
To: Emergencies Board

On: 3 April 2020

Report by: Director of Finance and Resources

Heading: Licensing Contingency Measures

1. Summary

- 1.1 The situation with Coronavirus continues to develop by the day and the Council continues to follow the latest advice from the Scottish and UK Governments. This is an unprecedented time and services will be severely tested.
- 1.2 At its meeting on 20 March 2020, the Board agreed that in relation to regulatory and quasi-judicial matters the Head of Corporate Governance would develop a procedure involving the conveners of the relevant Board being consulted. This report sets out revised processes in relation to some quasi judicial applications.
- 1.3 The Scottish Government published the Coronavirus (Scotland) Bill on 31 March 2020. The Bill makes a number of changes to licensing practice under the terms of the Civic Government (Scotland) Act 1982. However, a number of other emergency measures still remain to be implemented to ensure that the Council is able to meet its statutory obligations in relation to the determination of licence applications. This report outlines proposals to change policies and procedures for dealing with some licensing applications in the absence of meetings of the Regulatory Functions Board.

2. **Recommendations**

2.1 The Board is asked to:

2.1.1 Approve the measures proposed in paragraph 3.9 and 3.10 in relation to decisions normally taken by the Regulatory Functions Board and agree to delegate authority to the Head of Corporate Governance, the Legal and Democratic Services Manager and Assistant Managing Solicitor (Licensing) to make decisions in consultation with the Convenor or Depute Convenor of the Regulatory Functions Board.

2.1.2 Agree that powers be delegated to the officers specified at Paragraph 2.1.1 above to extend the duration of any licence falling within the remit of the Regulatory Functions Board, which would otherwise expire on or before 30 June 2020, for a period of three months.

2.1.3 Agree to introduce a temporary policy permitting the temporary cessation of Taxi and Private Hire Car Licences where requested by the vehicle operator.

2.1.4 Note that any application that is contrary to an existing policy of the Council will continue to be referred to Board following consultation with the Convenor or Depute-Convenor of the Regulatory Functions Board.

3. **Background**

Applications under the remit of the Regulatory Functions Board

3.1 The Council acts as Licensing Authority for a range of legislation including the Civic Government (Scotland) Act 1982 ('the 1982 Act') and the Housing (Scotland) Act 2006 ('the 2006 Act').

3.2 Under the Council's Scheme of Delegated Functions, Council officers currently have authority to deal with non-contentious applications, including where the application has attracted no objection and is in accordance with the policies of the Council. Otherwise, applications are determined by the Regulatory Functions Board.

3.3 The majority of civic licence applications under the Civic Government (Scotland) Act 1982 have a nine month determination period, which the new Bill seeks to increase to 12 months. House in Multiple Occupation

(‘HMO’) licences have a one year determination period under the Housing (Scotland) Act 2006. Scope for continuation of applications is therefore limited. If a determination date is passed, the outcome is that a licence is granted by operation of law (a “deemed grant”). It is not recommended that these situations arise as this removes scrutiny of an applicant, and where appropriate, premises, by the Council.

- 3.4 The Council has ceased all committee meetings until, at least, 24 June 2020. Additionally, the staffing resource available to maintain normal services is expected to be limited as the Council will be focusing on maintaining critical services to vulnerable communities as a priority.
- 3.5 In the coming weeks and possibly months, a number of measures will be required to ensure that the Council’s licensing service is able to maintain some level of normal operation. The current circumstances also pose significant challenges to licence holders/applicants in terms of their ability to trade, to submit, and make payment for, applications for renewals of licences.
- 3.6 It is proposed that Council officers will take a risk-based approach to dealing with applications. The majority of licensing applications are already able to be determined by officers using delegated powers, as they have not resulted in any objection and seek a licence in accordance with the licensing policies of the Council.
- 3.7 The Licensing Service will continue to deal with and process those licensing applications already received. New licence applications will not be accepted.
- 3.8 The vast majority of applications for licences are typically non-contentious, particularly renewals. In the absence of objections or negative comments from consultees, under the current Scheme of Delegated Functions, applications can be granted by Council officers (provided that the terms of the application are within the terms of the licensing policies of the Council).
- 3.9 It is proposed to temporarily change the Scheme of Delegation to allow applications which receive adverse comments or attract objections to be determined by officers. The following change is recommended, to apply in these circumstances and in the circumstances set out in Paragraph 3.10 below:

“During the period of time for which the Council’s Emergencies Board is in operation, the requirement for decisions to be made by the Regulatory Functions Board (“the Board”) shall not apply. Instead, such decisions shall be made by the Head of Corporate Governance, Legal and

Democratic Services Manager and Assistant Managing Solicitor (Licensing), in consultation with the Convener or Depute Convener of the Board, having regard to the public interest. Such decisions will be reported to the next meeting of the Regulatory Functions Board”.

3.10 It is anticipated that, for some licence application types, the relevant consultees may be unable to respond to renewal applications due to an inability to inspect premises or due to staffing shortages. As an interim measure it is proposed that a risk-based approach should be adopted. This approach would mean that, where it is not possible to find resolution to identified issues by consultees, applications would be considered under the Scheme of Delegated Functions as proposed at paragraph 3.9 above and either refused, or granted for a limited period of time, e.g. six months. Equally, it may be appropriate to approve applications, but subject to additional conditions. These matters would not require an additional delegation as they would be encompassed within the process set out at Paragraph 3.9.

3.11 Subject to approval of the proposed temporary change to the Scheme of Delegated Functions set out at Paragraph 3.9, officers will begin to determine applications where objections have been received following consultation with the Convenor or Depute Convenor of the Regulatory Functions Board. It should be noted the Council also receives from time to time a relatively small number of licensing applications where the terms of the application fall outwith the terms of the licensing policies agreed by the Council. These include applications for both grant and renewal of licences. In the case of renewals, these are generally to seek renewal on similar terms as previously agreed at a meeting of the Regulatory Functions Board. While delegated authority is not sought at this time to determine applications which are not in accordance with Council policy, existing applications will have to be determined within statutory time limits. This may require a further report to be brought to the Board seeking the delegation of additional powers, or alternatively those applications will require to be referred to the Emergencies Board for determination. However, any change to existing procedures will be discussed with the Convenor or Depute Convenor of the Regulatory Functions Board.

Extension of Duration of Licences

3.12 As stated at Paragraph 3.7, above, the Council is currently unable to receive new applications, including applications for renewal. Many licences falling under the remit of the Regulatory Functions Board expire after either a one, two or three-year period. In order to relieve pressure on both licence holders/applicants and the Licensing team, it is

recommended that the Council's policy on the period of grant of licences be varied, and that the officers specified at Paragraph 3.9 also be given power to extend any licence which is otherwise to expire on or before 30 June 2020 for a period of three calendar months. This would mean that the duration of any licences due to expire during the coming months would be extended as follows:

Date of Expiry	Date of Extension
31 March 2020	30 June 2020
30 April 2020	31 July 2020
31 May 2020	31 August 2020
30 June 2020	30 September 2020

A number of other Councils have adopted a similar course of action.

The Scottish Government are supportive of a pragmatic and sensible approach being taken to licensing procedures to help minimise the disruption caused to licence holders by the ongoing medical emergency.

The proposed arrangement will require to be reviewed further by the Board should current restrictions continue beyond 30 June 2020.

- 3.13 A record of the above decisions will be retained and reported to the next meeting of the Regulatory Functions Board.
- 3.14 The Licensing Section have been approached by a number of Taxi and Private Hire Vehicle operators who have advised that the current COVID-19 restrictions have resulted in a significant reduction in trade. This in turn has meant that they have ceased operating. A number of requests have been made seeking that they be allowed to reduce their current insurance cover to social, domestic and pleasure use on basis that they will, on a temporary basis, no longer undertake public or private hire. This is not permitted under current Council Policy and officers have been unable to agree to such requests. Accordingly, the Board is asked to agree recommendation 2.1.3. This would allow officers to authorise a temporary cessation of the licence upon receipt of a request in writing from the licence holder. They will be required to remove their plates upon granting of the cessation. This would then permit the licence holder to the use their vehicle for personal use only. Police Scotland will be notified of the temporary cessation. Operation of the Licence could only resume upon public or private hire insurance being exhibited. A similar approach has been adopted by neighbouring authorities.

Implications of the Report

1. **Financial** – There will be a reduction in income from licensing renewal income as licences are extended for an additional three months without payment of an application fee.
 2. **HR & Organisational Development** – N/A
 3. **Community/Council Planning** – it is unlikely that the recommendations will affect this directly, but the extension of licences will help sustain the livelihoods of licence holders
 4. **Legal** – as detailed in the report.
 5. **Property/Assets**- N/A
 6. **Information Technology**- N/A
 7. **Equality & Human Rights** -
 - (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report; only positive benefits are likely to result from the extension of duration of existing licences due to the ongoing medical emergency. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
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8. **Health & Safety** – nil.
 9. **Procurement** – nil

- 10. **Risk-** nil.
- 11. **Privacy Impact** – n/a
- 12. **Cosla Policy Position** – n/a
- 13 **Climate Change** – neutral. The report concerns the operation of the statutory licensing system to ensure the Council can meet the statutory requirements.
- 14 **Fairer Scotland Duty (Strategic Decisions Only)** – n/a

List of Background Papers

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