

To: Emergencies Board

On: 9 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 At its meeting on 3 April 2020, the Board considered the terms of a report on Licensing Contingency Measures. The Report was continued for further consideration of appropriate delegations to officers. Since that meeting the Coronavirus (Scotland) Act 2020 (“the 2020 Act”) received Royal Assent on 6 April 2020 and the licensing provisions of that Act are now in force. The Act 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 Agree to delegate authority to 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 Regulatory Functions Board and one member from each other political grouping represented on that Board, to grant applications for House in Multiple Occupation (HMO) Licences for a period of 6 months in limited circumstances where reports cannot be completed in relation to the suitability of the premises, provided no other adverse representations have been received.
- 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 other application that is contrary to an existing policy of the Council or subject to objections will continue to be referred to Board in line with existing practice.

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 licence applications under the Civic Government (Scotland) Act 1982 have a nine-month determination period, which the 2020 Act now increases to 12 months. However, House in Multiple Occupation ('HMO') licences have a one-year determination period under the Housing (Scotland) Act 2006 and the 2020 Act does not change the period for determining those licence applications. Therefore, there is no scope for continuation of these applications. If a determination date is passed, the outcome is that a licence is granted by operation of law (a "deemed grant"). For HMOs this would be a three-year licence. 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 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 As the provisions of the 2020 Act are now in force, meaning that the Council has an additional three months to determine most applications made under the terms of the 1982 Act, officers have considered to what extent there is a legal requirement to determine applications, which cannot be granted by officers under delegated powers. Having investigated the position in light of the new legislation, officers have ascertained that most applications which cannot be granted by officers will be able to be considered by Board following the Council's summer recess, due to the additional period allowed by the 2020 Act. However, it is considered necessary to temporarily change the Scheme of Delegated Functions to authorise officers to grant HMO licences for a restricted period of 6 months in limited circumstances. It is proposed to do so on the terms below:

"During the period of time for which the Council's Emergencies Board is in operation, 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 Regulatory Functions Board and one member from each other political grouping represented on that Board, may grant applications for House in Multiple Occupation (HMO) Licences for a period of 6 months where reports cannot be completed in relation to the suitability of the premises, provided no other adverse representations have been received from third party objectors. Such decisions will be reported to the next meeting of the Regulatory Functions Board".

3.10 HMO licences are granted for a variety of residential dwellings, including those designed for vulnerable persons. The Council requires to be satisfied in so granting a licence that an HMO is suitable for that purpose. Given current restrictions, officers from Communities, Housing and Planning Services are unable to carry out compliance visits due to social distancing rules to check that the premises now fully comply with their technical standards. Further, the Scottish Government have recently provided advice to private landlords to the effect that they should not seek to obtain any required gas safety and electrical installation condition certification until current restrictions are lifted. If such applications were referred to the Regulatory Functions Board, the Board's options in determining these applications would be limited, given the absence of information as to the suitability of the premises. Failure to reach a decision within the statutory timescale would result in an application being deemed to be granted, without the normal licence conditions, for a three-year period. It is therefore proposed that such applications would be considered under the Scheme of Delegated Functions as proposed at paragraph 3.9 above and granted for a limited period of six months

being the shortest period for which the Council is empowered to grant an HMO licence under the 2006 Act.

- 3.11 The Council receives from time to time applications which result in objections from Police Scotland and other parties, as well as 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 other than HMO applications, a further report may require to be brought to Board to regulate how such matters will be determined. Under the terms of the 2020 Act, a hearing may be held remotely, including by electronic means, in relation to applications made under the 1982 Act, although not the 2006 Act which regulates HMO licensing. Any change to existing procedures will be discussed with the Convenor or Depute Convenor of the Regulatory Functions Board before a further report will be brought before this 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

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