

EAST AYRSHIRE COUNCIL

STATUTORY COUNCIL MEETING - 17 MAY 2007

MEMBERSHIP OF EAST AYRSHIRE LICENSING BOARD

Report by Solicitor to the Council/Clerk to the Licensing Board

1. PURPOSE OF REPORT

- 1.1** To apprise Council members of the legal requirements incumbent upon East Ayrshire Council by virtue of the relevant provisions of the Licensing (Scotland) Act 2005, to provide potential members with some detail of the role, responsibilities and obligations of members of the Licensing Board and to seek to have the appropriate number of members elected to serve on East Ayrshire Licensing Board.

2. BACKGROUND

- 2.1** From the inception of East Ayrshire Council the Licensing Board has operated in terms of the Licensing (Scotland) Act 1976 and has previously consisted of twelve Members, with the Solicitor to the Council, David Mitchell, appointed as Clerk. As such, the Board has hitherto been responsible for liquor licensing and betting and gaming licensing. It has been required to regulate the current various categories of liquor licenses for public houses, hotels, nightclubs and other entertainment premises, restaurants, refreshment licences and off-sales premises. In addition, the Board has dealt with occasional permissions and licences, regular extensions for registered clubs, betting offices licenses, bookmakers permits and bingo permits.
- 2.2** However, following the issue of The Nicholson Committee Report on Liquor Licensing Law in Scotland in August 2003, the Scottish Executive formulated the Licensing (Scotland) Act 2005. Although the new Act will not come fully into force until 2009 the planning and transitional process for the new regime has already begun and will necessitate fundamental change in all areas of liquor licensing law and practice.
- 2.3** In addition, new national legislation in the form of the Gambling Act 2005 has also come into force. This piece of legislation will also implement fundamental changes in relation to the Board's role and responsibilities on Gambling issues.

3. FUTURE OPERATION, MEMBERSHIP AND TRANSITIONAL ARRANGEMENTS OF THE BOARD

- 3.1** The Board is a statutory body distinct from the Council. In relation to 1976 Act business there will be three further meetings of the Board which will take place on 12 June and 9 October 2007 and 15 January 2008. Thereafter, a formal transitional period will begin on 1 February 2008 which will last until 1 September 2009 during which period all existing licence holders will be required to apply for a new licence under the 2005 Act. At this stage it is anticipated that from February 2008 until the end of the transition period, the Board may be required to meet on at least a fortnightly basis.
- 3.2** In terms of the relevant statutory provisions the members of the Licensing Board must be elected by the Council at its first meeting from among their councillors and the Board must comprise of not fewer than five and not more than ten members. The quorum for a meeting of the Licensing Board is one half of the number of members, but in any case cannot be fewer than three members. Irrespective of the statutory provisions, it is recommended that Council seek to appoint the maximum number of members to ensure that the future administration of the new licensing system is not compromised.
- 3.3** Thereafter, the Licensing Board must at its first meeting on 12 June 2007 elect one of their members as Chair of the Board. The Chair of the Licensing Board will then hold such office until after the next ordinary Council election or until resigning or ceasing to be a member of the Licensing Board.

4. DISQUALIFICATIONS FROM MEMBERSHIP

- 4.1** A councillor is disqualified from election as a member of the Licensing Board if the councillor is:-
- A premises licence holder,
 - An employee of a premises licence holder and works as such in licensed premises,
 - Whether alone or in partnership with another person engaged in the business of producing or selling alcohol,
 - A director or other officer of a company so engaged, or
 - An employee of any person so engaged and works as such in that business.

In practice, anyone with any association, or recent association with the licensed trade, should not be selected for Membership of the Board, as the integrity of the Board should not be compromised. Breach of the provisions in relation to disqualification is in itself a criminal offence.

5. TRAINING

- 5.1** The 2005 Act also introduces, for the first time, statutory obligations in relation to training requirements for members of the Licensing Board. In essence, this requirement is to the effect that all councillors elected as Board Members must satisfactorily complete an externally provided training course by Friday 17 August 2007. Board Members failing to do so cannot take part in any proceedings of the Board thereafter and may cease to hold office as a member of the Board. However, in an effort to ensure that the training requirements can be dealt with as quickly as possible it should be noted that arrangements have already been made for the training to be delivered by Servewise within Council Headquarters on Wednesday 27 June 2007.

6. LEGAL/POLICY/FINANCIAL/COMMUNITY PLANNING IMPLICATIONS

- 6.1** Other than the Council's statutory obligation to elect a Licensing Board at this meeting, none arising directly from the contents of this report.

7. CONCLUSION

- 7.1** As outlined above, whilst the Council does have a discretion in respect of the number of Members to be elected provided there are at least five, it is suggested that a membership of ten would afford the Board a greater level of flexibility in the discharge of its responsibilities and accordingly the Council may wish to consider electing this level of membership.

8. RECOMMENDATION

- 8.1** It is therefore recommended that the Council proceed to elect ten Members to serve on the East Ayrshire Licensing Board.

Solicitor to the Council/Clerk to the Licensing Board
DM/SMcC
10 May 2007

LIST OF BACKGROUND PAPERS

Nil

Anyone wishing further information should contact Stuart McCall (Tel. 01563 576085).

Implementation Officer: David Mitchell, Clerk to the Licensing Board

