

# **SHETLAND ISLANDS AREA LICENSING BOARD**

Clerk: Jan-Robert Riise  
Depute Clerk: Susan Brunton

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If calling please ask for  
**Leisel Malcolmson**  
Direct Dial: 01595 744599

Dear Sir/Madam

Date: 17 June 2019

You are invited to attend the following meeting:

**Shetland Islands Area Licensing Board  
Council Chamber, Town Hall, Lerwick  
Monday 24 June 2019 at 10am**

Apologies for absence should be notified to Leisel Malcolmson at the above number.

Yours faithfully

Depute Clerk to the Board

Clerk to the Board: Jan R Riise

## **AGENDA**

- (a) Hold circular calling the meeting as read.
  - (b) Apologies for absence, if any.
  - (c) Declarations of Interest.
1. Premises Licence Review Proposal – Westings Inn, Whiteness. Enclosed
  2. Combined Annual Functions and Financial Report 2018 – 2019. Enclosed



## SHETLAND ISLANDS AREA LICENSING BOARD

24 June 2019

### Premises Licence Review Proposal – Westings Inn, Whiteness

#### 1. Introduction

- 1.1 All Premises Licences in Scotland under the Licensing (Scotland) Act 2005 are granted subject to a condition, *inter alia*, that an annual fee be paid. Most premises licence holders in Shetland pay the annual fee on time. This report asks Shetland Islands Area Licensing Board to consider whether they wish to propose to review the licence held by Westings Inn, Whiteness, whose holder has failed to pay the annual fee due 1 October 2018.

#### 2. Detail – Statutory Provision

- 2.1 Section 37(1) of the Act states that a Licensing Board may on its own initiative, in respect of any licensed premises in relation to which a premises licence has effect, propose to review the licence on any of the grounds for review.

The Act refers to such a proposal as a “premises licence review proposal”.

- 2.2 Section 39 of the Act sets out the powers of Boards at a licence review. If the Board is satisfied that the grounds of review are established it can, in order to promote the licensing objectives, take the following steps,
- (a) Issue a written warning to the licence holder,
  - (b) Make a variation to the licence,
  - (c) Suspend the licence, or
  - (d) Revoke the licence.
- 2.3 Section 36(3) of the Act sets out the grounds for review, including the ground –
- (a) that one or more of the conditions to which the premises licence is subject has been breached.
- 2.4 All premises licences granted under the Act must contain the condition that the annual fee is be paid as required by regulations. The Licensing (Fees)(Scotland) Regulations 2007 provides that the holder of a premises licence must make payment of an annual fee in respect of the performance in relation to that licence of functions by the relevant Board, the council within the area of which the premises are situated and that council's Licensing Standards Officers.
- 2.5 Annual fees are due on 1 October each year.
- 2.6 A premises licence review proposal must set out for the premises licence holder the alleged ground for review including in particular, where the ground is that specified in subsection 36(3)(a), the condition or conditions alleged to have been breached.

### 3. Detail - Facts

- 3.1 Most premises licence holders in Shetland Islands Area make sure that the annual fee for the premises is paid on time as allowed by legislation - either in full by the beginning of October each year, or by instalments as permitted. All licensees received advance notification from the Board of the due date and the fee level prior to the due date.

Appendix 1 is a copy of the notification sent to the premises licence holder of the Westings Inn on 24 August 2018.

- 3.2 The premises licence holder made payment of £55, and receipt of that was acknowledged on 10 September in terms of the copy letter in Appendix 2. This letter specified the date on which further payments were due.

Although the Board's officers sent the premises licence holder of a reminder, no further payment has been received in respect of the premises licence for the Westings Inn.

- 3.3 In these circumstances the Board may consider whether a premises licence review proposal should be carried out for the premises.

### 4. Decisions Required

- 4.1 The Board is asked to consider the information provided and decide whether –
- a. The Board wishes to propose to review the Westings Inn premises licence on the ground that it has breached a condition of the licence by failing to pay the annual fee; and
  - b. If it resolves to hold a review hearing the Board is asked to consider whether it wish to request the attendance at that of any specified person.

Assistant Clerk to the Licensing Board  
3 September 2018

Attached: Appendix 1 – Copy letter  
Appendix 2 – Copy letter

## **SHETLAND ISLANDS AREA LICENSING BOARD**

Clerk: Jan-Robert Riise  
Depute Clerk: Susan Brunton

Governance & Law  
Corporate Services  
Office Headquarters  
8 North Ness Business Park  
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ZE1 0LZ

Mr & Mrs Swift  
Westings Inn  
Wormadale  
Whiteness  
Shetland  
ZE2 9LJ

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If calling please ask for  
**Keith Adam**  
Direct Dial: 01595 744096

Your Ref: -  
Our Ref: SI/PREM/045 DKA/JI

Date: 10 September 2018

Dear Mr & Mrs Swift

**Westings Inn  
Licensing (Scotland) Act 2005 – Premises Licence  
Annual Fee for 2018/2019**

I acknowledge receipt of the sum of £55 in payment of the first instalment of the annual fee for your premises licence.

Further instalments will become due on 1 January, 1 April and 1 July 2019. No reminders for these further instalments will be issued and it is the responsibility of the licence holder to ensure that these payments are made no later than the date they become due.

Yours sincerely



Assistant Clerk to the Licensing Board

## **SHETLAND ISLANDS AREA LICENSING BOARD**

Clerk: Jan-Robert Riise  
Depute Clerk: Susan Brunton

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If calling please ask for  
Licensing Admin Team  
Direct Dial: 01595 744550

Your Ref: -

Our Ref: SI/PREM/045 SB/SI

Date: 24 August 2018

Dear Sir & Madam

**Westings Inn  
Licensing (Scotland) Act 2005  
Premises Licence – Annual Fee for 2018/2019**

I write to inform you that the annual premises licence fee for 2018/2019 is due for payment on 1 October 2018. In the case of Westings Inn the fee is £220, and I look forward to receiving payment from you not later than 30 September 2018.

Payment may be made at the above address by cheque, payable to "Shetland Islands Area Licensing Board", or in cash. Please do not send cash through the post or make payment to any other address as this may result in a delay in your payment being credited to your account. Alternatively, debit/credit card payments can be made if you contact the Board by telephone at 01595 744091 or 01595 744761.

If you prefer to pay the fee by either 4 or 12 equal instalments, over the course of the year, please let me know.

The above Act provides that payment of the annual fee is a mandatory condition of the premises licence. Failure to make payment constitutes grounds for the review of a premises licence and if that failure is established at a hearing this can lead to the suspension or revocation of the licence.

Yours faithfully



Depute Clerk to the Licensing Board

# **SHETLAND ISLANDS AREA LICENSING BOARD**

**24 June 2019**  
**Licensing (Scotland) Act 2005**

## **Combined Annual Functions and Financial Report 2018 - 2019**

### **1. Introduction**

- 1.1 The purpose of this report is to present to the Board the draft 2018 -2019 combined annual functions and financial report for consideration and publication.

### **2 Statutory Requirements**

- 2.1 Sections 9A and 9B of the Licensing (Scotland) Act 2005 place obligations on licensing boards to prepare and publish an annual functions report and an annual financial report not later than three months after the end of each financial year. Section 9A(5) provides that a licensing board may if it considers appropriate prepare and publish a combined report.
- 2.2 The purpose of this combined report is to draw together information regarding the Board's regard to the licensing objectives and their Licensing Policy Statement in their decision making, a summary of the decisions made by or on behalf of the Board and the number of licences held under the Act and to include a statement of income and expenditure together with an explanation as to how the amounts were calculated.
- 2.3 The draft combined report is attached as Appendix 1 to this report.

### **3 Recommendation**

- 3.1 I recommend that the Board consider and approve the draft combined Annual Functions and Financial Report and instruct the Clerk to publish it on the Board's website.

Assistant Clerk to the Licensing Board

Ref: Z/0/19 PEFW

14 June 2019





# **Shetland Islands Area Licensing Board**

## **Licensing (Scotland) Act 2005**

### **Combined Annual Functions and Financial Report 2018 – 2019**

Clerk to the Licensing Board  
Shetland Islands Council  
8 North Ness  
LERWICK  
ZE1 0LZ

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# 1. INTRODUCTION

1.1 This combined Annual Functions and Annual Financial Report has been prepared by Shetland Islands Area Licensing Board (the “Board”) in terms of sections 9A and 9B of the Licensing (Scotland) Act 2005 (the “Act”). Section 9A(5) provides that a Licensing Board may, if considered appropriate, prepare and publish a combined report containing the information required under section 9A and 9B. The Act requires a combined report to include –

1. A statement explaining how the Board has had regard to:
  - a. The licensing objectives.
  - b. Their licensing policy statement and any supplementary licensing policy statement (including the Board's statement under section 7(1) (duty to assess overprovision)), in the exercise of their functions under the Act.
2. A summary of the decisions made by (or on behalf of) the Board during the financial year.
3. Information about the number of licences held under the Act in the Board's area (including information about the number of occasional licences issued during the year).
4. A statement of the amount of relevant income received by the Licensing Board during the financial year and the amount of relevant expenditure incurred in respect of the Board's area during the year.
5. An explanation of how the amounts in the statement were calculated.

1.2 This combined Annual Functions and Financial Report has been prepared for the financial year 2018-2019.

# 2. BACKGROUND INFORMATION

2.1 When it undertakes its functions, the Board has regard to the licensing objectives as well as to its own Licensing Policy Statement published in accordance with Section 6 of the Act. The Licensing Policy Statement was approved by the Board on 9 October 2018. Prior to that the approved and published Licensing Policy Statement was that published in November 2013.

- 2.2 The licensing objectives set out in Section 4 of the Act are –
- a. preventing crime and disorder;
  - b. securing public safety;
  - c. preventing public nuisance;

- d. protecting and improving public health; and
- e. protecting children from harm.

2.3 The Board's Licensing Policy Statement is available on the [liquor licensing](#)<sup>1</sup> page of Shetland Islands Council's website. Under the Licensing Policy Statement, matters dealt with at a meeting of the Board are the consideration and granting of applications for –

- premises licences
- personal licences
- occasional licences
- provisional licences
- extensions of licensing hours
- temporary licences
- transfers of licences
- variations of licences

in respect of the sale of alcohol by retail and the supply of alcohol in Members' clubs.

2.4 The Board has delegated to the Clerk (and the duly appointed Depute and Assistant Clerks) authority to grant certain specified descriptions of application under the Act, namely –

- (a) minor variations of premises licence (section 29).
- (b) variations to substitute new premises manager – where the applicant has not been convicted of any relevant or foreign offence (section 31 and with reference to section 54).
- (c) transfers of premises licence – where the transferee has not been convicted of any relevant or foreign offence (reference to sections 33 to 35).
- (d) grants of a provisional licence when the Board has held a hearing, has proposed a modification to the operating plan and the applicant has accepted the modification, as proposed by the Board.
- (e) confirmation of a provisional premises licence – where no objections or representations have been received (section 46).
- (f) grants of occasional licence – when all the following criteria are met –
  - i. no objections or representations have been received;
  - ii. Police Scotland have not recommended refusal;
  - iii. the proposed licensed hours are within the guideline licensing hours of 11 am to am; and
  - iv. the hours applied for do not cover a period in excess of 48 hours.
- (g) extensions of licensed hours – within the Board's guideline licensing hours of 11 am to am – where no objections or representations have been received, Police Scotland have not lodged a notice recommending refusal of the application and the report by the Licensing Standards Officer does not recommend refusal (section 68).

- (h) personal licence or renewal of a personal licence where the applicant has not been convicted of a relevant or foreign offence.
- (i) revocation of personal licence when a licence holder has failed to comply with the statutory retraining requirements.
- (j) general extension for Fire Festival and Up Helly Aa events - within the Board's Policy Statement and provided no adverse comments have been received from Police Scotland or the Licensing Standards Officer.

The Board has delegated to two members of the Board authority to grant the following descriptions of application under the Act, namely -

- (1) Occasional Licence applications. First time applications where they exceed hours or if objections are received must come to the Board. Subsequent applications of a similar nature with no complaints may be granted by two members of the Board.

2.5 The data in the following table apply to the reporting period ending 31 March 2019 –

<b>Premises licences</b>			
	Premises licences in force		155
	• on-sales licences	67	
	• off-sales licences	46	
	• both on- and off-sales	42	
<b>Premises licence applications received</b>			
	• on sale		0
	• off sale		1
	• both on- and off-sales		1
<b>Applications for premises licences refused<sup>1</sup></b>			0
<b>Applications granted<sup>2</sup></b>			4
<b>Applications for review of premises licence<sup>2</sup></b>			2
<b>Occasional licences granted</b>			119

<b>Personal Licences</b>			
	Personal Licences in force		409
	Applications made		45
	Applications refused	0	
	Applications granted	41	
	Proceedings taken <sup>3</sup> resulting in:-		
	• endorsement		0

<sup>1</sup> Section 23 of the Act.

<sup>2</sup> Sections 36 and 37 of the Act.

<sup>3</sup> Section 83 (following conviction)

	• suspension	0
	• revocation	0
	• no action	0
	Proceedings taken <sup>4</sup> in respect of conduct inconsistent with licensing objectives	0
	Proceedings <sup>5</sup> in respect of multiple endorsements	0
	Revocations <sup>6</sup> of personal licences	17
<b>Staffing</b>		
	Number (full-time equivalent) of licensing standards officers employed	0.2

### 3. PUBLISHED DOCUMENTATION

3.1 The Board publishes its relevant documentation on the website of Shetland Islands Council at [https://www.shetland.gov.uk/about\\_introduction/LegalLicensing.asp](https://www.shetland.gov.uk/about_introduction/LegalLicensing.asp). This web page contains contact information and the current Licensing Policy Statement and Statutory reports and includes links to –

- Licensing board documents;
- Register of premises licences;
- Register of occasional licences;
- Application forms under the Act and guidance notes;
- Notices required to be published under the Act;
- Agendas and Minutes of Board Meetings<sup>7</sup>.

### 4. THE LICENSING OBJECTIVES AND THE BOARD'S LICENSING POLICY STATEMENT

4.1 The Act requires the Board to publish a statement of its licensing policy with respect to the exercise of its functions under the Act and that has regard to the licensing objectives<sup>8</sup>. The Board's policy statement outlines the way it intends to exercise its functions under the Act and to promote the licensing objectives.

4.2 The licensing objectives provide a basis for the Board's proper and reasonable determination of an application for the grant of a premises licence or of an occasional licence; an act or omission by a holder of a licence under the Act that

<sup>4</sup> Section 84 (conduct inconsistent with licensing objectives)

<sup>5</sup> Section 86

<sup>6</sup> Section 87(3) (failure to provide evidence of having undertaken refresher training)

<sup>7</sup> From the Beginning of 2018 Minutes and Agendas are published only on the Council's Committee Information Pages:  
<http://www.shetland.gov.uk/coins/committee.asp?bodyid=181&bodytitle=Shetland+Islands+Area+Licensing+Board>

<sup>8</sup> Paragraph 2.2 above

is contrary to the licensing objectives may lead to the imposition of sanctions on a personal licence holder or provide grounds for the review of a premises licence. The attachment of conditions to a premises licence or occasional licence may be based on any of the objectives.

4.3 Reports by the Clerk to the Board regarding applications for determination and advice to be tendered by the Clerk to the Board during Board meetings refer the Board to its policy provisions, the licensing objectives and grounds for objection, as well as grounds for refusal. In the same way, advice is also given that applications must be refused if they are inconsistent with any of the licensing objectives. The Board's attention is drawn by way of guidance to pertinent provisions of the Board's statement of licensing policy.

4.4 The Board can provide a summary of decisions made, as provided in the section on Background Information above<sup>9</sup>, it is more difficult for it to provide detailed analysis of all decisions. It is, however, of relevance that –

- the Board's Licensing Policy Statement sets out the Board's approach;
- Board meetings are held in public;
- agendas and reports are published;
- minutes of meetings are published; and
- Statements of Reasons, which are very detailed documents, can be requested in accordance with the Act for specific decisions on applications.

## 5. FINANCIAL STATEMENT

5.1 The statements of relevant income and relevant expenditure are as follows:

Income	£
Income (Licencing Fees)	57,905.37
No Liquor licensing fees income (i.e. gambling fees)	2,431.00
Total Income	<u>60,336.37</u>

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<sup>9</sup> Section 2 above

## Expenditure

	£
staff costs - LSO	5,641.58
staff costs – other	26,079.36
transport	0
supplies	0
overheads	7,750.41
Total Expenditure	<u>39,471.35</u>
Difference between income and expenditure - surplus / (deficit)	<u>20,865.02</u>

5.2 Section 9B(2)(a) requires an explanation of how the amounts in the statement were calculated.

The amount of relevant income has been calculated by adding up the licensing fees received by the Board for liquor licensing and non-liquor licensing applications and annual fees. The amount of relevant expenditure has been calculated by adding up the staff costs and attributing an amount for overheads.

## 6. CONCLUSION

6.1 The Board is satisfied that it and its officers have, in all decisions taken in the exercise of the Board's functions under the Act during the reporting year, had regard to the Licensing Objectives and the Board's Licensing Policy Statement. The Board is fully mindful of its duties under the Act and is also willing to encourage and support the local licensed trade to adopt and maintain best practices in relation to their businesses and premises as are for the benefit of Shetland society.

6.2 The Board is mindful of the challenges brought by changes to law in relation to the sale, use and abuse of alcohol and has regard to national policy as societal attitudes in the performance of its duties.

Reported by

*Clerk to the Shetland Islands Area Licensing Board*