

# Report

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Report to:	<b>Licensing Committee</b>
Date of Meeting:	<b>6 April 2011</b>
Report by:	<b>Executive Director (Corporate Resources)</b>

Subject:	<b>Amendment to Scheme of Delegation - Criminal Justice and Licensing (Scotland) Act 2010</b>
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## 1. Purpose of Report

1.1. The purpose of the report is to:-

- propose an amendment to the Scheme of Delegation to take account of changes to the Civic Government (Scotland) Act 1982 introduced by the Criminal Justice and Licensing (Scotland) Act 2010, the provisions of which came into force on 28 February 2011

## 2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the proposed amendment to the Scheme of Delegation, as detailed in Paragraph 4.3, be approved.

## 3. Background

3.1. Prior to the amended legislation coming into force on 28 February 2011, a holder of a licence under the Civic Government (Scotland) Act 1982 required to lodge a renewal application prior to the expiry of the existing licence. If the application was not lodged prior to the expiry date, then the licence holder would cease to trade pending the grant of a new licence.

## 4. Present Position

4.1. The Civic Government (Scotland) Act 1982 has now been amended by provisions of the Criminal Justice and Licensing (Scotland) Act 2010. The Act contains the following amendment:-

“On good cause being shown a licensing authority may for the purposes of sub paragraph (5) deem an application for renewal of a licence made up to 28 days after expiry of a licence to be an application made before the expiry.”

- 4.2. A licence holder may continue to trade although he/she has lodged the renewal application after the expiry date of their licence but within 28 days of that date. This would only apply if there was good cause shown as to why the application was lodged late, e.g. illness, bereavement.
- 4.3. In order for this amendment to be operated effectively, it is considered necessary for decisions in relation to what constitutes “good cause” to be made at an operational level. It is, therefore, proposed that powers be delegated to the Executive Director (Corporate Resources) to determine what constitutes “good cause” and,

accordingly, that the Scheme of Delegation (Section 4C, Paragraph 29) be amended to include the following:-

<b>Function</b>	<b>Power</b>	<b>Restriction</b>
To determine whether “good cause” has been shown in terms of Section 178 of the Criminal Justice and Licensing (Scotland) Act 2010	Accept or reject application for renewal of licence if received after date of expiry of existing licence but within 28 days of same	

## **5. Employee Implications**

5.1. None.

## **6. Financial Implications**

6.1. In the event that a significant number of applications for renewal are lodged in the 28 days following expiry of the previous licence, there may be a consequential impact on budgetary figures with income being received 28 days after the projected date.

## **7. Other Implications**

7.1. As in all new legislation, there may be a risk of increased Court challenges in respect of refusal to accept the application within 28 days of the date of expiry of the previous licence as the definition of “good cause shown” has not yet been tested by the Courts.

7.2 There are no apparent implications in terms of sustainable development.

## **8. Equality Impact Assessment and Consultation Arrangements**

8.1. No impact assessment or consultation is required in terms of the proposals contained within this report.

**Robert McIlwain**

**Executive Director (Corporate Resources)**

30 March 2011

## **Link(s) to Council Objectives/Improvement Themes/Values**

### **◆ Objectives:**

Accountable, Effective and Efficient

## **Previous References**

◆ Executive Committee of 26 January 2011

## **List of Background Papers**

• None

## **Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:-

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