

Item: 5

Orkney Islands Area Licensing Board: 22 August 2019.

Licensing (Scotland) Act 2005.

Application for Personal Licence.

James A Linklater, Farahowe, Stenness.

Report by Clerk to the Board.

1. Purpose of Report

To determine an application for personal licence from James A Linklater, Farahowe, Stenness.

2. Recommendations

It is recommended:

That the Board determines the application for personal licence from James A Linklater, Farahowe, Stenness.

3. Policy Aspects

3.1.

The Board's Statement of Licensing Policy provides that determination of a personal licence application where the applicant has been convicted of a relevant or foreign offence is reserved to the Board.

3.2.

The full policy document is available from the Related Downloads section of the following Council webpage:

<https://www.orkney.gov.uk/Service-Directory/L/licensing-board-policies.htm>

4. Application

4.1.

An application for a personal licence was lodged by the Pickaquoy Centre on behalf of Mr Linklater on 6 June 2019. He declared the following convictions:

Offence	Court	Date	Penalty
CD30: Driving without due care and attention or without reasonable consideration for other road users.	9805: Kirkwall Sheriff Court District.	Conviction date: 9 August 2016.	Penalty points: 0. Fine: £200.
DR10: Driving or attempting to drive with alcohol level above limit.	9805: Kirkwall Sheriff Court District.	Conviction date: 9 August 2016.	Fine: £320. Period: 9 months.

4.2.

The application was copied to Police Scotland and the Council's Licensing Standards Officers via email on 6 June 2019.

4.3.

Police Scotland responded via email dated 11 June 2019 to confirm that they had no objections or observations in relation to the application. They attached a note of relevant convictions. Their response is attached at Appendix 1 to this report.

4.4.

Police Scotland subsequently confirmed by email dated 23 July 2019 that the penalty incurred in respect of the DR10 conviction was, as declared by the applicant, a fine of £320 and a disqualification period of 9 months and not, as stated in their letter, a fine of £230 and a disqualification period of 12 months.

4.5.

The Council's Licensing Standards Officers responded via email dated 13 June 2019 to confirm that they had no information in relation to the applicant that they considered may be relevant to consideration by the Board of the application and no objection to the personal licence being issued.

4.6.

A copy of the Police Scotland response was forwarded to Mr Linklater by recorded delivery post on 20 June 2019. Mr Linklater was advised that he was entitled to attend, or be represented at, the meeting on 22 August 2019 and was advised that he should consider seeking independent legal advice. He was also advised that he was entitled to be accompanied at the meeting by a legal or other representative.

5. Financial Implications

The appropriate application fee of £50 has been paid.

6. Legal Aspects

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. Applicants must be at least 18 years of age, be in possession of an approved licensing qualification, not hold any other personal licences and not have had a personal licence revoked within the preceding period of 5 years (other than revocation for failure to complete mandatory refresher training).

6.3.

6.3.1.

In terms of section 73 of the Act, the Board is required to provide the chief constable with a copy of the application. The chief constable must, within 21 days of receipt of the notice, respond either:

- To report that, as far as s/he is aware, the applicant has not been convicted of any relevant or foreign offence; or.
- To specify any convictions of the applicant for any such offence.

6.3.2.

Where the chief constable considers that it is necessary for the purposes of any of the licensing objectives that a personal licence application is refused, s/he may include in the response a recommendation to that effect. S/he may also provide to the Board any information in relation to the applicant that s/he considers may be relevant to consideration by the Board of the application.

6.4.

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.

6.5.

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

6.6.

The 2007 Regulations provide that an offence under section 5 of the Road Traffic Act 1988 (driving etc. a vehicle with alcohol concentration above prescribed limit) is a relevant offence for the purposes of the Act, which would require declaration by any applicant for a personal licence to the Board, unless the conviction was spent in terms of the Rehabilitation of Offenders Act 1974. The applicant has declared that he incurred a conviction for such an offence on 9 August 2016, which has been confirmed by Police Scotland and the penalty included a fine. Accordingly, the conviction will not be spent until 5 years have passed from the date of conviction.

6.7.

Although Police Scotland have advised that the applicant's conviction under section 3 of the Road Traffic Act 1988 (careless driving) is a relevant offence, the 2007 Regulations do not make such provision. Accordingly, the applicant's conviction for that offence did not require to be declared and should be disregarded for the purposes of consideration of his application for personal licence.

6.8.

In terms of section 73A of the Act, the Board is required to provide the Licensing Standards Officers (LSOs) for the Board's area with a copy of the application. The LSOs may, within 21 days of receipt of the copy application, respond to provide any information in relation to the applicant that they consider may be relevant to consideration by the Board of the application.

6.9.

In terms of section 74 of the Act, where a response from the chief constable confirms the existence of a relevant or foreign offence, but does not include a recommendation for refusal, the licensing board may hold a hearing to consider and determine the application.

6.10.

At a hearing referred to in section 6.9 above, the licensing board must, after having regard to the chief constable's notice and any information provided in terms of sections 6.3.2 or 6.8 above:

- If satisfied that a ground for refusal applies, refuse the application, or.
- If not so satisfied, grant the application.

6.11.

The grounds for refusal are:

- That, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence.
- That it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.

6.12.

In considering whether an applicant is a fit and proper person to be the holder of the licence, case law has established that there is no onus on an applicant to satisfy a licensing authority that s/he is a fit and proper person to hold a licence. Rather, the onus is upon the licensing authority to have a reasonable basis for reaching a decision on whether the applicant is a fit and proper person to hold a licence.

6.13.

Each application requires to be considered on its own merits.

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.

8. Appendix

Appendix 1: Email from Police Scotland dated 11 June 2019.

Elaine Sinclair-Hill

From: Richard Morris [REDACTED] >
Sent: 11 June 2019 23:38
To: Licensing
Subject: APPLICATION FOR GRANT OF PERSONAL LICENCE - James Linklater
Attachments: LIC19 PERSONAL - RELEVANT OFFENCES - NO RECOMMENDATION - JAMES LINKLATER.RTF

I can confirm Police Scotland has no objections or observations in relation to the attached application.

LIC 19 (relevant convictions) attached
Many thanks,

Richard Morris
Sergeant N0490
Orkney Area Command
Kirkwall Police Station
[REDACTED]

11/06/2019

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 LICENSING OFFICER

Dear Sir/Madam,

LICENSING (SCOTLAND) ACT 2005 - APPLICATION FOR THE GRANT OF A PERSONAL LICENCE

**JAMES ANDREW LINKLATER, [REDACTED]
FARAHOWE, IRELAND ROAD, STENNESS, ORKNEY ISLANDS, KW16 3LB.**

I refer to the above application and in terms of Section 73(3)(b) of the Licensing (Scotland) Act 2005, I have to advise you that, based upon the information provided to Police Scotland, the applicant has been convicted of the following relevant offence(s).

Date	Court	Crime/Offence	Disposal
09/08/2016	Kirkwall Sheriff	Section 3 Road Traffic Act 1988 (careless driving)	Fine £200 and licence endorsed.
		S5 Road Traffic Act 1988 (drink driving)	Fine £230 and Disqualified for 12 months.

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

Yours faithfully

For enquiries please contact the Licensing Department on 01463 720817.