

# **THE ABERDEENSHIRE LICENSING BOARD**

**REPORT TO LICENSING BOARD HEARING – 22<sup>nd</sup> February 2023**

**LICENSING (SCOTLAND) ACT 2005**

**Section 28**

**DETERMINATION AS TO WHETHER PREMISES LICENCE HAS CEASED TO HAVE EFFECT - HEARING**

**Sections 36 - 40**

**APPLICATION FOR REVIEW OF PREMISES LICENCE - HEARING**

## **1. Executive Summary/Recommendations**

- 1.1. This report relates to a request for a review of a premises licence in terms of Section 36(1) of the Licensing (Scotland) Act 2005 (“the 2005 Act”) which is a matter which can only be determined by the Licensing Board.
- 1.2. As a preliminary matter, the Board is being asked to determine whether the relevant premises licence has ceased to have effect in terms of Section 28 of the 2005 Act.
- 1.3. Should the Board determine the premises licence has ceased to have effect, no further action will be taken.
- 1.4. Should the Board determine that the premises licence still has effect, the Board will continue to consider the request for review of the premises licence and determine the request in line with the Legal Test set out in this Report.

### **Recommendation**

- 1.5. **It is recommended that the Board considers the materials before them and –**
  - (a) **Determines whether there is enough evidence before the Board to allow a determination to be made, or whether the Board needs to defer consideration of the matter to the next available Board meeting; and**

- (b) **Where the Board has concluded that there is sufficient evidence before them to allow a determination to be made:**

**FIRST: Preliminary Matter**

- (i) **Determine whether the premises licence has ceased to have effect in terms of Section 28 of the 2005 Act.**

**If the Board determines the licence has ceased to have effect, no further action requires to be taken as the licence will no longer exist**

**SECOND: Review of Premises Licence**

**Where the Board has determined that the licence continues to have effect, the Board should consider the request for review of the Licence as attached at Appendix 1 to this Report and consider -**

- (i) **If any of the grounds for review have been established; AND**
- (ii) **Where any of the grounds for review have been established what steps require to be taken under Section 39(2) of the Act.**
- (c) **Determines whether the Board requires to hold any hearing in terms of Section 84 of the Act in respect of any personal licence holder working at the premises where appropriate to do so.**

**2. Purpose and Decision-Making Route**

2.1. Sarah Ward, Licensing Standards Officer lodged an application for review of a premises licence by letter dated 26<sup>th</sup> January 2023. The application seeks the review of the premises licence for The Masons Arms Hotel, 1 Castle Street, Rosehearty, AB43 7JJ. A copy of the review application is attached as **Appendix 1** to this Report and referred to for its terms.

2.2. The grounds for review submitted by the LSO are:-

- i. Failure to pay Annual fee per Schedule 3 paragraph 10 of the Licensing (Scotland) Act 2005;

- ii. Failure to comply with Section 14 (2) (a) (i) of the Act, Compliance notice served 2<sup>nd</sup> November 2022;
  - iii. Premises ceased to have effect under S28 (5)(b) of the Licensing (Scotland) Act 2005 and Licensing Boards Policy statement (supplementary Policy 6, para 6.13)
- 2.3. The Masons Arms Hotel, 1 Castle Street, Rosehearty, AB43 7JJ is the subject of premises licence No AB-N-P006. The premises licence holder is DD and DS Limited, 9 Loch Street, Rosehearty, AB43 7JT. The Company has been the premises licence holder since 1<sup>st</sup> September 2009. The Designated Premises Manager named on the licence is David Dougal Whyte, 9 Loch Street, Roshearty, AB43 7JT. His Personal Licence Number is AB-N-385.
- 2.4. A copy of the premises licence is attached as **Appendix 2** to this Report.
- 2.5. A copy Mr Whyte's Personal Licence is attached as **Appendix 3** to this Report.
- 2.6. A copy of the review application was forwarded to the Licence Holder on 7<sup>th</sup> February 2023.
- 2.7. This matter has not been considered by the Board previously.

### **3. Discussion**

#### **Preliminary Matter**

- 3.1. Email correspondence from the LSO indicates that the premises appears to have ceased trading since at least the Spring of 2022. To date there has been no formal surrender of the licence.
- 3.2. Section 28(5) of the 2005 Act provides that a premises licence ceases to have effect where the premises cease to be used for the sale of alcohol.
- 3.3. Section 298 of the Act is silent as to how long premises must be closed in order that the licence is deemed to no longer be of effect. However, the Board's current Statement of Licensing Policy; Supplementary Policy 6 states at paragraph 6.3 –

***“Where any premises ceases to be used for the sale of alcohol for a period of more than three months, the Board will conclude that the licence has ceased to have effect in terms of Section 28 of the Act. A new premises licence will be required before alcohol can be sold from the premises. The Board will consider each case on its own merits. This period may be extended if circumstances arise that merit this. Licence Holders should request extensions in writing to the Board and should outline the reasons the extension is sought. All requests will be considered by the Board.”***

- 3.4. As at the date of writing this report, the premises has not traded for a period equating to more than three months. No request for an extension or explanation for the premises closure has been forthcoming from the licence holder. The Board is therefore invited to make a finding that the premises licence has ceased to have effect in terms of Recommendation 1.5.b.(i) of this Report.
- 3.5. Where the Board so decides, the request for review of the premises licence will fall as there will no longer be a premises licence in effect to review.

#### **Review of Premises Licence**

- 3.6. Where the Board determines that the premises licence is in fact still in effect it is recommended that the Board proceeds to consider the application for review of the premises licence and:
- (a) Considers if any of the grounds of review have been established; and
  - (b) If so established, what steps, if any, require to be taken as per Recommendation 1.5.(b)(ii), (iii) of this Report.
- 3.7. Payment of the annual fee is a mandatory condition of a premises licence. Where an LSO believes that a condition of licence has been breached, he/she may service a notice on the Licence Holder under Section 4(2) of the 2005 Act requiring such action to be taken to remedy the breach as may be specified in the notice.

- 3.8. If the Licence Holder fails to take the action specified in the Section 4(2) notice, the LSO may make an application for review of the licence on the grounds that one of the conditions of the licence has been breached. The Board MUST hold a hearing to determine the review application.
- 3.9. The LSO's letter of 26<sup>th</sup> January 2023 advises that a ground of review of the premises licence is that one of the conditions of the premises licence has been breached, namely that the Licence Holder has failed to pay the annual fee of £220.00. This ought to have been paid by 1<sup>st</sup> October 2022. Part 4 of the LSO's letter narrates the steps that have been taken to try to ensure that the annual fee is paid. The final step was the issue of a Compliance Notice under Section 14(2) of the 2005 Act on 16<sup>th</sup> November 2022 which gave the Licence Holder a further 7 days to make payment, failing which an application for review of the licence would be brought before the Board. A copy of the Compliance Notice is included in the Application for Review which forms **Appendix 1** to this Report. The Compliance Notice was sent by recorded delivery mail and has not been responded to.

### **Consultations**

- 3.10. In terms of Section 38(4) of the Act, where not the person seeking the review application, the Licensing Standards Officer must prepare and submit a report to the Board on the premises licence review proposal.
- 3.11. No consultations have taken place in respect of this review application, it having been submitted by the Licensing Standards Officer.

### **Legal Test**

- 3.12. The Legal Test forms **Appendix 4** to this Report.

### **The Board's Powers**

- 3.13. If the Board is not satisfied that a ground of review is established then no action can be taken.

3.14. Where the Board is satisfied that a ground of review is established under Section 39(1) of the 2005 Act (whether or not on the basis of any circumstances alleged in the premises licence review proposal/application considered at the hearing) the Board may take any of the following steps as the Board considers necessary or appropriate for the purposes of any of the licensing objectives:-

- (a) **Issue a Written Warning.** Where a written warning is given, the licence holder can continue to trade under the terms of his premises licence as currently granted;
- (b) **Vary the terms of the Licence:** Where a variation of the licence is made, the licence holder can continue to trade under the terms of the varied premises licence
- (c) **Suspend the licence for such period as the Board sees fit.** Where the Board suspends the licence, the licence holder cannot trade for the duration of the suspension.
- (d) **Revoke the Licence.** Where the Board revokes the licence, there is no longer a premises licence that can be traded.

3.15. The Board may also make a finding in terms of Section 84 of the Act in respect of any personal licence holders who are or were working in the licensed premises in respect of which the premises licence was issued acted in a matter which was inconsistent with any of the licensing objectives and call for a Hearing to consider whether the personal licences held by those persons should be revoked, suspended or endorsed as per Recommendation 1.5(c) of this Report. To that end, the Designated Premises Manager has also been informed of the review application and has a right to be in attendance, but not take part in, the premises licence review hearing.

3.16. The Licence Holder has the right to appeal any of the decisions made by the Board with regard to the premises licence.

## **Procedure**

- 3.17. The review of premises licence should be considered on its own merits.
- 3.18. The Licence Holder, Chief Constable, and the Licensing Standards Officer have been invited to attend the Hearing by letter dated 7<sup>th</sup> February 2023. Notices included a copy of this report, the Legal Test and the Board's Guidance on procedures for Hearings.
- 3.19. The Designated Premises Manager has also been invited to attend the Hearing as the outcome of the Hearing may affect his personal licence.
- 3.20. Members should follow the procedure outlined at **Appendix 5** to this Report.
- 3.21. In terms of the Board's procedure, any documentation/written submissions lodged by any of the parties, will be circulated to Members and all parties prior to the meeting taking place, where it is possible to do so. Such written documentation/submissions will form **Appendix 6** to this Report, if submitted.
- 3.22. When coming to a decision the Board must consider the evidence provided and the contents of the legal test. Supplementary advice and information can be made available by Officers, if required.

#### **4. Priorities, Implications and Risk**

- 4.1 The Board must determine this matter on its own merits in accordance with the legal test set out in the relevant legislation. The Board is a separate legal entity to Aberdeenshire Council and therefore the Council's priorities do not apply to this report.
- 4.2 The table below shows whether risks and implications apply if the recommendations are agreed:

**Table 1 Risks and Implications**

<b>Subject</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
Financial		X	
Staffing		X	
Equalities and Fairer Scotland Duty		X	
Children and Young Peoples'		X	

Rights and Wellbeing			
Climate Change and Sustainability		X	
Health and Wellbeing		X	
Town Centre First		X	

4.3 An Integrated Impact Assessment (“IIA”) has not been carried out as the application for review has not identified any issues that would fall within the remit of the IIA and the Board must determine this matter in line with the legal test.

4.4 There are no staffing and financial implications.

4.5 There are no Risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Licensing Board is considering the application as the Licensing Authority in a quasi-judicial role and must determine each application on its own merits in accordance with the legal tests set out in the relevant legislation.

4.6 The Town Centre Principle does not apply in respect of this matter as the Board is considering the applications as Licensing Authority in a quasi-judicial role and must determine the applications on their own merits in accordance with the legal tests set out in the relevant legislation

## 5 Governance

5.1 In terms of paragraph 1.11 of Part 1 of the Boards’ current approved Scheme of Delegation, such hearings are a matter reserved to the Licensing Board.

**Karen Wiles**  
**Clerk to the Board**

**Report Prepared by Fiona M Stewart, Senior Solicitor (Governance), Depute Clerk to the Board**  
**Date: 7<sup>th</sup> February 2023**  
**File Reference: LAPREM/419/08**

### Appendices

**Appendix 1 – Application for Review of Premises Licence**

**Appendix 2 – Copy Premises Licence**

**Appendix 3 – Copy Personal Licence of Designated Premises Manager**

**Appendix 4 – Legal Test**

**Appendix 5 – Procedure**

**Appendix 6 – Written Submissions**



**APPENDIX 1**

**Copy Application For Review of Premises Licence**

Our Ref: SMW / LAPREM/419/08  
Ask for: Sarah Ward  
Direct Dial: [REDACTED]  
Email: [REDACTED]

Infrastructure Services  
Environmental Health  
St Leonards  
Sandyhill Road  
Banff  
AB45 1SD  
www.aberdeenshire.gov.uk  
DX 521328 Banff

The Depute Clerk  
Aberdeenshire Licensing Board

26.01.2023

Dear Sirs,

**Premises Licence Review Application-  
In Terms of Sec 36 (4)(b) Licensing (Scotland) Act 2005**  
**Sirs DD & DS Limited, AB-N-P006 - The Masons Arms Hotel, 1 Castle Street,  
Rosehearty, Aberdeenshire, AB43 7JJ**

### **1. Grounds for Review**

It is the view of the Civic Licensing Standards Officer that the following grounds for a board review exist:

- (i) Failure to pay Annual fee per Schedule 3 paragraph 10 of the Licensing (Scotland) Act 2005;
- (ii) Failure to comply with Section 14 (2) (a) (i) of the Act, Compliance notice served 2<sup>nd</sup> November 2022;
- (iii) Premises ceased to have effect under S28 (5)(b) of the Licensing (Scotland) Act 2005 and Licensing Boards Policy statement (supplementary Policy 6, para 6.13)

### **2. Previous premises Licence Review Applications:**

None.

### **3. Background to Premises:**

- (i) The current premises licence holder applied, during transition from the '76 Act to the 2005 Act for a premises licence; said licence was granted by North Aberdeenshire Licensing Board , with Grand Father rights, and the licence was granted with effect from 1<sup>st</sup> September 2009. Said Ltd company were incorporated in 2008 with registered address as 9 Loch Street, Rosehearty, Aberdeenshire. AB43 7JT, with Debbie Whyte as Secretary and David Dougal Whyte as Director.
- (ii) No application has been lodged to vary the premises licence, since date of grant.

### **4. History of Premises – Failure to pay Annual Fees**

On the 1<sup>st</sup> September 2022, The licensing wrote Sirs DD & DS Limited to advise that in terms of paragraph 7 (2) of the Licensing (Fees)(Scotland)

Regulations 2007 the annual fee in respect of the premises was due no later than 1<sup>st</sup> October 2022. The fee due is £220.00, based on a rateable value for the premises of £9000.00.

**Copy of letter attached. [A]**

On 13<sup>th</sup> October 2022, Sarah Ward, Civic Licensing Standards Officer, wrote by email to DD & DS Ltd to advise them that we were experiencing technical difficulties with the online payments, and alternative options to resolve, if applicable.

**Copy of email attached. [B]**

Following no response, on the 2<sup>nd</sup> November 2022, Sarah Ward, Civic Licensing Standards Officer, wrote to DD & DS Ltd, advising that the annual fee had still not been paid. The letter (emailed and sent recorded delivery) reiterated non-compliance with Schedule 3 para 1 of the Licensing (Scotland) Act 2005 may result in revocation of the licence. The letter gave a further 7 days to pay. If not paid a compliance notice would be served under Section 14(2)(a) of the Act. Guidance was also provided in terms of the licensing boards policy in respect of where the premises ceases to be used for the sale of alcohol.

**Copy of non-compliant letter attached and confirmation of letter being signed for on the 3<sup>rd</sup> November 2022. [C]**

Again, following no acknowledgement by email, On 16<sup>th</sup> November 2022, Sarah Ward, Civic Licensing Standards Officer, once again wrote to DD & DS Ltd (recorded delivery) In this letter she advised that from the records it appeared that the annual fee of £220.00 remained outstanding. On this occasion she issued along with the letter, a Compliance Notice under Section 14(2)(a) of the Act. This notice gave the Licence Holder a further 7 days to make payment or result in a review hearing at the meeting of Aberdeenshire Licensing Board. The letter and compliance notice were sent to 9 Loch Street, Rosehearty, recorded delivery.

**Copy of Letter, Compliance Notice attached. Unfortunately, we've been unable to trace if received via Royal Mail, and letter not returned. [D]**

**To date the fee remains outstanding**

## **5. Conclusion and recommendation**

The premises licence holder has failed to comply with several requests to pay the annual fee, which is a mandatory condition under Schedule 3 para 10 of the Licensing (Scotland) Act 2005. Further to these requests, a Compliance notice was served on DD & DS Limited, under Section 1(2)(a) of the Act, also not complied with. In addition, supplementary Policy 6 para 6.13 indicates that a premises ceases to have effect if it is no longer used for the sale of alcohol.

It appears that the premises have been closed for some time – I've been unable to identify when the premises last traded, however several visits were carried out early spring 2022 and summer 2022, identifying the premises closed, with no sign of trading. The Licence Holder has been provided guidance in terms of the licensing

boards policy in terms of closure, however, to date the licence holder has not responded nor have the premises licence holders been in contact with the Licensing Team.

Considering all of the above, I recommend that the premises licence be revoked.

Yours sincerely,



**Sarah Ward**  
Civic Licensing Standards Officer

**If you have difficulty reading this document, please contact  
Sarah Ward** 

Enc: various email / letters of non-compliance and Section 14  
Notice

[A]



Case Ref LAPREM/419/08

Legal and People  
Viewmount  
Arduathie Road  
Stonehaven  
AB39 2DQ

Sirs DD & DS Limited  
The Masons Arms Hotel  
1 Castle Street  
Rosehearty  
Aberdeenshire  
AB43 7JJ

[www.aberdeenshire.gov.uk](http://www.aberdeenshire.gov.uk)

Email [licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk)

1 September 2022

Dear Licence Holder,

**ANNUAL FEE**  
**LICENCE NUMBER: AB-N-P006**  
**LICENCE HOLDER: SIRSD & DS LIMITED**  
**PREMISES: MASONS ARMS HOTEL**

I refer to the above premises and write to advise that in terms of paragraph 7(2) and (3) of the Licensing (Fees) (Scotland) Regulations 2007 the annual fee in respect of the premises is due no later than **1 October each year.**

**The annual fee due for the premises is £220.00.**

The annual fee is based on the rateable value for the premises (unless the premises are clubs/visitor attractions/private accommodation). Please notify the Board immediately if you believe that the record we have is not the correct rateable value for the premises.

Paragraph 10 of the Mandatory Conditions requires payment of the annual fee for the year ahead by 1 October. Failure to make this payment will result in contact from the Licensing Standards Officer and may result in a review of the licence for a failure to comply with a mandatory condition.

You must therefore ensure that the annual fee is paid by 1 October at the latest. No invoice will be issued.

#### **How to Pay**

**Online payment using a debit or credit card is the quickest and most convenient method.** If using this method please go the following web address:-

- [www.aberdeenshire.gov.uk](http://www.aberdeenshire.gov.uk)
- Click on the word "Pay"
- At the bottom of the list click on "Liquor licence annual fee"
- Complete your details on screen

**If you have difficulty reading this document, please contact**  
**[licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk)**

*Serving Aberdeenshire from mountain to sea – the very best of Scotland*

If you are unable to pay online please contact [licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk) and we will arrange a telephone payment or provide you with the details for a BACS transfer.

If you wish to pay via bank transfer, please ensure that you advise us when the payment has been made, and let us know the reference used, so we can track your payment.

**Please be aware that Aberdeenshire Council no longer accept cash or cheque payments.**

Yours faithfully,

**The Licensing Team**

**From:** Sarah Ward [REDACTED]  
**Sent on:** Friday, September 16, 2022 2:07:17 PM  
**To:** Masons Arms [REDACTED]  
**Subject:** ACTION - Closure Masons Arms Roseheartly AB-N-P006  
**Urgent:** High

**Follow up:** Follow up  
**Start date:** Thursday, January 26, 2023 12:00:00 AM  
**Due date:** Thursday, January 26, 2023 12:00:00 AM

Good Afternoon Debbie & David,  
I note I've not received a response from yourselves in respect of your intentions for the premises licence held; as you'll be aware licensing have issued licence holders their reminders for annual fee payments.

I refer to my email below, with relevant guidance, please confirm your intentions?

Thanks in Advance,  
Regards  
Sarah

Sarah Ward  
Civic Licensing Standards Officer

**From:** Sarah Ward  
**Sent:** 08 August 2022 14:54  
**To:** Masons Arms [REDACTED]  
**Subject:** ACTION - Closure Masons Arms Roseheartly AB-N-P006  
**Importance:** High

Good Afternoon David & Debbie,

I note that the premises have been closed for sometime, as I've visited on a number occasions, latterly on Saturday evening; I note there is no record of closure against the premises licence held by Aberdeenshire Licensing Board.

In terms of the premises licence held for the premises, the licensing boards policy states the following:

6.13

*"Where any premises ceases to be used for the sale of alcohol for a period of more than three months, the relevant Board will conclude that the licence has ceased to have effect in terms of Section 28 of the Act. A new premises licence will be required before alcohol can then be sold from the premises. The relevant Board will consider each case on its own merits. This period may be extended if circumstances arise that merit this. Licence Holders should request extensions in writing to the relevant Board and should outline the reasons the extension is sought. All requests will be considered by the licensing Board."*

As you will be aware your Annual Fee will be due soon and letters of reminder will be sent; If it is your intentions to remain closed, then you will need to write to the licensing boards, explaining your circumstances, in order for them to consider your extension.

I suggest you write to them as soon as possible by email to [licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk) outlining the current status and your intentions for the premises.

Alternatively, you may surrender the premises licence, the please confirm this by email to [licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk) and return the premises licence to Stonehaven.

Any queries, please do not hesitate to contact me.

Kind Regards,  
Sarah

Sarah Ward  
Civic Licensing Standards Officer



Contactable by:

Guidance / Application forms.

 [Licensing - Aberdeenshire Council](#)  [Environmental Health - Aberdeenshire Council](#)

To Lodge Licensing Applications Liquor or Civic, please email [licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk) or for the following applications, please use our online system:

**Occasional Licence** [Occasional licence to sell alcohol - Aberdeenshire Council](#)

**Personal Licence Grant and Renewal** [Personal licence to sell alcohol - Aberdeenshire Council](#)



[B]

**From:** Sarah Ward  
**Sent:** 13 October 2022 10:01  
**Subject:** ACTION - Annual Fee Reminder 2022/2023  
**Importance:** High

Good Morning,

Schedule 3 paragraph 10 of the Licensing (Scotland) Act 2005 – Payment of Annual Fees.

As many of you may have noticed we are having technical difficulties with the online payment system for 2022/2023 Annual Liquor Licensing Fees.

I am currently unable to trace the annual fee payment which was due by 1<sup>st</sup> October 2022. It may be that you've already made payment and therefore I ask if you can confirm when and how the payment was made e.g. date and reference to the receipt number.

If payment has not been made please go to - [www.aberdeenshire.gov.uk](http://www.aberdeenshire.gov.uk)

- Click on the word "Pay"
- At the bottom of the list click on "Liquor Licence Annual Fee"
- Complete your details on screen

Should you wish to pay by telephone then please contact [licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk) providing a number they can contact you on.

Please give this your immediate attention; if payment is not received within 7 days, then we have no choice but to follow the formal procedures for issuing a letter of non-compliance, in terms of a breach in mandatory conditions - Schedule 3 paragraph 10 of the Licensing (Scotland) Act 2005.

Thanks in advance,  
Sarah  
Sarah Ward  
Civic Licensing Standards Officer



Contactable by:  
Guidance / Application forms:

 [Licensing - Aberdeenshire Council](#)  [Environmental Health - Aberdeenshire Council](#)

To Lodge Licensing Applications Liquor or Civic, please email [licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk) or for the following applications, please use our online system:

**Occasional Licence** [Occasional licence to sell alcohol - Aberdeenshire Council](#)

**Personal Licence Grant and Renewal** [Personal licence to sell alcohol - Aberdeenshire Council](#)

[C]

**From:** Sarah Ward  
**Sent:** 02 November 2022 09:44  
**To:** Masons Arms [REDACTED]  
**Subject:** ACTION - Masons Arms, Rosehearty - Annual Fees - Non Compliant  
**Importance:** High

Good Morning Sirs DD & DS Limited,

To date we've been unable to trace payment for Annual Fees; previous email correspondence has been sent with no response. The non compliant letter and copy of Annual Fee Reminder has been sent by post today to the licence holder directly to the premises.

Please Read the letter carefully and confirm your intentions for the premises.

Any queries, regarding said matter please do not hesitate to contact either myself or [licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk)

Regards,  
Sarah

Sarah Ward  
Civic Licensing Standards Officer  
[REDACTED]

Contactable by: [REDACTED]  
Guidance / Application forms.

 [Licensing - Aberdeenshire Council](#)  [Environmental Health - Aberdeenshire Council](#)

To Lodge Licensing Applications Liquor or Civic, please email [licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk) or for the following applications, please use our online system:

**Occasional Licence** [Occasional licence to sell alcohol - Aberdeenshire Council](#)

**Personal Licence Grant and Renewal** [Personal licence to sell alcohol - Aberdeenshire Council](#)



Our Ref SMW / LAPREM/419/08

Licence Holder  
Sirs DD & DS Limited  
The Masons Arms Hotel  
1 Castle Street  
Rosehearty  
Aberdeenshire  
AB43 7JJ

Environment and Infrastructure  
**Environmental Health**  
St Leonards  
Sandyhill Road  
Banff  
AB45 1SD  
Telephone: [REDACTED]

[www.aberdeenshire.gov.uk](http://www.aberdeenshire.gov.uk)

Please ask for Sarah Ward  
Direct [REDACTED]  
Email [REDACTED]

02.11.2022

Dear Licence Holder,

**Licensing (Scotland) Act 2005, Annual Fee Payment  
The Masons Arms, Rosehearty AB-N-P006**

I refer to the above premises and write to advise that in terms of paragraph 7(2) of the Licensing (Fees) (Scotland) Regulations 2007 the annual fee in respect of the premises has not been paid by **01/Oct/2022**. The outstanding fee due is £220.00, you are now required to pay the fee within 7 days of the date of this letter.

Paragraph 10 of the Mandatory Conditions to which the premises licence is subject require payment of the annual fee by 01 October. Failure to make this payment will result in a review of the licence for failure to comply with a mandatory condition which may result in an immediate revocation of the licence.

If the above contravention remains un-resolved, I shall issue the premises with a Section 14(2) (a) compliance Notice.

I note the premises have been closed for some time and it may not be your intentions to keep the premises licence live; therefore, you will not need to pay your Annual Fee.

However, if it's your intentions to pay your annual fee, then you must request an extension of closure: you must communicate this with us; To date Licensing nor I, have had any form of communication from yourselves and I have emailed several times.

In /

In terms of the premises licence held for the premises, the licensing boards policy states the following:

6.13 *"Where any premises ceases to be used for the sale of alcohol for a period of more than three months, the relevant Board will conclude that the licence has ceased to have effect in terms of Section 28 of the Act. A new premises licence will be required before alcohol can then be sold from the premises. The relevant Board will consider each case on its own merits. This period may be extended if circumstances arise that merit this. Licence Holders should request extensions in writing to the relevant Board and should outline the reasons the extension is sought. All requests will be considered by the licensing Board."*

Alternatively, you may surrender the premises licence, if this is your intentions, then please confirm this by email to [licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk) and return the premises licence to Stonehaven.

I will be happy to offer advice or guidance on remedying the matters but would also recommend that you consider taking legal advice if you have any concerns about the matters being raised.

PLEASE SEE PAYMENT OPTIONS IN ATTACHED LETTER, SENT BY THE LICENSING DEPARTMENT ON THE 1/09/2022 by email.

Should you wish to make representation to my line manager (Keith Simpson, Senior Licensing Standards Officer, Viewmount, Arduthie Road, Stonehaven, AB39 2DQ. [REDACTED] you should do so within two weeks from receipt of this letter.

If you require any further information or advice, please do not hesitate to contact me at the above address.

Yours sincerely,

[REDACTED]

Sarah Ward  
Civic Licensing Standards Officer

cc: email copy sent 2.11.2022

Enc. Copy of letter reminder letter.

Licence Holder  
Sirs DD & DS Limited  
The Masons Arms Hotel  
1 Castle Street  
Rosehearty  
Aberdeenshire  
AB43 7JJ



[D]



Our Ref: SMW/ LAPREM/419/08  
Ask for: Sarah Ward  
Direct Dial: [REDACTED]  
Email: [REDACTED]

Environment and Infrastructure  
**Environmental Health**

St Leonards  
Sandyhill Road  
Banff

AB45 1SD

Telephone: [REDACTED]

[www.aberdeenshire.gov.uk](http://www.aberdeenshire.gov.uk)

Licence Holder  
Sirs DD & DS Limited  
The Masons Arms Hotel  
1 Castle Street  
Rosehearty  
Aberdeenshire  
AB43 7JJ

16 November 2022

Dear Licence Holder,

**NOTICE IN TERMS OF SEC 14 LICENSING (SCOTLAND) ACT 2005  
LICENSING (SCOTLAND) ACT 2005 - ANNUAL FEE PAYMENT**

**The Masons Arms, Rosehearty AB-N-P006**

Further to our letters dated 2nd September and reminders by emails, our records show the payment of £220.00 remains outstanding. It may be your intentions to surrender the premises licence, however you must communicate this with the licensing board; or request a extension to closure with explanation, which the board will consider, ref previous correspondence.

As a result of non-payment of Annual Fees, you have continued to fail to comply with Schedule 3, paragraph 10 of the Licensing (Scotland Act 2005), which contains details of the mandatory conditions attached to your premises licence. As such, I am now issuing you, as premises licence holder, with a Section 14(2)(a) compliance notice. Details of the breach are contained within the notice along with action required to remedy the situation.

**How to Pay**

**Online payment using a debit or credit card is the quickest and most convenient method.** If using this method, please go the following web address:-

- [www.aberdeenshire.gov.uk](http://www.aberdeenshire.gov.uk)
- Click on the word "Pay"
- At the bottom of the list click on "Liquor licence annual fee"
- Complete your details on screen

**If you are unable to pay online, please contact [licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk) and we will arrange a telephone payment or provide you with the details for a BACS transfer. If you wish to pay via bank transfer, please ensure that you advise us when the payment has been made, and let us know the reference used, so we can track your payment.**

**Please be aware that Aberdeenshire Council no longer accept cash or cheque payments.**

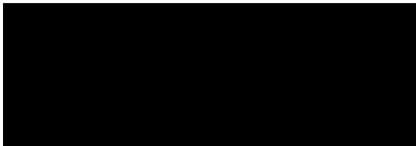


Further failure to comply with this notice will result in the premises licence being subject to a review hearing at the next meeting held by Aberdeenshire Licensing Board, in December. At the hearing the Licensing Board may consider one of the following steps:

1. issue a written warning
2. make a variation
3. suspend the licence for a period
4. to revoke the licence

You may also wish to take legal advice as, potentially your premises licence could be at risk

Yours faithfully,



Sarah Ward  
Civic Licensing Standards Officer

**If you have difficulty reading this document, please contact  
Sarah Ward [redacted]**





**LICENSING (SCOTLAND) ACT 2005  
COMPLIANCE NOTICE UNDER SECTION 14**

Notice is hereby given in terms of Section 14 (2)(a)(i) of the above Act and is issued by Lisa Godini being a Licensing Standards Officer for Aberdeenshire Central Licensing Board.

This notice requires action to be taken by the Licence Holder to remedy the breaches of the licensing conditions outlined below to which the Premises Licence is subject. Failure to do so to the satisfaction of the Licensing Standards Officer within the time allowed for compliance (if any) will result in an application to Aberdeenshire Central Licensing Board for a review of the Premises Licence.

<b>Premises Licence Holder &amp; Licence No:</b>	Sirs DD & DS Limited AB-N-P006
<b>Premises Subject to Notice:</b>	Masons Arms Hotel, 1 Castle Street, Rosehearty, AB43 7JJ
<b>Date &amp; Time Issued:</b>	16/11/2022 (AM)
<b>Premises Manager Details:</b>	Deborah White
<b>Manner of service:</b>	By Post (Recorded)
<b>Details to Whom Issued:</b>	Sirs DD & DS Limited

**Details of Breach of Condition and Remedy**  
*Licensing Standards Officer should detail the condition(s) breached and describe the remedial action required to be taken in order to comply with this notice. \**

Mandatory Conditions.

**Schedule 3 paragraph 10 of the Licensing (Scotland) Act 2005**

Remedy

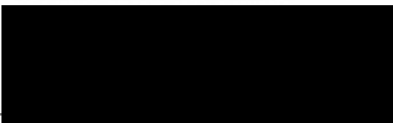
Make payment of the outstanding annual fee - £220.00 within 7 days from date of this notice.

Payment can be made in any of the following methods:  
Online, telephone or at one of the Aberdeenshire Council Service Points.

Where possible, we would encourage you to pay online at the undernoted website address.  
<http://www.aberdeenshire.gov.uk>

**REQUIREMENT TO COMPLY**

<b>With Immediate Effect:</b>	<b>NO</b>
<b>(or) Comply By:</b>	<b>Date: 7 days from date of the attached letter</b>

<b>Licensing Standards Officer (Print Name &amp; Signature)</b>	<b>Notice Received by (Print Name &amp; Signature)</b>
Sarah Ward, 	



Licence Holder  
Sirs DD & DS Limited  
The Masons Arms Hotel  
1 Castle Street  
Rosehearty  
Aberdeenshire  
AB43 7JJ



**APPENDIX 2**

**Copy Premises Licence**

## PREMISES LICENCE

Issued by – North Aberdeenshire Divisional Licensing Board – under the terms and conditions of the Licensing (Scotland) Act 2005.

<b>Premises Licence Number</b>	<b>AB-N-P006</b>
--------------------------------	------------------

<b>Date of Commencement of Licence</b>	<b>1 September 2009</b>
----------------------------------------	-------------------------

<b>Postal Address of Premises</b>	<b>Masons Arms Hotel 1 Castle Street Rosehearty</b>
<b>Postcode AB43 7JJ</b>	<b>Telephone Number</b>

**Description of Premises:**  
The premises are a rural hHotel with a function room, situated on the outskirts of a village

**Licensed Hours**

	CORE LICENSED HOURS APPLIED FOR	
	On Sale	Off Sale
<b>Monday</b>	11.00 a.m. - 11.00 p.m.	N/A - N/A
<b>Tuesday</b>	11.00 a.m. - 11.00 p.m.	N/A - N/A
<b>Wednesday</b>	11.00 a.m. - 11.00 p.m.	N/A - N/A
<b>Thursday</b>	11.00 a.m. - 12.30 a.m.	N/A - N/A
<b>Friday</b>	11.00 a.m. - 1.00 a.m.	N/A - N/A
<b>Saturday</b>	11.00 a.m. - 1.00 a.m.	N/A - N/A
<b>Sunday</b>	11.00 a.m. - 12 midnight	N/A - N/A

**Notes:**

**Name and postal address (or registered address if a company), telephone number and email (where relevant) of holder of premises licence**

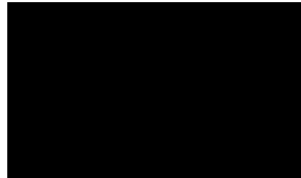
**DD & DS Limited  
The Masons Arms Hotel  
1 Castle Street  
Rosehearty  
Aberdeenshire  
AB43 7JJ**

**Registered number of premises licence holder, e.g. company number, charity number (where applicable)**

**SC337893**

**Name, postal address and telephone number of premises manager named in the operating plan**

**David Dougal Whyte**



**Number of the personal licence held by the premises manager named in the operating plan and the name of the issuing Licensing Board**

**AB-N-385**

**Aberdeenshire North Licensing Board**

## Licence Conditions

The Mandatory Conditions set out in Schedule 3 of the Licensing (Scotland) Act 2005 (as amended) apply to this licence.

The following sections of the Board's local conditions apply to this licence:-

- General Management
- Noise
- Children

The Mandatory Conditions are attached as Appendix 1 to this Licence.  
Any Local Conditions are attached as Appendix 2 to this Licence.

This premises licence was granted on the undernoted date:-

Date: 26<sup>th</sup> June, 2008

Fiona M. Stewart

Depute Clerk to the Board

## Appendix 1

### **Mandatory Conditions for Premises Licences – Schedule 3 of the Licensing (Scotland) Act 2005 (as amended) – with effect from 1st October 2011**

#### **Interpretation**

1. In these conditions, “the premises” means, in relation to any premises licence, the premises specified in the licence.

#### **Compliance with the Operating Plan**

2.
  - (1) Alcohol is to be sold on the premises only in accordance with the operating plan contained in the licence.
  - (2) Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 63(2) of the Licensing (Scotland) Act 2005.
3. Any other activity to be carried on in the premises is to be carried on only in accordance with the operating plan contained in the licence.

#### **The Premises Manager**

4.
  - (1) Alcohol is not to be sold on the premises at any time when –
    - (a) There is no premises manager in respect of the premises,
    - (b) The premises manager does not hold a personal licence,
    - (c) The Personal licence held by the premises manager is suspended, or
    - (d) The licensing qualification held by the premises manager is not the appropriate licensing qualification in relation to the premises.
  - (2) In sub-paragraph (1) “appropriate licensing qualification” in relation to any licensed premises means any licensing qualification prescribes as such in relation to licensed premises of that description under Section 91(2)(d) of the Licensing (Scotland) Act 2005.
  - (3) Nothing in sub-paragraph (1) or paragraph 5 is to be read as requiring the premises manager to be present on the premises at the time any sale of alcohol is made.

**Authorisation of Sales of Alcohol**

5. Every sale of alcohol made on the premises must be authorised (whether generally or specifically) by –
- (a) The premises manager, or
  - (b) Another person who holds a personal licence.

**Training of Staff** <sup>1</sup>

- (6) (1) No person (other than a person who holds a personal licence) is to work in the premises in the capacity mentioned in sub-paragraph (2) unless that person has complied with such requirements as to the training of staff as may be prescribed for the purposes of this paragraph.
- (2) That is a capacity (whether paid or unpaid) which involves the person –
- (a) Making sales of alcohol, or
  - (b) Where alcohol is sold on the premises for consumption on the premises, serving such alcohol to any person
- (2A) At any time when a person (other than a person who holds a personal licence) is working in the premises in a capacity mentioned in sub-paragraph (2), there must be kept on the premises a training record which relates to that person and is in the form set out in the Schedule to the Licensing (Mandatory Conditions No 2)(Scotland) Regulations 2007.
- (2B) A record kept on the premises under sub-paragraph (2A) must be produced to a Licensing Standards Officer on request.
- (3) Regulations under sub-paragraph (1) prescribing training requirements may, in particular –
- (a) Provide for the accreditation by the Scottish Ministers of –
    - (i) Courses of training, and
    - (ii) Persons providing such courses,For the purposes of the Regulations,
  - (b) Prescribe different training requirements in relation to different descriptions of persons,

---

<sup>1</sup> Matters to be covered in training for staff are attached at the end. These are provided for in the Licensing (Training of Staff)(Scotland) Regulations 2007

- (c) Require that any person providing training or any particular description of training in accordance with the regulations hold a personal licence or such other qualifications as may be prescribed in the regulations, and
- (d) Require training to be undergone again at such intervals as may be prescribed in the regulations.

**Minimum Price of Packages Containing More than One Alcoholic Product**

6B

- (1) A package containing two or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the sum of the prices at which each alcoholic product is for sale on the premises.
- (2) Sub-paragraph (1) applies –
  - (a) Only where each of the alcoholic products is for sale on the premises separately, and
  - (b) Regardless of whether or not the package also contains any item which is not an alcoholic product.
- (3) In this paragraph “alcoholic product” means a product containing alcohol and includes the container in which alcohol is for sale.

**Pricing of Alcohol**

- 7. Where the price at which any alcohol sold on the premises for consumption on the premises is varied –
  - (a) The variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and
  - (b) No further variation of the price at which that or any other alcohol is sold on the premises for consumption on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.
- 7A Where the price at which any alcohol sold on the premises for consumption off the premises is varied –
  - (a) the variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and
  - (b) no further variation in the price at which that alcohol is sold on the premises may be brought into effect before the expiry of the



period of 72 hours beginning with the coming into effect of the earlier price variation.

**Irresponsible Drinks Promotions**

- 8.
- (1) An irresponsible drinks promotion must not be carried on in or in connection with the premises.
  - (2) Subject to sub-paragraph (3), a drinks promotion is irresponsible if it –
    - (a) Relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18
    - (b) Involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks),
    - (c) Involved the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink,
    - (d) Involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises),
    - (e) Encourages, or seeks to encourage, a person to buy or consume a large measure of alcohol than the person had otherwise intended to buy or consume,
    - (f) Is based on the strength of any alcohol,
    - (g) Rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or
    - (h) Offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.
  - (3) Paragraphs (c) to (e) of sub-paragraph (2) apply only to a drinks promotion carried on in relation to alcohol sold for consumption on the premises.
  - (4) The Scottish Ministers may by regulations modify sub-paragraph (2) or (3) so as to –
    - (a) Add further descriptions of drinks promotions,
    - (b) Modify any of the descriptions of drinks promotions for the time being listed in it, or
    - (c) Extend or restrict the application of any of those descriptions of drinks promotions.
  - (5) In this paragraph “drinks promotion” means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises.

**Provision of non-alcoholic drinks**

- 9.
- (1) The conditions specified in this paragraph apply only to the extent that the premises licence authorises the sale of alcohol for consumption on the premises.
  - (2) Tap water fit for drinking must be provided free of charge on request.
  - (3) Other non-alcoholic drinks must be available for purchase at a reasonable price.

**Requirement for Age Verification Policy**

9A

- (1) There must be an age verification policy in relation to the sale of alcohol on the premises.
- (2) An "age verification policy" is a policy that steps are to be taken to establish the age of a person attempting to buy alcohol on the premises ("the customer") if it appears to the person selling the alcohol that the customer may be less than 25 years of age (or such older age as may be specified in the policy).
- (3) The condition specified in this paragraph does not apply in relation to any sale of alcohol which takes place on the premises merely by virtue of being treated, by Section 139 of the Licensing (Scotland) Act 2005, as taking place on the premises.

**Payment of annual or recurring Fees**

- 10.
- (1) The condition specified in sub-paragraph (2) applies only in relation to a premises licence in respect of which an annual or other recurring fee is to be paid by virtue of regulations under Section 136(1) of the Licensing (Scotland) Act 2005.
  - (2) The fee must be paid as required by the Regulations.

**Notices – Admission of Persons under 18**

- 11.
- (1) The condition specified in this paragraph applies only in the case of premises on which alcohol is sold for consumption on the premises.
  - (2) There is to be displayed so that it is reasonably visible to customers entering the premises a sign of at least A4 size which  
–

- (a) States that person under the age of 18 are not permitted on the premises; or
- (b) States that such persons are permitted on the premises or on such parts of the premises as are specified on the sign.

**Baby Changing Facilities**

- 12.
- (1) The condition specified in this paragraph applies only in the case of premises –
    - (a) Which are not –
      - (i) A vehicle;
      - (ii) A vessel;
      - (iii) A moveable structure; or
      - (iv) Used wholly or mainly for the purposes referred to in Section 125(1) of the Licensing (Scotland) Act 2005;
    - (b) On which alcohol is sold for consumption on the premises; and
    - (c) To which children under the age of 5 are to be admitted.
  - (2) There are to be on the premises facilities for baby changing which are to be accessible to persons of either gender.

**Display, or Promotion of the sale, of Alcohol for Consumption off the Premises**

- 13.
- (1) Alcohol which is for sale only for consumption off the premises may be displayed only in one or both of the following –
    - (a) A single area of the premises agreed between the Licensing Board and the holder of the licence; or
    - (b) A single are of the premises which is inaccessible to the public.
  - (1A) Sub-paragraphs (1B) to (1D) apply where the premises, in so far as they are used for the sale of alcohol, are so used only or primarily for the sale of alcohol for consumption off the premises.
  - (1B) Any drinks promotion on the premises may take place only in any one or more of the following –
    - (a) an area referred to in sub-paragraph (1)(a) and (b),
    - (b) a room on the premises which is used for offering the tasting of any alcohol sold on the premises (for consumption off the

premises) and the resulting tasting and is separate from those areas.

(1C) A drinks promotion in connection with the premises may not take place in the vicinity of the premises.

(1D) For the purposes of sub-paragraph (1C), the “vicinity” means the area extending 200 metres from the boundary of the premises (as shown on the layout plan)

(2) In an area agreed in terms of sub-paragraph (1)(a), a product other than alcohol may be displayed only if it is –

- (a) A non-alcoholic drink; or
- (b) Packaged with, and may be purchased only along with, alcohol.
- (c) A branded non-alcoholic products, or
- (d) A newspaper, magazine or other publication.

(2A) Sub-paragraph (2) is without prejudice to sub-paragraph (1B).

(3) This paragraph does not apply in respect of premises –

- (a) whose main function is to provide a visitor attraction, and
- (b) where -
  - (i) the premises form part of a larger site which is used principally for the production of alcoholic drinks, or
  - (ii) the visitor attraction is used principally to provide information about and promote the history and attributes of a particular alcoholic drink or a particular category of alcoholic drink.

(4) In this paragraph –

“branded non-alcoholic product” means a product which does not consist of or contain alcohol and which –

- (a) bears a name or image of, or
- (b) is an image of,

an alcoholic product (namely, a product consisting of, or containing alcohol)

“drinks promotion” means any activity which promotes, or seeks to promote, the buying of any alcohol sold on the premises for consumption off the premises but does not include the display of any product which is –

- (a) a branded non-alcoholic product for sale on the premises, or

- (b) a newspaper, magazine or other publication –
  - (i) for the sale on the premises, or
  - (ii) if not for sale on the premises, which does not relate only or primarily to alcohol.

### **Late Opening Conditions**

#### **NOTES**

1. Paragraph 1. below **applies to all premises** open for a continuous period beginning on one day and ending after 1.00a.m on the following day.
2. Paragraphs 2 – 6 below **apply to premises** with a capacity of which is at least 250 people and which –
  - (a) Will regularly provide at any time in the period between 1.00a.m. and 5.00a.m.
    - (i) Live or recorded music with a decibel level exceeding 85dB;
    - (ii) Facilities for dancing; or
    - (iii) Adult entertainment; or
  - (b) When fully occupied, are likely to have more customers standing than seated.
3. Paragraphs 2-6 below **do not apply to premises** –
  - (a) The primary function of which is the service of food;
  - (b) Which include, or are part of large premises which include, at least 6 letting bedrooms;
  - (c) In respect of which a licence under section 12 of the Theatres Act 1968 or section 1 of the Cinemas Act 1985 is in force; or
  - (d) Which are, or are part of, an art gallery.

#### **CONDITIONS**

1. A person trained to the satisfaction of the Licensing Board in administering first aid must be present on the premises from 1.00a.m. (on any day when the premises are open at that time) until whichever is the earlier of
  - (a) The time at which the premises next close; and
  - (b) 5.00a.m.

2. A designated person who is the holder of a personal licence must be present on the premises from 1.00a.m. (on any day when the premises are open at that time) until whichever is the earlier of –
  - (a) The time at which the premises next close; and
  - (b) 5.00a.m. or such other time as the Licensing Board may specify.
3. There must be written policies in existence concerning
  - (a) The evacuation of the premises; and
  - (b) The prevent of the misuse of drugs on the premises.
4. A CCTV system must be installed on the premises to the satisfaction of the appropriate Chief Constable and must be kept in good working order.
5. There must be persons responsible for checking on the safety and wellbeing of persons using any toilet facilities on the premises.
6. A person who holds a licence granted under Section 8 of the Private Security Industry Act 2001 must be positioned at every entrance to the premises from 1.00a.m. (on any day when the premises are open at that time) until whichever is the earlier of –
  - (a) The time at which the premises next close; and
  - (b) 5.00a.m. or such other time as the Licensing Board may specify.

### **Matters to be Covered in Staff Training**

“Relevant training” means training of at least 2 hours’ duration which covers each of the matters listed below.

1. The legal basis of the requirement for training of staff under paragraph 6 of Schedule 3 to the Act.
2. The Licensing Objectives
3. The definition of “alcohol” in the Act.
4. What constitutes an unlicensed sale.
5. The functions of Licensing Standards Officers, including their powers of entry.
6. The nature of an operating plan and its place in the licensing system.
7. The different types of premises licence conditions under Section 27 of the Act.
8. Special provisions for clubs under Section 125 of the Act.
9. Licensed hours under Part 5 of the Act.
10. Offences under the Act, particularly those involving persons under the age of 18/
11. Proof of age under Sections 102 and 108 of the Act and the Sale of Alcohol to Children and Young Persons (Scotland) Regulations 2007.
12. Test Purchasing of alcohol under Section 105(2) of the Act.
13. Best practice as regards standards of service and refusing service.
14. Units of alcohol and the relationship between units and the strength of different alcoholic drinks.
15. The sensible drinking limits for males and females recommended by the British Medical Association.
16. Good practice in managing conflict situations.

**Training to staff can only be delivered by a person who holds a personal licence or a qualification accredited for the purpose by the Scottish Qualifications Authority.**

Appendix 2

**Local Conditions**

**General Management for All Premises**

1. **The provisions relating to management of licensed premises contained within the Board's current policy statement, particularly Appendix 9 and Schedule 1 of Appendix 10 to that document, shall be complied with.**

Noise – All Premises

1. **No noise from amplified and non-amplified music, singing and speech sourced from licensed premises shall be audible in adjoining properties after 11.00p.m.**

Children and Young Persons

1. **Children shall not have direct access to pool tables, darts boards or gaming machines in any part of the premises to which they have access or are allowed entry.**
2. **The Licence holder shall provide safe high chairs for the use of young children**
3. **The Licence holder shall provide heating facilities for baby/young person's food at no cost to the customer.**
4. **The Licence holder shall provide containers for the disposal of soiled nappies**
5. **The Licence holder shall ensure that heating sources are adequately protected.**
6. **The Licence holder shall ensure that electrical sockets are covered.**

Premises Providing Late Night Entertainment

1. **Alcohol shall be provided for the sale of alcohol for consumption on the premises only.**
2. **Alcohol shall be provided ancillary to the entertainment provided on the premises only.**
3. **The entertainment to be provided shall be:....**
4. **The entertainment provided shall be on a continuous basis with breaks of not more than 15 minutes in any one hour.**



**5. All public notices or advertisements shall contain the following information:-**

- The name and address of the premises
- The entertainment to be provided on the premises
- The commencement time of the entertainment
- The price of entry
- The terminal hour for the premises.
- The time of the curfew, where operated, must be advertised.

The premises shall have a policy to ensure patrons are not put in vulnerable situations after leaving the premises. The policy must be in writing. All members of staff shall be informed of the policy. The policy shall be made available to customers, and for inspection. The policy shall be reviewed regularly and a detailed record of reviews kept.

## **Door Supervisors**

1. XXX number of door supervisors, holding the appropriate licence issued by the Security Industry Authority shall be employed at the premises.
2. Door Stewards shall be on duty on the following occasions:
3. Door Stewards' duties shall include..... This list is not exhaustive.

### **Members Clubs**

1. Members Clubs are expected to comply with the provisions of Appendix 11 to the Board's current policy statement.
2. Members Clubs shall adhere to the terms of the Club's constitution or rules attached to their premises licence.
3. Where the Club has submitted draft constitution or rules with their application for a premises licence, they shall submit a copy of the approved constitution or rules to the Clerk to the Board.
4. Where the Club revises its constitution or rules in the future, the Club must submit a copy of the proposed revisions to the Board for approval and thereafter submit a copy of the approved revised constitution or rules to the Clerk to the Board.
5. Where there are any changes to the list of connected persons in relation to the Club, the Club must submit details of the names, addresses, postcodes, dates and places of birth of the new connected persons and an updated list of all connected persons, to the Clerk to the Board.

## **Petrol Stations**

1. All payments for fuel will be made separately from payments of alcohol either (i) through the use of a different building; or (ii) by payment of fuel from outside the premises or part of the premises through a payment window, without fuel customers entering the premises.

**The Licence holder shall have signage advising customers of the payment arrangements at the premises**

**OPERATING PLAN** *Licensing (Scotland) Act 2005, section 20(2)(b)(i)*

**Question 1**

STATEMENT REGARDING ALCOHOL BEING SOLD ON PREMISES/OFF PREMISES OR BOTH

1(a) Will alcohol be sold for consumption solely ON the premises	<b>YES</b>
1(b) Will alcohol be sold for consumption solely OFF the premises	<b>NO</b>
1(c) Will alcohol be sold for consumption both ON and OFF the premises	<b>NO</b>
*Delete as appropriate	

**Question 2**

STATEMENT OF **CORE** TIMES WHEN ALCOHOL WILL BE SOLD FOR CONSUMPTION **ON** PREMISES

<b>Day</b>	<b>ON Consumption</b>	
	<b>Opening time</b>	<b>Terminal hour</b>
Monday	11.00 a.m.	11.00 p.m.
Tuesday	11.00 a.m.	11.00 p.m.
Wednesday	11.00 a.m.	11.00 p.m.
Thursday	11.00 a.m.	12.30 a.m.
Friday	11.00 a.m.	1.00 a.m.
Saturday	11.00 a.m.	1.00 a.m.
Sunday	11.00 a.m.	12 midnight

**Question 3**

STATEMENT OF **CORE** TIMES WHEN ALCOHOL WILL BE SOLD FOR CONSUMPTION **OFF** PREMISES

<i>Day</i>	<i>OFF Consumption</i>	
	<i>Opening time</i>	<i>Terminal hour</i>
Monday	N/A	N/A
Tuesday	N/A	N/A
Wednesday	N/A	N/A
Thursday	N/A	N/A
Friday	N/A	N/A
Saturday	N/A	N/A
Sunday	N/A	N/A

NOTES:

**Question 4**

SEASONAL VARIATIONS

Does the applicant intend to operate according to seasonal demand	<b>NO</b>
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\*If YES – provide details

N/A
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**Question 5**

PLEASE INDICATE THE OTHER ACTIVITIES OR SERVICES THAT WILL BE PROVIDED ON THE PREMISES IN ADDITION TO SUPPLY OF ALCOHOL

<b>5(a) Activity</b>	<b><i>Please confirm YES/NO</i></b>	<b>To be provided during core licensed hours – please confirm YES/NO</b>	<b>Where activities are also to be provided <u>outwith</u> core licensed hours please confirm YES/NO</b>
Accommodation	Y	N/A	N/A
Conference facilities	N	N	N
Restaurant facilities	N	N	N
Bar meals	Y	Y	Y
<b>5(b) Activity Social functions including:</b>	<b><i>Please confirm YES/NO</i></b>	<b>To be provided during core licensed hours – please confirm YES/NO</b>	<b>Where activities are also to be provided <u>outwith</u> core licensed hours please confirm YES/NO</b>
Receptions including (Weddings funerals,, birthdays, retirements etc)	Y	Y	Y
Club or other group meetings etc	Y	Y	N
<b>5(c) Activity Entertainment</b>	<b><i>Please confirm YES/NO</i></b>	<b>To be provided during core licensed hours – please confirm</b>	<b>Where activities are also to be provided <u>outwith</u> core</b>

<b>including:</b>		<b>YES/NO</b>	<b>licensed hours please confirm YES/NO</b>
Recorded Music – see 5(g)	Y	Y	Y
Live performances – see 5(g)	Y	Y	Y
Dance facilities – see 5(g)	Y	Y	Y
Theatre	N	N	N
Films	N	N	N
Gaming	Y	Y	N
Indoor/outdoor sports	Y	Y	N
Televised sport	Y	Y	N
<b>5(d) Activity</b>	<b>Please confirm YES/NO</b>	<b>To be provided during core licensed hours – please confirm YES/NO</b>	<b>Where activities are also to be provided outwith core licensed hours please confirm YES/NO</b>
Outdoor drinking facilities	N	N	N
<b>5(e) Activity</b>	<b>Please confirm YES/NO</b>	<b>To be provided during core licensed hours – please confirm YES/NO</b>	<b>Where activities are also to be provided outwith core licensed hours please confirm YES/NO</b>
Adult entertainment – see 5(g)	N	N	N

Where you have answered YES in respect of any entry in column 4 above, please provide further details below.

<p><b>ACCOMMODATION - SERVING OF ALCOHOL TO RESIDENTS ONLY</b></p> <p><b>BAR MEALS</b></p> <p><b>SERVING OF BREAKFASTS TO RESIDENTS - NO ALCOHOL WILL BE SERVED</b></p> <p><b>5(B) - RECEPTION - FUNERAL TEAS PRIOR TO 11.00 A.M. NO ALCOHOL WILL BE SERVED</b></p> <p><b>5(C) - ENTERTAINMENT - PROVIDED DURING FRIDAY AND SATURDAY PRIVATE FUNCTIONS WHEN CORE HOURS EXTENDED TO 1.30 A.M.</b></p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5(f) any other activities

If you propose to provide any activities other than those listed in 5(a) – (e) please provide details or further information in the box below.

<p><b>PRIVATE FUNCTIONS ON FRIDAYS AND SATURDAYS WHEN CORE HOURS EXTENDED TO 1.30 A.M.</b></p>
------------------------------------------------------------------------------------------------

5(g) Late night premises opening after 1.00am

Where you have confirmed that you are providing either live or recorded music, dancing or adult entertainment, any combination of these or all please provide the following details

Will the music level exceed 85dB?	N/A
When fully occupied, are there likely to be more customers standing than seated?	N/A
*Delete as appropriate	

**Question 6 (On-sales only)**

CHILDREN AND YOUNG PERSONS

6(a)	When alcohol is being sold for consumption on the premises will children or young persons be allowed entry	<b>Y</b>
	*Delete as appropriate	

6(b) Where the answer to 6(a) is YES provide statement of the **TERMS** under which they will be allowed entry

**CHILDREN PERMITTED TO LUNCH BAR, FUNCTION ROOM AND ACCESS AND TOILET AREAS IF ACCOMPANIED BY A RESPONSIBLE ADULT.  
YOUNG PERSONS UNRESTRICTED ACCESS.**

6(c) Provide statement regarding the **AGES** of children or young persons to be allowed entry

**NO RESTRICTION - BABY CHANGING FACILITIES WILL BE IN PLACE PRIOR TO 1ST SEPTEMBER, 2009.**

6(d) Provide statement regarding the **TIMES** during which children and young persons will be allowed entry

**CHILDREN - UNTIL 11.00 P.M. UNLESS ATTENDING PRIVATE FUNCTIONS WHEN PERMITTED UNTIL THE TERMINAL HOUR.  
YOUNG PERSONS - DURING CORE HOURS.**



6(e) Provide statement regarding the **PARTS** of the premises to which children and young persons will be allowed entry

**CHILDREN - ALL PUBLIC ACCESSIBLE AREAS EXCEPT PUBLIC BAR.  
YOUNG PERSONS - ALL PUBLIC ACCESSIBLE AREAS.**

**Question 7**

CAPACITY OF PREMISES

**What is the proposed capacity of the premises to which this application relates?**

**ON SALES - 260  
FUNCTION HALL/LOUNGE BAR 162  
PUBLIC BAR 98**

**Question 8**

PREMISES MANAGER (**NOTE: not required where application is for grant of provisional premises licence**)

Personal details

8(a) Name

**DAVID DOUGAL WHYTE**

8(b) Date of birth

**[REDACTED]**

8(c) Contact address


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8(d) Email address

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8(e) Personal licence

<i>Date of issue</i>	<i>Name of Licensing Board issuing</i>	<i>Reference no. of personal licence</i>
1 SEPTEMBER 2009	ABERDEENSHIRE NORTH LICENSING BOARD	AB-N-385

**APPENDIX 3**

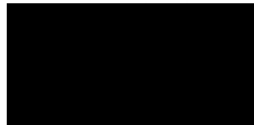
**Copy Personal Licence for Designated Premises Manager**

## PERSONAL LICENCE

The holder of this licence is qualified and permitted to sell alcohol under the terms of  
the Licensing (Scotland) Act 2005

Licence Number: AB-N-385

Name and Address of Licence Holder: Mr David Dougal Whyte



Name of Issuing Licensing Authority: Central Aberdeenshire Divisional Licensing Board

Expiry Date: 31 August 2029

Date: 1 September 2019

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Depute Clerk to The Board

**ANNEX A**

**TRAINING RECORD**

**Personal Licence Number:** AB-N-385

<b>Dates of Training</b>	<b>Title of Course Completed</b>	<b>Awarding/ Accrediting Body</b>	<b>Level Attained</b>
18 March 2019	Scottish Certificate for Personal Licence Holders (Refresher) at SCQF Level 6	City & Guilds	Pass

**ANNEX B**

**Convictions for Relevant and Foreign Offences**

**Personal Licence Number:**                      **AB-N-385**

<b>Offence</b>	<b>Court</b>	<b>Date</b>	<b>Penalty</b>
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**ANNEX C**

**Endorsements**

**Personal Licence Number: AB-N-385**

<b>Reason for Endorsement</b>	<b>Name of Licensing Board</b>	<b>Date of Commencement</b>	<b>Expiry Dates</b>
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APPENDIX 4

Licensing (Scotland) Act 2005  
Section 36 - 40  
Review of Premises Licences

**LEGAL TEST**

The grounds for review are set out at Section 36(3) and (4) of the Act.

- (3) The **grounds for review** referred to in subsection (1) are –
- (za) **that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence**
  - (a) **that one or more of the conditions to which the premises licence is subject has been breached, or**
  - (b) **any other ground relevant to one or more of the licensing objectives.**
- (4) A Licensing Standards Officer may make a premises licence review application on the ground specified in subsection (3)(a) **only if –**
- (a) in relation to the alleged ground for review, the Officer or any other Licensing Standards Officer has issued to the licence holder a notice under Section 14(2)(a)(i)<sup>1</sup>, AND
  - (b) the licence holder has failed to take the action specified in the notice to the satisfaction of the Officer.

The legal test is set out in Section 39 of the Act.

- (1) At a review hearing in relation to any premises licence, the Licensing Board **MAY**, if **SATISFIED** that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review proposal or application considered at the hearing) take such of the **STEPS** mentioned in subsection (2) as the Board considers **necessary or appropriate for the purposes of any of the licensing objectives.**
- (1A) Subsection (1) is subject to subsection (2A).
- (2) Those steps are –
- (a) **to issue a written warning to the licence holder**
  - (b) **to make a variation of the licence.**
  - (c) **to suspend the licence for such period as the Board may determine,**
  - (d) **to revoke the licence.**
- (2A) Where, at a review hearing in relation to any premises licence, the Licensing Board are satisfied that the ground for review specified in Section 36(3)(za)<sup>2</sup> is established, the Board **MUST revoke** the licence.

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<sup>1</sup> An enforcement notice

<sup>2</sup> That, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence.



(2B) Subject to Section 39B<sup>3</sup>, a revocation under subsection (2A) takes effect at the end of the period of 28 days beginning with the day on which the Board makes the decision

(3) On making a variation under subsection (2)(b), the Board may provide for the variation to apply only for such period as they may determine.

There are five licensing objectives which underpin the 2005 Act. These are:

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

The Licensing Board's policy statement must promote these licensing objectives and sets out how the Board expects applicants to comply with and promote the objectives. The following parts of the policy are relevant to the consideration of applications for premises licences and provisional premises licences:

- Appendices 1 and 2 to the Main Policy Statement (Appendix 2 applies in North only)
- Supplementary Policy 3 – overprovision
- Supplementary Policy 4 – Operating Hours
- Supplementary Policy 6 – Licence Types and Board Procedures
- Supplementary Policy 7 - private members clubs
- Supplementary Policy 8 - petrol stations.

### **Premises Licence**

1. In terms of Section 17 of the 2005 Act, a premises licence is required to authorise the sale of alcohol on premises.

There are two methods by which the Board can review a premises licence set out in terms of the Act.

### **Section 36 – Application for Review of a Premises licence**

2. Any person may apply to the appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect for a review of the licence on any of the grounds for review. Such an application is referred to as a “premises licence review application”.

3. A premises licence review application must specify the alleged ground for review, including in particular –

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<sup>3</sup> Where a Licensing Board decides to recall a revocation of a premises licence imposed under S39(2A)

- (za) where the ground is that specified in Section 36(3)(za), a summary of the information on which the applicant's view that the alleged ground applies is based
  - (a) Where the ground is that specified in Section 36(3)(a), the condition or conditions alleged to have been breached
  - (b) Where the ground is that specified in Section 36(3)(b), the licensing objective or objectives to which the alleged ground of review relates.
4. A person making a premises licence review application may include in the application any information that the applicant considers may be relevant to consideration by the Licensing Board of the alleged ground for review including, in particular, information in relation to –
- (a) the licence holder
  - (b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or
  - (c) any person who is an interested party in relation to the licensed premises.
5. A Licensing Board may reject a premises licence review application if the Board considers the application –
- (a) is vexatious or frivolous, or
  - (b) does not disclose any matter relevant to any ground for review and MAY recover any expenses incurred by the Board in considering the application.

### **Section 37 – Review of a Premises Licence on the Licensing Board's Initiative**

6. The appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect may, on their own initiative, propose to review the licence on any of the grounds for review. Such a proposal is referred to as a "premises licence review proposal".
7. The grounds for review set out in Section 36(3) apply to a premises licence review proposal as they do to a premises licence review application.
8. The review proposal must specify the alleged grounds for review, including in particular
- (za) where the ground is that specified in Section 36(3)(za), a summary of the information on which the Board's view that the alleged ground applies is based
  - (a) Where the ground is that specified in Section 36(3)(a), the condition or conditions alleged to have been breached
  - (b) Where the ground is that specified in Section 36(3)(b), the licensing objective or objectives to which the alleged ground of review relates.
9. A licensing Board making a premises licence review proposal may include in the proposal any information that the Board considers may be relevant to their consideration of the alleged ground for review including, in particular, information in relation to –

- (a) the licence holder
- (b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or
- (c) any person who is an interested party in relation to the licensed premises.

### **Review Hearing**

10. Where a Licensing Board –

- (a) makes a premises licence review proposal, or
- (b) receives a premises licence review application

The Board MUST hold a hearing for the purposes of considering and determining the proposal or application unless, in the case of a premises licence review application, the Board has rejected the application under Section 36(6). Such a hearing is referred to as a “review Hearing”

11. Where a review hearing is to be held, the Board MUST –

- (a) in the case of a premises licence review application, give notice of the hearing to the applicant, and
- (b) give notice of the hearing and a copy of the premises licence review proposal or application to –
  - (i) the licence holder, and
  - (ii) Any Licensing Standards Officer for the area in which the premises concerned are situated, unless, in the case of a premises licence review application, the applicant is such an Officer.

12. The Licensing Board MAY, for the purposes of the review hearing –

- (a) obtain further information from such persons, and in such manner, as the Board thinks fit. And
- (b) take the information into account.

13. In particular, the Board may –

- (a) request –
  - (i) the attendance at the review hearing of any person for the purpose of providing information, and
  - (ii) the production at the review hearing by any person of any documents in that person’s possession or under that person’s control, and
- (b) take into account any information relevant to any ground for review event though it is not relevant to any circumstances alleged in the review proposal or application under consideration.

### **Conduct Inconsistent with the Licensing Objectives**

14. Section 84 of the Act Applies where, in the course of a review hearing in respect of any premises licence, a Licensing Board makes a finding such as is mentioned in the following paragraph, in relation to any personal licence holder who is, or was, working in the licensed premises in respect of which the premises licence was issued.
15. The Board should hold a separate hearing in respect of personal licence holders as the finding and a hearing should take place can only be made after holding a hearing to review the premises licence. Any persons licence holders that may be affected by the premises licence review that are known to the Board, should be invited to attend the premises licence review hearing so that they are fully aware of the circumstances that they may be asked to address in respect of their conduct as personal licence holders.
16. The Board can make a finding that the personal licence holder concerned, while working as mentioned in the above paragraph, acted in a manner which was inconsistent with any of the licensing objectives.
17. The Licensing Board making the finding MUST –
  - (a) If the persons licence holder concerned is, at the time of the finding, working in licensed premises (whether the licensed premises concerned or other licensing premises) in that Board’s area, hold a hearing.
  - (b) In any other case, give notice to the relevant Licensing Board of their finding together with a recommendation as to whether the personal licence held by the Licence Holder concerned should be revoked, suspended or endorsed.
18. The Board should refer to the Legal Test Document on reviewing personal licences for further information.
19. The Boards’ current Scheme of Delegation make the following provisions for determination of review of premises licences:-

Section 1.11	Conducting a hearing under the Act including take any of the following steps: <ol style="list-style-type: none"> <li>(a) At a review hearing in respect of a premises licence where necessary in terms of the licensing objectives flowing from the sale of alcohol:             <ol style="list-style-type: none"> <li>(i) Issuing a written warning to the premises licence holder</li> <li>(ii) Revoking or suspending the premises licence, or</li> <li>(iii) Making a variation of</li> </ol> </li> </ol>	Reserved to the Board
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	<p>the premises licence. (b) Such hearings will be conducted by means of written submissions in the first instance, where it is appropriate to do so.</p>	
Section 3.6	Determining whether to make a premises licence review proposal	Delegated to the Clerk to the Board or any person appointed to assist them
Section 3.7	For the purposes of a review hearing, to obtain further information, request any person to attend to provide information and/or request production of any document at a review hearing	Delegated to the Clerk to the Board or any person appointed to assist them

### Statutory Guidance

20. Chapter 8 of the Scottish Government's Statutory Guidance to Licensing Authorities relates to premises licences. The Board should note that in terms of Section 142(4) of the Act, a Board deciding not to follow this guidance must give Ministers notice of that decision together with a statement of the reasons for it.

## **EXTRACT FROM SCOTTISH GOVERNMENT GUIDANCE TO LICENSING BOARDS RELATING TO PREMISES LICENCES**

### **Review of a premises licence.**

8.85. Sections 36 to 40 of the 2005 Act make provision for the review of a premises licence. A number of amendments have been made to the 2005 Act as enacted by the Criminal Justice and Licensing (Scotland) Act 2010 and (the majority) by the Air Weapons and Licensing (Scotland) Act 2015.

#### *Application for a review*

8.86. Any person can submit a “premises licence review application” to the relevant Board regarding a licensed premises on any of the grounds for review. The Air Weapons and Licensing (Scotland) Act 2015 amended Section 36 of the 2005 Act by adding a third ground for review. The grounds of review are:

- (1) are that one or more of the conditions to which the premises licence is subject has been breached, or
- (2) any other ground relevant to one or more of the licensing objectives or
- (3) not a “fit and proper person”

8.87. Depending on which ground for review is noted on the application, certain information must also be provided:

- (1) the condition or conditions alleged to have been breached
- (2) the licensing objective or objectives to which the alleged ground of review relates
- (3) a summary of the information on which the applicant’s view that the alleged ground applies is based.

8.88. A Licensing Standards Officer (LSO) is only able to apply for a review on the ground that there has been a breach of licence conditions if the LSO has issued a written warning about the breach and the LSO is not satisfied with the action taken by the licensing premises holder in response to the written warning.,

8.89. The Air Weapons and Licensing (Scotland) Act 20`5 further amended section 36 to clarify that any person who makes a premises licence review application may include any information in that application that the person considers relevant to the Licensing Board’s consideration of the alleged ground of review. This could include information relating to the licence holder, connected persons in relation to the licence holder or an interested party in relation to the licensed premises.

8.90. A Licensing Board may reject a premises licence review application if the Board considers the application:

- Is vexatious or frivolous, or
- Does not disclose any matter relevant to any ground for review.

If a Licensing Board rejects an application on one of the grounds mentioned above then it must give notice of the decision, and the reason for it to the applicant. Provision is also made for a Board to recover, from the applicant, any expenses incurred by the Board in considering a vexatious or frivolous application.

*Review of premises Licence on Licensing Board's initiative*

8.91. Section 37 allows for Licensing Boards to initiate reviews of premises licences themselves. The grounds for review are the same as those for applications under section 36 (discussed above). Where a Licensing Board proposes to initiate a review of a premises licence, the Board must provide a written report – known as a review proposal – setting out the grounds that it considers merits such a review of the premises licence. An Air Weapons and Licensing (Scotland) Act 2015 amendment provides that a Board's proposal may include information that the Board considers relevant to its consideration of the alleged ground of review, in relation to the licence holder, connected persons in relation to the licence holder or interested parties in relation to the licensed premises.

*Review Hearing*

8.92. Section 38 of the 2005 Act requires a Licensing Board to hold a review hearing and determine an application for a review of a premises licence made under section 36 (or a review proposal under section 37). As discussed above, the Board does not need to hold a review hearing if it considers the application is frivolous or vexatious or if it is not relevant to the grounds for review.

8.93 In terms of notification of a review, the Licensing Board is required:

- In the case of a premises licence review application to give notice of the hearing to the applicant, and
- Give notice of the hearing and a copy of the premises licence review proposal or application to the licence holder and any LSO for the area in which the licensed premises are located (unless in the case of a premises licence review the LSO is the applicant)

8.94 As discussed earlier in the guidance, where an LSO received a copy of a premises licence review proposal or application, the LSO must prepare and submit a report on the proposal or application to the Board before any hearing takes place. The Licensing Board must take account of this report at the hearing. Additionally, a Licensing Board is empowered to request information, the attendance at a hearing of any persons and the production of documents.

8.95 A Licensing Board has a range of sanctions that it may elect to impose on reviewing a premises licence. These are set out at Section 39 of the 2005 Act as amended by the Air Weapons and Licensing (Scotland) Act 2015. These steps are to:

- Issue a written warning to the licence holder
- Make a variation of the licence; may only apply for a period decided by the Board
- Suspend the licence for whatever period the Board may decide,
- Revoke the licence.

Section 39 also provides that where a Licensing Board is satisfied at a hearing that the licence holder fails the "fit and proper" test then the Licensing Board must revoke the premises licence. Subject to the revocation of a licence being recalled, a revocation takes effect at the end of the period of 28 days beginning with the day the Board made the decision to revoke the premises licence.

- 8.96 The 2005 Act as enacted has been amended by the Criminal Justice and Licensing (Scotland) Act 2010 and the Air Weapons and Licensing (Scotland) Act 2015 in relation to a Licensing Board giving notice of a decision made at a premises licence review hearing,. The 2010 Act inserted a new provision (Section 39A Notification of Determinations) into the 2004 Act and this provision was subsequently amended by the 2015 Act.
- 8.97 The rationale for the 2010 Act amendment was to seek to improve the transparency of the premises licence review process provided for in the 2005 Act. It ensures that
- Adequate notification of a Licensing Board's decision following a review hearing is given to the Licensing holder and the person who applied for a review
  - When a Licensing Board takes action against a Licence Holder following a review hearing, the Licence Holder is able to request a statement of reasons from the Board – as already happened in the case of a premises licence application.
  - A statement of reasons can be requested by a person who applies for a review of the licence, whether or not any action is taken by the Board following the review hearing.

The 2015 Act textual amendments were a result of the introduction of the fit and proper person test as a ground for refusal.

- 8.98 The 2005 Act provides (Section 40) a mechanism by which a Licence Holder can apply to the Licensing Board to have any variation of their premises licence or the suspension of the premises licence removed. If the Board feels that the sanction in question is no longer necessary then, in the case of these two sanctions only, it may remove the relevant sanction.

### **Recall of revocation of licence**

- 8.99 The 2015 Act inserted Section 39B which provides for the recall of a revocation of a licence under section 39(2A). This amendment and the amendment which inserted 28 days are linked to the “fit and proper person”, also introduced by the 2015 Act. As noted during the parliamentary passage of the then Air Weapons and Licensing (Scotland) Bill, the Bill, on introduction, had provided for the immediate revocation of a premises licence on the grounds that, having regard to the Licensing objectives, the Licence Holder is not a fit and proper person to be the holder of a premises licence.
- 8.100 Concerns had been raised that without alternative disposal available to it, the Board might be reluctant to find that a person is not fit and proper to hold a premises licence. To address these concerns, one amendment provided that a revocation under the Licensing Board's powers of review would take effect at the end of a period of 28 days beginning on the day on which the Board makes the decision. The rationale being that this provided a short period of grace in which the Licence Holder may take action to address the problems that led to the Board making the findings.



8.101 The second and related amendment inserted a new section (Section 39B) into the 2005 Act. This section provides that when a Licensing Board has taken steps to revoke a premises licence on the ground that the licence holder is not a fit and proper person, the Board must recall the revocation if the relevant application is made within that 28 day period and the Board ultimately grants the relevant application. These provisions enable Boards to take robust action when a Licence Holder is found not to be a fit and proper person and they offer reasonable traders the opportunity to take prompt action to address the Board's concerns and retain their licence.

## APPENDIX 5

### Procedure for remote Licensing Hearings – APPLICATIONS FOR A REVIEW OF LICENCE

- (a) Identify whether the Complainer or person requesting the review of licence and his/her advisors are present.
- (b) Identify whether Licence Holder and his/her advisors are present.
- (c) Identify whether any person with an objection or representation(s) and his/her advisors are present. [in turn]
- (d) Invite the Complainer to speak to his complaint or request to review the licence (outline to the Board why the complaint or request has been made)
- (e) Ask the Objector(s) to speak to their Objection(s) or Representation(s) [in turn]
- (f) Ask the Licence Holder to respond to the Complaint and any objections or representations made
- (g) Give the Complainer an opportunity to address any issues raised by the Licence Holder.

#### NOTE TO PARTIES

- **Presentation of a case may be through the use of documents (which must be provided to all parties prior to the start of the Hearing), oral submissions made at the hearing, written submissions lodged no later than 7 days in advance of the hearing, or a combination thereof;**
- **Cross Examination by the parties is not generally permitted**
- **Hearsay evidence is admissible.**

- (h) Members MAY then question all parties present.
- (i) Convenor should invite concluding remarks (Licence Holder then Complainer), but no new evidence, before considering the application.

#### NOTE TO PARTIES

**Once you have been asked to make concluding remarks you are not entitled to speak again, unless to answer a question from a Board Member.**

- (j) Members may then deliberate the application and/or ask for legal advice if required. Members can choose to deliberate the application in private, however, no decisions will be made during any adjournment to deliberate in this way.

#### NOTE TO PARTIES

**If the Board opts to adjourn the meeting to deliberate in private, the Board Members will leave the meeting and remove to an adjournment room. The recording of the meeting will be paused. The parties should remain in the main meeting until the Board Members return. On confirming all parties/attendees are again present, the recording of the meeting will be restarted.**

- (k) Thereafter, the Convenor should confirm with Members that they have sufficient evidence upon which to make a decision.
- If the Board determines that there is not sufficient evidence upon which to make a decision, the matter will be deferred to a future meeting of the Board for further evidence to be obtained.
  - If the Board determines that there is sufficient evidence upon which to make a decision, the Convenor will then:
    - (i) Call for a motion
    - (ii) Call for a seconder to the motion
    - (iii) Call for any amendment to the motion
    - (iv) Call for a seconder to any amendment proposed
    - (v) If there is no amendment, the Convenor should confirm with the Committee that the decision is unanimous. [This will be done by roll call vote for transparency purposes]
    - (vi) If there is an amendment, then there MUST be a vote. The Convenor has the casting vote.
- (l) The Depute Clerk will confirm the decision taken by the Board

**NOTE TO PARTIES The parties will then be asked to leave the meeting, failing which the Depute Clerk will remove the parties from the meeting.**

**APPENDIX 6**

**WRITTEN SUBMISSIONS (IF RECEIVED)**