
 - The sale of alcohol in members clubs

2 ANNUAL FUNCTIONS REPORT

- 2.1 The Air Weapons and Licensing (Scotland) Act 2015 amended the Act to place a statutory duty on Licensing Boards to publish an Annual Functions within three months of the end of each financial year. However, as a result of the Covid-19 outbreak, Schedule 5 Paragraph 4 of the Coronavirus (Scotland) Act 2020 extended the timeframe for the preparation and publishing of annual functions reports and allowed Boards to prepare and publish their annual reports no later than 31 December 2023 due to the coronavirus pandemic.

2.2 In terms of Section 9A of the Air Weapons and Licensing (Scotland) Act 2015, the Board has the following key obligations:

To publish an Annual Functions Report within three months of the end of the relevant financial year and to include within the Annual Functions Report:

- a Statement explaining how the Board has had regard to the licensing objectives and its policy statement in the exercise of its functions;
- the Board's Policy Statement in exercise of its functions under the Act;
- a summary of decisions taken by each Board over the relevant financial year including decisions taken by officers under delegated powers;
- the number of licences held under the Act in the Board's area including the number of occasional licences issued during the financial year;
- other information as determined as necessary by the Licensing Board

3 LICENSING OBJECTIVES

3.1 The Act sets out the following five Licensing Objectives ("the Licensing Objectives") as set out below:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children and young persons from harm.

3.2 The Licensing Objectives provide a basis for the administration of the licensing regime. They also provide potential reasons for refusal of an application for the grant or variation of a Premises Licence, an Occasional Licence or a Personal Licence. Breach of the objectives may provide grounds for reviewing a Premises Licence or a Personal Licence. Conditions attached to a Premises Licence or an Occasional Licence may be based on any one or more of the Licensing Objectives.

4 FUNCTIONS OF THE BOARD

4.1 The functions of the Board are set out in Schedule 1 of the Act and are summarised below:

- Determining the Board's policy for the purposes of a Licensing Policy Statement or Supplementary Licensing Policy Statement;

- Determining for the purposes of any such Statement whether there is overprovision of licensed premises or licensed premises or any particular description in any locality
- Determining a Premises Licence application/ Provisional Premises Licence application.
- Determining a Premises Licence Variation application where the variation sought is not a minor variation
- Determining an application for the Transfer of a Premises Licence where the applicant has been convicted of a relevant offence or a foreign offence
- Determining a Personal Licence application or a Personal Licence renewal application where the applicant has been convicted of a relevant offence or a foreign offence
- Conducting a hearing in respect of a Review of a Premises Licence
- Conducting a hearing in respect of revoking, suspending or endorsing a Personal Licence
- Making a Closure Order

5 HOW THE BOARD HAS REGARD TO THE LICENSING OBJECTIVES

- 5.1 In exercising its functions under the Act, the Board is required to have regard to the Licensing Objectives as stated at paragraph 3.1.
- 5.2 Promotion of the Licensing Objectives is always at the forefront of the Board's consideration in determining its policies for the purposes of its policy statement.
- 5.3 When determining licence applications, the Board verifies that all applications are consistent with the Licensing Objectives and ensures that any potential issues are addressed through appropriate measures to safeguard full compliance with the Licensing Objectives. Such measures include attaching local and special conditions to licences if necessary.
- 5.4 The Board is confident that it has been able to pursue the crime and disorder objective by taking into account and recognising that certain criminal activity or associated problems may take place or be taking place despite the best efforts of the licensee and the staff working at the premises. In such circumstances the Board will endeavour to take any steps it feels are appropriate to remedy the problem. The Board has strived to promote this objective in the interests of the wider community rather than determining the guilt or innocence of the individual which the Board recognises is a matter for the courts of law.
- 5.5 The Board is confident that it has been able to pursue the Public

Safety and Public Nuisance objectives by endeavouring to take any necessary steps it feels are appropriate to address any such problems which may contravene these objectives. In doing so, the Board is mindful that it cannot take into account any issues that are dealt with by other legislation such as the Environmental Protection Act 1990.

5.6 The Board is confident that it has pursued the protecting Children and Young Persons from harm objective by applying appropriate conditions to licences with a view to ensuring that children and young persons are adequately protected within licensed premises or at licensed events. There have also been occasions when the Board has not been satisfied that an application sufficiently complies with this objective and on these occasions the Board has refused the applications accordingly.

5.7 The Board is confident that it has been able to pursue the Public Health objective to mitigate the public health risk when considering licensing applications. The Local Health Board is a statutory consultee who are invited to make representations with regard to each application which is considered by the Board. Whilst in most cases they have no comments to make, there are occasions when they do make representations and a representative is invited to attend the Board meeting and address the Board accordingly.

6 HOW THE BOARD HAS REGARD TO THEIR LICENSING POLICY STATEMENT

6.1 The Board is aware that all applications before it are to be dealt with in an open and transparent manner in accordance with licensing legislation and the Board's policy documents.

6.2 Information and assistance was made available to persons wishing to apply for a licence, make representations or lodge objections.

6.3 The Board, when making their determinations, took into account their Policy Statement and any supplementary arrangements which it had agreed on extended hours for special events of local or national significance and the Board policy hours.

6.4 The Board is aware of its quasi-judicial function and its obligation to objectively determine facts and draw conclusions from them. The Board always aims to follow best practice to ensure proportionate, accountable and consistent decision making by listening to all the information provided by applicants, any objectors and Licensing Standards Officers weighing up the relevant information, reviewing this against its policies and coming to an informed decision.

- 6.5 The Board is confident that its Statement of Licensing Policy is sufficiently robust to enable it to make appropriate decisions when the question of over-provision is a consideration. When reviewing its Statement of Licensing Policy, the Board took into account the work carried out by the Scottish Borders Licensing Forum who by way of a multi-agency data gathering public project produced the report "Scottish Borders Alcohol Profile". This Profile provides an invaluable evidence base which has been most useful to the Board in the review of its Policy and the Board has regard to it when determining applications

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- 7.1 In the year from 1 April 2022 to 31 March 2023 the Board met 9 times to determine applications.
- 7.2 Each application for a new Premises Licence, Variation of a Premises Licence, Occasional licence or Extended hours was decided on its own merits.
- 7.3 In assessing applications, the Board used a number of different sources of information to enable them to reach determinations. As well as the statutory consultees these sources included others with an interest including Community Councils, local residents, the Licensing Standards Officers, Police Scotland, the local Health Board, application objectors and established licensing practitioners. As referred to in paragraph 6.5 above, the Board also took into account the information provided in the Scottish Borders Alcohol Profile provided by the Scottish Borders Licensing Forum as well as the Licensing Objectives and its Statement of Licensing Policy.
- 7.4 All objections received to any applications were taken into account in the decision making process.

8 NUMBER OF LICENCES HELD IN THE BOARD'S AREA

- 8.1 The Board granted 17 new Premises License and 1548 Occasional Licenses were issued by the Board during the period. 284 of the Occasional licences were granted to voluntary organisations. The Board also considered 8 applications to vary Premises Licences. This included both major variations which must be determined by the Board and applications which attracted objections or representations. In addition, 17 Section 31 substitution of designated premises manager applications and 5 Section 33 transfer applications were dealt with.

8.2 The Board arranged a review hearing in respect of 1 premises licence during the period. This was in connection with a review request received from one of the Council's Licensing Standards and Enforcement officers for non-compliance with mandatory condition 10 attached to all premises licences relating to the non-payment of annual fees. In this instance payment of the annual fees due on 1 October 2021 and 1 October 2022 were outstanding. At the first review hearing, the Board continued consideration of the review request and afforded the licence holder the opportunity to make payment of the fees due for 2021. At the second review hearing the Board was advised that payment of the fees outstanding for 2021 had not been paid and as a result the licence was revoked.

8.3 The Board received 94 new Personal Licence applications and 2 Personal Licence renewal applications during the period, all of which were granted.

9 OTHER INFORMATION ABOUT THE EXERCISE OF THE LICENSING BOARD'S FUNCTIONS

9.1 Licensing Forum

The Forum consists of a cross-section of members including Licensing Standards Officers, representatives from public health, the Police, the licensed trade and the general public. The Forum met on a few occasions throughout the year. The Forum held its annual joint meeting with the Board on 29 November 2022. At the Board meeting both the Board and Forum members were provided with Equalities training

9.2 Impact of Covid-19 Pandemic

During the period, the impact of the Covid-19 pandemic continues to lessen on the Licensed trade and as a result the number of applications received began to increase during the period. In particular the number of Occasional Licence applications received increased from 765 to 1548.

9.3 Licensing Team

The Board is assisted by a unit of officers who sit within the Council's Legal and Licensing Team. The unit currently consists of, a Licensing Team Leader, three Licensing Standards and Enforcement Officers and two Licensing Officers with administrative support staff. They offer guidance and advice in the processing and issuing of licenses under delegated powers, provide support to the Clerk and make referrals to the Board. The Licensing Team as a unit ensure that the functions of the Board are fulfilled as efficiently as possible.

10 CONCLUSION

The Board is pleased to report that licenced premises in the Scottish Borders have been well run and generally problem free during the period covered by this report. The Board is thankful to the licensed trade in its efforts of promoting and upholding the licensing objectives and complying with the Board's Policy.

Licensing (Scotland) Act 2005**Scottish Borders Licensing Board Financial Report****Financial Year: 2022/23**

The Scottish Borders Licensing Board is required under section 9B of the Licensing (Scotland) Act 2005 to publish an annual financial report within three months of the end of the relevant financial year.

As a result of the Covid-19 outbreak, Schedule 5 Paragraph 4 of the Coronavirus (Scotland) Act 2020 extended the timeframe for the preparation and publishing of annual functions reports and allowed Boards to prepare and publish their annual reports no later than 31 December 2023 due to the coronavirus pandemic. This report has been prepared using financial data taken for year ending 31 March 2023.

It should be noted that expenditure in the statement has been calculated based upon estimates of the direct time spent by legal and licensing service staff on licensing functions. The report excludes allocation of indirect central support costs properly incurred by Scottish Borders Council which would include a share of total costs associated with accommodation, ICT, financial services, catering, telephone calls, printing, stationery and equipment.

The report accordingly should not be relied on as an accurate statement of income and expenditure for the exercise of the Board's functions under the Licensing (Scotland) Act 2005.

The financial statement is as follows:

Income¹:

	Premises inc	
	Annual Fees	£150,390
Extensions/Variations/Transfers/Personal		£9,800
	Occasional Licences	£15,140
	Total	£175,330

Direct Staff Costs²:

Licensing Standards Enforcement Officers		£26,052
	Licensing Services	£45,688
	Legal Services	£73,010
	Total	£144,750

Other Direct Costs³:

	Board Members	£3,718
	Transport Costs, Members	£0
	Transport Costs, Officers	£0
	IT Software Licences	£2,981
	Postages	£3,775
	Committee Members	£744
	Total	£11,218

Indirect Costs⁴:

Apportionment of central admin costs		£23,710
Net Income – Expenditure		- £4,348

Notes:

1. Denotes income from applications and annual fees received under the Licensing (Scotland) Act 2005
2. Denotes salary, superannuation, national insurance and pension costs associated with the Clerk, Licensing Standards Officers and other Council legal and licensing staff responsible for support to the Board under paragraph 8 of Schedule 1 to the Licensing (Scotland) Act 2005.
3. Denotes direct budgetary costs associated with the exercise of the Licensing Board function.
4. Figures exclude any apportionment of central costs such as accommodation, ICT, financial services, catering, telephone calls, printing, stationery and equipment, etc that are expended towards the Council's statutory duty to provide the Licensing Board function.