

Item: 4

Orkney Islands Area Licensing Board: 1 December 2022.

Licensing (Scotland) Act 2005.

Personal Licence Holder – Notification of Convictions.

Rodney A Smith, Pentland, Longhope.

Report by Clerk to the Board.

1. Purpose of Report

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

2. Recommendations

It is recommended:

That the Board determines whether to make an order:

- revoking;
- suspending for such period, not exceeding 6 months, as the Board considers appropriate; or
- endorsing

the personal licence held by Rodney A Smith, Pentland, Longhope, following notification of convictions.

3. Policy Aspects

This report relates to the Board complying with its statutory duties as a Licensing Authority.

4. Introduction

4.1.

Personal licence OI/482 was issued to Mr Rodney A Smith on 31 March 2016 and has effect until 30 March 2026.

4.2.

The Licensing Service received an email on 7 October 2022 on behalf of Mr Smith, providing notification that he had “been convicted of drink driving on Wednesday 27th September. Rodney doesn’t have e mail and has asked me to inform you.”.

4.3.

The Licensing Service forwarded notification of the conviction to Police Scotland on 11 October 2022.

4.4.

By letter dated 14 October 2022, Police Scotland confirmed that Mr Smith had incurred a conviction in terms of section 5(1)(a) of the Road Traffic Act 1988 (Driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit). The letter is attached as Appendix 1 to this report.

4.5.

A copy of the letter from Police Scotland was forwarded to the licence holder by recorded delivery post on 28 October 2022. The applicant has been asked to attend the meeting on 1 December 2022 and was advised that he should consider seeking independent legal advice. He was also advised that he may be accompanied at the meeting by a legal or other representative.

5. Financial Implications

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

6. Legal Aspects

6.1.

Requirements relating to personal licences are contained within Part 6 of the Licensing (Scotland) Act 2005 (the 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 published at <https://www.legislation.gov.uk/> as modified by Part 2 of Schedule 2 of the Consumer Protection from Unfair Trading Regulations 2008 published at the same website.

6.5.

The 2007 Regulations provide that an offence of "driving etc. a vehicle with alcohol concentration above prescribed limit" is a relevant offence which would require declaration by any holder of a personal licence.

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:

- 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.

Where a response from the chief constable confirms the existence of the conviction and that it relates to a relevant or foreign offence, the licensing board must hold a hearing.

6.11.

At such a hearing, the licensing board may:

- having regard to the conviction and any recommendation contained in the chief constable's response in accordance with section 7.7 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.

7. Contact Officers

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

Sheila Tulloch, Depute Clerk to the Board, extension 2213, Email sheila.tulloch@orkney.gov.uk.

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

8. Appendix

Appendix 1 – Letter from Police Scotland dated 14 October 2022.

14/10/2022

Your Ref: [Text]

Our Ref: [Text]

Orkney Islands Licensing Board
Corporate Services
Orkney Islands Council
Council Offices
School Place
Kirkwall
Orkney
KW15 1NY



Kirkwall Police Station
Burgh Road
Kirkwall
Orkney
KW15 1AH

FOR THE ATTENTION OF ELAINE SINCLAIR, LEGAL CLERK

Dear Madam,

**LICENSING (SCOTLAND) ACT 2005 - PERSONAL LICENCE APPLICANT'S
DUTY TO NOTIFY LICENSING BOARD OF CONVICTIONS
RODNEY ALLAN SMITH, [REDACTED]
PENTLAND, LONGHOPE, ORKNEY, KW16 3PA.**

I refer to the above and your correspondence. In terms of Section 75(6)(b) of the Licensing (Scotland) Act 2005, I have to advise you that the applicant has been convicted of the following relevant offence(s).

Date	Court	Crime/Offence	Disposal
28/09/2022	Kirkwall: Sheriff	Road Traffic Act 1988 s5 (1) (A)	DISQUALIFIED 12 MONTHS, LICENCE ENDORSED, FINE £400, VICTIM SURCHARGE £20

I am unable to confirm the existence of any foreign offence in respect of the applicant or any connected person.

Yours faithfully

PS [REDACTED]
Kirkwall Police Station

For enquiries please contact the Licensing Department on [REDACTED]