

Item: 5

Orkney Islands Area Licensing Board: 6 December 2018.

Licensing (Scotland) Act 2005.

Notification of Convictions – Holder of Personal and Premises Licences.

Dionne J Butcher, Seaview, Deerness.

Report by Clerk to the Board.

1. Purpose of Report

To consider what action to take in respect of a personal licence and a premises licence, following notification of convictions.

2. Recommendations

It is recommended:

2.1.

That, with respect to the premises licence, the Board determines whether to:

- Make a premises licence review proposal in respect of the premises licence held by Dionne J Butcher; or.
- Take no further action in respect of the premises licence held by Dionne J Butcher.

in light of the convictions referred to in section 3 of this report.

2.2.

That, with respect to the personal licence, the Board determines whether to:

- Hold a hearing in respect of the personal licence held by Dionne J Butcher; or.
- Take no further action in respect of the personal licence held by Dionne J Butcher.

in light of the convictions referred to in section 3 of this report.

3. Background

3.1.

Personal licence OI/277 was issued to Miss Dionne J Butcher on 4 February 2010 and has effect until 3 February 2020.

3.2.

A premises licence has been held at Deerness Stores, Deerness, since 1 September 2009, firstly by Mrs Margaret Sinclair and subsequently by Miss Dionne J Butcher since 19 May 2010. Miss Butcher is also named on the premises licence as premises manager.

3.3.

On 5 September 2018, Miss Butcher submitted notification of criminal convictions by letter, attached as Appendix 1 to this report. The convictions were in respect of:

- Assault.
- A contravention of Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010.

3.3.1.

An offence is committed under Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010 if a person behaves in a threatening or abusive manner, the behaviour would be likely to cause a reasonable person to suffer fear or alarm and the person behaving in the manner described above intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.

3.4.

A copy of the notification was forwarded to Police Scotland on 5 September 2018.

4. Police Scotland

4.1.

By email dated 12 September 2018, attached as Appendix 2 to this report, Police Scotland confirmed the existence of the conviction for Assault, as detailed in their submission.

4.2.

A copy of the email from Police Scotland was forwarded to Miss Dionne J Butcher by recorded delivery post on 16 November 2018. Miss Butcher was advised that she was entitled to attend, or be represented at, the meeting on 6 December 2018 and was advised that she should consider seeking independent legal advice. She was also advised that she was entitled to be accompanied at the meeting by a legal or other representative.

5. Financial Implications

There are no financial implications arising directly from the recommendations of this report.

6. Legal Aspects

Personal Licences

6.1.

Requirements relating to personal licences are contained within Part 6 of the Licensing (Scotland) Act 2005 (the Act) as amended by the Air Weapons and Licensing (Scotland) Act 2015 (the 2015 Act).

6.2.

A personal licence under the Act permits the holder to supervise or authorise the sale of alcohol. Holders must be at least 18 years of age and be in possession of an approved licensing qualification.

6.3.

In terms of section 82 of the Act, personal licence holders convicted of a relevant or foreign offence must notify the issuing licensing board no later than one month after the date of the conviction. Personal licence holders who fail to comply with this requirement, without reasonable excuse, commit an offence in terms of the Act.

6.4.

Relevant and foreign offences are prescribed in terms of section 129 of the Act and the Licensing (Relevant Offences) (Scotland) Regulations 2007.

6.5.

The 2007 Regulations provide that any offence inferring personal violence is a relevant offence for the purposes of the Act which would require declaration by any holder of a personal licence to the Board. Assault is a relevant offence for the purposes of the Act.

6.6.

In terms of section 83 of the Act, where a licensing board receives notice of a conviction relating to a personal licence holder, it must give notice to the chief constable. The chief constable must, within 21 days of receipt of the notice, respond either:

- To report that s/he is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or foreign offence; or.
- To confirm the existence of the conviction and that it relates to a relevant or foreign offence.

6.7.

Where the chief constable proposes to confirm the existence of the conviction and that it relates to a relevant or foreign offence and considers that, having regard to the conviction, it is necessary for the purposes of any of the licensing objectives that the licence holder's personal licence should be revoked, suspended or endorsed, s/he may include in the response a recommendation to that effect.

6.8.

The licensing objectives are defined in section 4 of the Act as follows:

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

6.9.

Where a response from the chief constable states that s/he is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or foreign offence, the licensing board may not take any further action in relation to the conviction.

6.10.

Section 83(7) of the Act provides that where a response from the chief constable confirms the existence of the conviction and that it relates to a relevant or foreign offence and includes a recommendation that the licence holder's personal licence should be revoked, suspended or endorsed, the licensing board must hold a hearing.

6.11.

Section 83(7A) of the Act provides that where a response from the chief constable confirms the existence of the conviction and that it relates to a relevant or foreign offence, but does not include any recommendation that the licence holder's personal licence should be revoked, suspended or endorsed, the licensing board must:

- Hold a hearing; or
- Decide to take no further action in relation to the conviction.

6.12.

At a hearing referred to in section 6.11 above, the licensing board may:

- Having regard to the conviction and any recommendation contained in the chief constable's response in accordance with section 6.7 above; and
- After giving the licence holder concerned and the chief constable an opportunity to be heard; and

- If satisfied that it is necessary to do so for the purposes of any of the licensing objectives,

Make an order:

- Revoking;
- Suspending for such period, not exceeding 6 months, as the Board considers appropriate; or
- Endorsing

The personal licence held by the licence holder concerned.

6.13.

Section 83(9A) of the Act provides that where, at the hearing referred to in section 6.11 above, the licensing board is satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.

Premises Licences

6.14.

Requirements relating to premises licences are contained within Part 3 of the Act, as amended by the 2015 Act.

6.15.

In terms of section 43 of the Act, premises licence holders convicted of a relevant or foreign offence must notify the issuing licensing board no later than one month after the date of the conviction. Premises licence holders who fail to comply with this requirement, without reasonable excuse, commit an offence in terms of the Act. Assault is a relevant offence for the purposes of the Act.

6.16.

In terms of section 44 of the Act, where a licensing board receives notice of a conviction relating to a premises licence holder, it must give notice to the chief constable. The chief constable must, within 21 days of receipt of the notice, respond either:

- To report that s/he is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or foreign offence; or.
- To confirm the existence of the conviction and that it relates to a relevant or foreign offence.

6.17.

Where the chief constable proposes to confirm the existence of the conviction and that it relates to a relevant or foreign offence and considers that, having regard to the conviction, it is necessary for the purposes of any of the licensing objectives that the licence holder's premises licence should be varied, suspended or revoked, s/he may include in the response a recommendation to that effect.

6.18.

The licensing objectives are listed in section 6.8 of this report.

6.19.

Where a response from the chief constable states that s/he is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or foreign offence, the licensing board may not take any further action in relation to the conviction.

6.20.

Section 44(7) of the Act provides that where a response from the chief constable confirms the existence of the conviction and that it relates to a relevant or foreign offence and includes a recommendation that the licence holder's premises licence should be varied, suspended or revoked, the licensing board must make a premises licence review proposal in respect of the premises licence.

6.21.

Section 44(7A) of the Act provides that where a response from the chief constable confirms the existence of the conviction and that it relates to a relevant or foreign offence, but does not include any recommendation that the licence holder's premises licence should be varied, suspended or revoked, the licensing board must:

- Make a premises licence review proposal in respect of the premises licence; or
- Decide to take no further action in relation to the conviction.

6.22.

Section 37 of the Act provides that the grounds for a premises licence review proposal are:

- 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.
- That one or more of the conditions to which the premises licence is subject has been breached; or
- Any other ground relevant to one or more of the licensing objectives.

6.23.

A premises licence review proposal must specify the alleged ground for review, including in particular:

- Where the ground is 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 summary of the information on which the Board's view that the alleged ground applies is based.
- Where the ground is that one or more of the conditions to which the premises licence is subject has been breached, the condition or conditions alleged to have been breached.
- Where the ground is any other ground relevant to one or more of the licensing objectives, the licensing objective or objectives to which the alleged ground of review relates.

6.24.

Section 38 of the Act provides that where a licensing board makes a premises licence review proposal, the Board must hold a hearing for the purposes of considering and determining the proposal. Such a hearing is known as a "review hearing".

6.25.

In terms of paragraph 13 of the Licensing (Procedure) (Scotland) Regulations 2007 (<http://www.legislation.gov.uk/ssi/2007/453/regulation/13/made>), a review hearing is to be held no later than 42 days after the date on which the licensing board made the premises licence review proposal.

6.26.

Section 38(3) of the Act provides that where a review hearing is to be held, the licensing board must give notice of the review hearing and a copy of the premises licence review proposal to the licence holder and the Licensing Standards Officer (LSO).

6.27.

Where an LSO receives a copy of a premises licence review proposal, s/he must, before the review hearing, prepare and submit to the licensing board a report on the proposal and the licensing board must take the report into account at the hearing.

6.28.

The licensing board may, for the purposes of the review hearing, obtain further information from such persons, and in such manner, as the board thinks fit and take the information into account.

6.29.

In particular, the licensing board may request the attendance at the review hearing of any person for the purpose of providing information and may request the production at the review hearing by any person of any documents in that person's possession or under that person's control.

6.30.

Section 39 of the Act provides that at a review hearing in relation to any premises licence, the licensing board may, if it is satisfied that a ground for review is established, take such of the following steps as they consider necessary or appropriate for the purposes of any of the licensing objectives:

- Issue a written warning to the premises licence holder.
- Make a variation of the premises licence, for such period as they may determine.
- Suspend the premises licence for such period as the board may determine.
- Revoke the premises licence.

It is also open to the licensing board to take no action.

6.31.

Section 39(2A) of the Act provides that where, at the hearing, the licensing board is satisfied 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, the board must revoke the licence.

6.32.

Section 39(2B) of the Act provides that, subject to section 39B of the Act, a revocation of premises licence on the grounds referred to in section 39(2A) of the Act takes effect at the end of the period of 28 days beginning with the day on which the board makes the decision (the 28-day period).

6.33.

Section 39B of the Act requires the licensing board to recall a revocation of a premises licence if a "relevant application" is made within the 28-day period and the board grants the application.

6.34.

Section 39B of the Act also enables the board to extend the 28-day period pending determination of a relevant application.

6.35.

“Relevant application” for the purposes of section 39B of the Act means an application for transfer of the premises licence or a variation that the board considers would remove the ground on which the licence was revoked under section 39(2A) of the Act.

6.36.

In terms of section 132 of the Act, and subject to the provisions of Section 39(2B) of the Act referred to above, a sanction will come into effect immediately. However, there is an exception whereby, on the application of any appellant and if satisfied on the balance of convenience that it is appropriate to do so, the Court may set aside a decision to suspend or revoke a premises licence pending determination of any appeal, thus permitting the licence holder to trade.

7. Contact Officers

Gavin Mitchell, Clerk to the Board, extension 2233, email gavin.mitchell@orkney.gov.uk.

Elaine Sinclair, Legal Clerk, extension 2232, email elaine.sinclair-hill@orkney.gov.uk.

Lillian Rendall, Legal Clerk, extension 2229, email lillian.rendall@orkney.gov.uk .

8. Appendices

Appendix 1: Letter from Dionne J Butcher to Orkney Islands Area Licensing Board dated 5 September 2018

Appendix 2: Email from Police Scotland dated 12 September 2018.

- 5 SEP 2018

Dionne Jane Butcher



Licence Number OI/277

18 August 2018

Orkney Islands area Licensing Board

Council Offices

Kirkwall

Orkney

KW15 1NY

Dear sir /madam

This letter is to inform you I have been charged>

Charge1 - Assault

Charge 2- Section 38(1) of criminal justice & Licensing Act 2010.

I attended court on 06/08/2018 and was admonished and dismissed in respect of this case.

Yours Faithfully



Dionne Butcher

Lillian Rendall

From: Morris, Richard [REDACTED]
Sent: 12 September 2018 15:35
To: Licensing
Subject: OI/277 - Dionne Butcher

Elaine

Regarding the conviction for Dionne Butcher for assault that she has disclosed to yourselves I can confirm that this is accurate.

Furthermore I can confirm that it is not our intention to raise any objections to the licence held by Dionne Butcher.

Richard
PS490 Morris

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