

Cunninghame House,  
Irvine.

26 February 2014

### **North Ayrshire Licensing Board**

You are requested to attend a meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, 3rd Floor, Cunninghame House, Irvine on **MONDAY 3 MARCH 2014** at **10.00 am** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

**1. Minutes**

Confirm the Minutes of the Board Meeting held on 20 January 2014.

**2. Licences and Applications under the Licensing (Scotland) Act 2005**

Submit report by the Clerk to the Licensing Board on applications under the Licensing (Scotland) Act 2005 (copy enclosed)

**3. Scheme of Delegations for Licensing (Scotland) Act 2005 and Gambling Act 2005**

Submit report to the Licensing Board to approve the draft Scheme of Delegations



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## Licensing Board

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Sederunt:   Ronnie McNicol (Convenor)  
              Tom Marshall (Vice-Convenor)  
              Robert Barr  
              John Bruce  
              Ian Clarkson  
              Catherine McMillan  
              Alex McLean  
              Alan Munro  
              Donald Reid  
              Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:

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## Agenda Item 2

3 March 2014

### North Ayrshire Licensing Board

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**Subject:** Licences and Applications under the Licensing (Scotland) Act 2005

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**Purpose:** To inform the Licensing Board on the background to applications received under the Licensing (Scotland) Act 2005.

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**Recommendation:** That the Licensing Board determines the applications.

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#### 1. Introduction

- 1.1 The Licensing Board is responsible for determining applications made under the Licensing (Scotland) Act 2005, and for determining questions under that Act.
- 1.2 The Board has previously approved a Scheme of Delegation whereby certain matters can be delegated.

#### 2. Current Position

- 2.1 The applications before the Board are set out in the attached appendices. Each appendix contains reports prepared by licensing staff for each individual case before the Board.
- 2.2 Appropriate consultation has taken place with Police Scotland and with the Council's Building Standards and Planning Sections. Where relevant the reports have been copied to the applicants and any persons making objections or representations. Any objections or representations have been copied to the applicants, so that a response might be made at the Board Hearing.

Clerk to the Licensing Board

Reference : WO'B/MC

*For further information please contact William O'Brien, Solicitor (Licensing)  
, on 01294 324305*



## APPENDIX A

### Premises Licence Applications or any other Applications requiring a Hearing

Case No.	Licence Applicant/Licence Holder No.	Premises	Comments
1.	0035 The George (Largs) Limited 375 West George Street Glasgow G2 4LW	The George 17/19 Main Street Largs KA30 8AA	Premises Licence Review Proposal - Section 37
2.	0190 Manjit Kaur Dhaliwal 3 Macallan Place Lawthorn Irvine KA11 2DN	Redburn Stores 1 Redburn Place Irvine KA12 9BQ	Premises Licence Review Application - Section 36
3.	0449 Jagir Singh 25 Berry Drive Irvine KA12 0LJ	The Metro Nightclub 2 Hamilton Street Saltcoats KA21 5EN	Application for Grant of Provisional Premises Licence - Section 45 Continued from 20/01/2014
4.	0439 Simpsinns Limited 152a High Street Irvine KA12 8AN	Si Cafe, Bar & Restaurant 18 Kilwinning Road Irvine KA12 8RU	Application for Variation of Premises Licence - Section 29
5.	0367 Zulfiqar Ali 1 Milgarholm Avenue Irvine KA12 0ER	Broomlands Supermarket 35 Broomlands Gate Lewis Crescent Broomlands Irvine KA11 1HB	Application for Variation of Premises Licence - Section 29 Continued from 20/01/2014
6.	0450 Shahid Hanif 180 Prospecthill Road Mount Florida Glasgow G42 9LH	Anayas 13 Bridgend Kilbirnie KA25 7DJ	Application for Grant of Premises Licence - Section 20
7.	0264 Garnock Community Social Club 63 Main Street Kilbirnie KA25 7AA	Garnock Community Social Club 63 Main Street Kilbirnie KA25 7AA	Application for Transfer and Variation of Premises Licence - Sections 33 & 35

8.	0288	Garnock Community Social Club Loadingbank Road Kilbirnie KA25 6JY	Garnock Community Social Club Loadingbank Road Kilbirnie KA25 6JY	Premises Licence Review Proposal - Section 37
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### Premises Licence Review Proposal - Section 37

Premises	The George, 17/19 Main Street Largs
Premises Licence Holder	The George (Largs) Limited, 375 West George Street, Glasgow, G2 4LW
Premises Licence Ref	0035

#### **1. Background**

The Board has received confirmation from the Chief Constable that a connected person, being Director Robert Armstrong, born 01/05/1965, has been convicted of the following offence:

Date:	21 November 2013
Court:	Kilmarnock Sheriff Court
Offence:	1. The Copyright Designs and Patents Act 1988, Section 297(1) 2. The Copyright Designs and Patents Act 1988, Section 297(1)
Disposal:	1. Fine £3,200 2. Fine £3,200

This is a "Relevant Offence" (as prescribed by The Licensing (Relevant Offences) (Scotland) Regulations 2007 No. 513).

Under Section 44 the Board must, on receipt of that confirmation, make a Review Proposal under Section 37 (Review of Premises Licence on Licensing Board's initiative).

The information given by the Police is limited to that given above, and does not contain details of the charge, e.g. place, date, circumstances. However, the provisions of the Copyright Designs and Patents Act 1988 have no direct relation to the sale of alcohol.

#### **2. Action**

Given that the conviction has no direct relation to the sale of alcohol the Board may wish to conclude the Review by taking no action. If the Board considers that Revocation or the other steps otherwise available may be appropriate, and wishes to be addressed by the Licence Holder, the case should be continued to a later meeting.



**Premises Licence Review Application - Section 36**

Premises	Redburn Stores, 1 Redburn Place, Irvine, KA12 9BQ
Premises Licence Holder	Manjit Kaur Dhaliwal
Ref.	0190

**1. Background**

By letter of 17 February 2014 the Chief Constable made a Review Application under Section 36 informing the Board of certain circumstances relating to these Premises. Copies of the letter will be distributed to Members at the Meeting.

On 1 December 2009 the Board refused an Application for a Personal Licence submitted by Dalvinder Dhaliwal, the son of Premises Licence Holder. The Board refused the Application for the purposes of the "Crime Prevention Objective". Copies of that earlier Application and the Police representation making a Refusal Recommendation will be distributed to Members at the meeting.

**2. Ground(s) for Review**

The Chief Constable submits that there are grounds relevant to the following Licensing Objectives :

- (a) preventing crime and disorder
- (e) protecting children from harm.

**3. Capacity etc.**

The Premises are Licensed for off-sales only and have a display capacity of 21.65 square metres.

**4. Additional Powers of Inquiry**

The Board is entitled by Section 38(5) to

- (a) obtain further information from such persons, and in such manner, as the Board thinks fit, and
- (b) consider any possible Ground for Review even though it is not relevant to any circumstances alleged in the original Review Application or Proposal. If the Board proposes to do this, it should inform the Licence Holder of its intention and consider whether an adjournment is appropriate.

**5. Board's Powers on Review**

The Board must hear the Applicant and the Licence Holder, and decide whether or not a Ground for Review is established.

If so, the Board may take any one or more of the following steps if it considers necessary or appropriate for the purposes of any of the Licensing Objectives:

- (a) issue a Written Warning to the Licence Holder;
- (b) make a Variation of the Licence - either indefinitely or for a specific time. The Variation may relate to any part of the Licence, for example:
  - (i) the operating hours for the Premises (or any part);
  - (ii) the Premises Manager (if any) can be removed;
  - (iii) the activities which may be carried on on the Premises (or any part);
  - (iv) the terms for access by persons under 18 to the Premises (or any part);
  - (v) the Licence Conditions (the Variation cannot alter the statutory Mandatory Conditions);
- (c) Suspend the Licence for a specific time.

If the Board imposes a Suspension, then it should not have immediate effect unless this is considered necessary in the public interest; most Suspensions should be postponed to give the PLH the opportunity to appeal to the Sheriff Court. Any Board order takes effect immediately, and is not postponed by an appeal, but if appealing the PLH can ask the Sheriff to recall the Suspension pending appeal. The postponement is in the Board's discretion, but 7 days would be reasonable.

- (d) Revoke the Licence. Similar considerations apply to the question of whether or not the Revocation should have immediate effect.

The Board is not obliged to take any of these steps, and it may decide that although a Ground for Review is established, no action is required.

The Board may take these steps either on the basis of the original Review Procedure, or on the basis of information obtained in the course of the Review Procedure.

## **6. Personal Licence**

Under Section 84, whether or not the Board takes any action in relation to a Premises Licence, the Board may consider that any Personal Licence Holder who is or was working in the Licensed Premises concerned (for example, a Premises Manager or a member of staff) acted in a manner which was inconsistent with any of the Licensing Objectives. If there is a suggestion that staff training was inadequate, the Premises Manager's Personal Licence may be reviewed whether or not he was present at the time of the circumstances alleged.

If the Licence Holder is working in Licensed Premises in North Ayrshire, and has had the opportunity to be heard, the Board Meeting which considers the present Premises Licence Review can consider that review at the same time as the Hearing relating to the Premises Licence.

Otherwise, the Board should either:

- (a) continue the case to a later date to allow notice to be given to the Personal Licence Holder, or
- (b) notify the appropriate other Licensing Board, and make a recommendation to that Board as to whether the Personal Licence should be Revoked, Suspended or Endorsed. That Board will then hold a Hearing.

Whichever Board holds the Review Hearing may, if it considers it necessary for any of the Licensing Objectives:

- (a) Revoke the Personal Licence,
- (b) Suspend the Personal Licence for up to 6 months,
- (c) Endorse the Personal Licence. An endorsement lasts 5 years. If the Licence Holder gets 3 Endorsements in a 5 year period, then the Board would have to consider whether the Licence should be Suspended (for up to 6 months) or Revoked (these are not automatic).

The Board is not obliged to take any of these steps, and may decide to take no action.



### Application for Grant of Provisional Premises Licence - Section 45

Applicant	Jagir Singh
Premises	"The Metro Nightclub", 2 Hamilton St., Saltcoats KA21 5EN
Ref.	449

#### **Preliminary**

*Continued from 20 January 2014. Since then the Applicant has lodged fresh Operating and Layout Plans. The proposal now is for a nightclub without any of the other facilities, such as catering for funerals, which were proposed earlier.*

#### **1. Summary of Proposal**

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL) for a Nightclub. The building previously held a Premises Licence (NALB ref. 002) but the Licence lapsed in December 2011 when the then PLH lost his right to occupy the building, and the building has not traded since.

The PPL relates to Premises which are to be converted for use as Licensed Premises, and is valid for a period of four years. During this period, the Applicant can request the Board to Confirm the PPL, or to extend the period.

The Premises cannot sell alcohol until the PPL is Confirmed. The Licence-Holder will apply to the Board for Confirmation once the conversion is complete, and after Certificates as to Building Control (and if appropriate Food Hygiene) are issued. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

The Board decision on the PPL relates only to licensing legislation, and does not act as permission or certification under other legislation, such as Planning or Building Control. If the PPL is granted, the Premises cannot operate until all other legislative requirements are met.

The previous Licence was granted during the Transitional Period without a Building Standards Certificate because the Premises already had a Licence under the Licensing (Scotland) Act 1976 and benefitted from 'grandfather rights' provisions. The Licence now requested does not have 'grandfather rights', and such a Certificate will be needed later, when Confirmation is requested.

#### **2. Detailed proposal**

##### **(a) Licensed Hours (on-sales)**

Either the request is within NALB Policy on licensed hours, and is shown 'OK', or the Policy is shown.

	<i>Proposal</i>	<i>Policy</i>
Monday		
Tuesday		
Wednesday		

Thursday	22.00 - 2.30	OK on all days
Friday	"	
Saturday	"	
Sunday	22.00 - 1.00	

(b) Capacity

On-Sales (persons)	679 *
Standing / Seated	500 / 150-200

*\*The capacity of 679 is based on the whole building (both the ground and first floor). When earlier licensed the building had a capacity of 570, but the applicant proposes a substantial refurbishment of the property and the PPL will not be Confirmed unless the Clerk is advised by Building Standards that the premises are suitable for a capacity of 679.*

(c) Activities other than the sale of alcohol

	<b><i>Proposed</i></b>
Accommodation	
Conference facilities	
Restaurant facilities	
Bar meals	
Receptions (including weddings, funerals, birthdays, retirements, etc.)	
Club or other group meetings	
Recorded music	x
Live performances	x
Dance facilities	x
Theatre	
Films	
Gaming	
Indoor/Outdoor sports	
Televised sport	
Outdoor Drinking	
Adult entertainment	

	Other activities
<b><i>Proposed</i></b>	None

(d) Access for Under-18s

No under-21s allowed, and proof of age will be required.



### 3. Issues

The Board must consider whether or not overprovision would arise if the premises were licensed.

There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2016, Annex E). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:

- (a) the existing number and capacities of Premises in that Locality and in that Function Type is already sufficient,
- (b) Overprovision would result if the Application was to be granted, and
- (c) the Application should be refused.

The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

The Board will expect Applicants who are seeking the grant of a new Premises licence or a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application.

This report to the Board supplies the following information:

- (a) the Locality of the Premises
- (b) the Function Type of the Premises
- (c) any Additional Factors
- (d) other similar premises in the Locality

#### (a) the Locality of the Premises

The Board has determined that there are 6 'localities' in its area (coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

The Subject Premises are in Locality 2 : Three Towns (Ardrossan, Saltcoats & Stevenston).

#### (b) the Function Type of the Premises

The Board's Overprovision Policy distinguishes Premises by 'Function Types'.

The Subject Premises are in Function Type 2 (Entertainment venues, e.g. nightclubs).

**(c) Additional Factors**

The likelihood that the Application will be granted or refused will be influenced by the Locality and the Function Type:

- (1) Locality: the Premises are in one of 4 Localities where Applications are especially unlikely to be granted (regardless of the Function Type) - "Three Towns"; "Kilwinning"; "Irvine etc."; or "Garnock Valley";
- (2) Function Type: The presumption of refusal applies to FT 2, 3 & 6 (nightclubs, pubs, and 'Part K' Clubs (regardless of the Locality);

**(d) other similar premises in the Locality**

There are 5 Premises of the same Function Type in the Locality, although none in Saltcoats. However, the Board may consider that it is appropriate to compare Function Type 3 (On-sales other than entertainment venues, e.g. public houses).

In the Locality, there are 29 premises of the Function Type 3, and the Locality has a total capacity of 7,492 customers.

The population of that Locality is 30,966 people (Source: Population from 'Scottish Neighbourhood Statistics' 2011).

**4. Observations**

None

**5. Licence Conditions**

If the Licence is granted, it will be subject to the following parts of the NALB Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions):

- A (All Premises)
- C (On-sale Premises)
- D (Late Opening Premises)
- E (Special Late Opening Premises)
- F (Entertainment)

Board should also consider whether it is necessary to attach an additional specially-worded condition to the Licence, and/or whether this additional Condition should be applied:

X.1 (CCTV to show inside Premises and any Outdoor area)

The CCTV condition was applied when the Premises were licensed before. The current Layout Plan shows 3 CCTV cameras covering the exits to Hamilton St..



## Application for Variation of Premises Licence - Section 29

Applicant	Simpsinns Ltd.
Premises	"Si Cafe, Bar & Restaurant", 18 Kilwinning Road, Irvine
Ref.	439

**1. Summary of Variation Request(s)**

No.	Variation
1	Add Outdoor Drinking Area on ground floor
2	Permit use of that outdoor area before Core Hours for hot drinks/soft drinks
3	Increase occupant capacity from 310 to 358 people
4	Extend under-18 access to that outdoor area

**2. Objections and Representations**

Police	No objection
Community Council	No response
Fire	No objection
Health Board	No response
Planning	No objection
Other Objections or Representations	Below

Name	Address	Date Received	Late or OK
J Wyllie	6 Highet Gardens, Irvine	18/02/2014	OK
Margaret J McCreddie	8 Kilwinning Road, Irvine	18/02/2014	OK
Ann & Murray McBurnie	27 Kilwinning Road, Irvine	19/02/2014	OK
Helen & Tim Swan	8 Highet Gardens, Irvine	20/02/2014	OK
Ian Turnbull	1 Highet Gardens, Irvine	20/02/2014	OK
Ann T McCurry	5 Highet Gardens, Irvine	20/02/2014	OK
Mr & Mrs J W Smith	11 Highet Gardens, Irvine	20/02/2014	OK
Dr & Mrs J C Lovie	7 Highet Gardens, Irvine	20/02/2014	OK
W R Young	12 Kilwinning Road, Irvine	21/02/2014	OK

**3. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

**Variation 1: Add Outdoor Drinking Area on ground floor**

Discretionary refusal

Notes:

The Licence was granted on 20 March 2013 and the Licence was granted with an express limitation (endorsed on the Layout Plan and added to OP5):

*"Only the building and its balcony are Licensed, and the sale or consumption of alcohol is not permitted in any area outside the footprint of the building. The Licence does not extend to the landscaped area at the front."*

The present Application seeks to overturn this in part, since the proposal now is to use the decking at the front of the building. There is no proposal to use the grass area between the decking and the boundary with the main road.

The Board would have to be satisfied that the proposals were not inconsistent with any of the Licensing Objectives, and in particular L.O. (c): 'preventing public nuisance'.

Board may consider that its Standard Conditions are sufficient:

"C.5.1 No loudspeakers, televisions, radios or other devices for amplifying sound shall be positioned at any time in Outdoor Drinking Areas."

If the Board allows Outdoor Drinking, and is later satisfied that this is inconsistent with any L.O. or that any Licence condition has been breached, it has the right to Vary the Licence so as to limit or remove the permission.

**Variation 2: Permit use of that outdoor area before Core Hours for hot drinks/soft drinks**

Discretionary refusal

Notes:

The Core Hours commence at 11.00 a.m. (7 days). The Premises sell hot drinks/soft drinks from 8.00 a.m..

The proposal is inconsistent with one of the Board's Standard Conditions on Outdoor Drinking Areas:

"C.5.2 No drinks (alcoholic or not) shall be taken into or consumed in such areas earlier than 11.00 a.m. and later than 10.00 pm.."

This condition is not mandatory and it is open to any Applicant to invite the Board to vary it. The Board would have to be satisfied that the proposal was not inconsistent with any of the Licensing Objectives, and in particular L.O. (c): 'preventing public nuisance'.

Note to Applicant

*This is not an issue the Board will take into account when deciding whether or not to*

*grant this Application, but for the Applicant's information it is a Condition of the Planning Permission granted on 14 August 2013 (13/00384/PP) that external seated areas must not be used outside 11.00 and 23.00.*

*Even if the Board grants the Variation requested, the Applicant will not be able to use the decking area unless the PP is varied.*

<b>Variation 3: Increase occupant capacity from 310 to 358 people</b>
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Discretionary refusal
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Notes:
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Applicant should confirm whether or not the proposed increase relates only to the outside decking.
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If the proposal is to increase the capacity of the building, the Board should not make a decision until the Chief Building Standards Officer has reported on the proposal, as the Board would have to be satisfied that the proposal:
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(a) was consistent with L.O. (b) ('securing public safety')
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(b) would not make the Premises unsuitable for the sale of Alcohol.
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<i>Note to Applicant: OP7 still omits to state Off-Sales Capacity. The Report considered by the Board when granting the Licence in 2013 included:</i>
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<i>"Not stated. Applicant must advise the Board of the correct figure, either in writing or by attending the Board Meeting."</i>
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<b>Variation 4: Extend under-18 access to that outdoor area</b>
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Discretionary refusal
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Notes:
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The Applicant proposes to extend to the outdoor area the same arrangements which already apply to the building itself. If the decking is to be licensed, there are no grounds for refusing this particular variation.
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#### **4. Licence Conditions**

No variation of the Conditions is appropriate.
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### Application for Variation of Premises Licence - Section 29

Applicant	Zulfiqar Ali
Premises	Broomlands Supermarket, 35 Broomlands Gate, Irvine KA11 1HB
Ref.	367

*Continued from Meeting of 20 January 2014. The Applicant later amended the Application, and accordingly the Application was re-intimated to third parties (e.g. Police, Health Board).*

#### **1. Summary of Variation Request(s)**

<b>No.</b>	<b>Variation</b>
1	<i>Increase Off-Sales Terminal Hours to 10.00 - 22.00, 7 days</i>
2	<i>Increase Off-Sales capacity from 10.9 sq.m. to 20.9 sq.m.</i>

#### **2. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

<b>Variation 1: <i>Increase Off-Sales Terminal Hours to 10.00 - 22.00, 7 days</i></b>
Grant (no statutory reason to refuse, and no breach of Board policy)

<b>Variation 2: <i>Increase Off-Sales capacity from 10.9 sq.m. to 20.9 sq.m.</i></b>
Discretionary refusal
Notes:
<u>Overprovision may result if the Application is granted</u>
There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2016, Annex E). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.
The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:
(a) the existing number and capacities of Premises in that Locality and in that Function Type is already sufficient,
(b) Overprovision would result if the Application was to be granted, and
(c) the Application should be refused.

The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

The Board will expect Applicants who are seeking the grant of a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application.

This report to the Board supplies the following information:

- (a) the Locality of the Premises
- (b) the Function Type of the Premises
- (c) any Additional Factors
- (d) other similar premises in the Locality

(a) the Locality of the Premises

The Board has determined that there are 6 'localities' in its area (coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

The Subject Premises are in:

Locality 4 : Irvine and Area (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torran yard)

(b) the Function Type of the Premises

The Board's Overprovision Policy distinguishes Premises by 'Function Types'.

The Subject Premises are in Function Type 1 (Off-sales).

(c) Additional Factors

The likelihood that the Application will be granted or refused will be influenced by the Locality and the Function Type:

- (1) Locality: the Premises are in one of 4 Localities where Applications are especially unlikely to be granted (regardless of the Function Type) - "Three Towns"; "Kilwinning"; "Irvine etc."; or "Garnock Valley";
- (2) Function Type: any Application for Premises in FT 1 (Off-sales) is especially unlikely to be granted (regardless of the Locality);

(d) other similar premises in the Locality

In the Locality, there are 37 premises of the same Function Type as the Subject Premises. The Locality has a total off-sales capacity of 2,079 square metres.

The population of that Locality is: 37,738 people.

(Source: Population from 'Scottish Neighbourhood Statistics' 2011).

### **3. Licence Conditions**

The Licence was granted subject to Edition 3 of the Board's Standard Conditions - before the most recent revision. The existing Conditions should be replaced by the current Edition 5.



### Application for Grant of Premises Licence - Section 20

Applicant	Shahid Hanif
Premises	Anayas 13 Bridgend Kilbirnie KA25 7DJ
Ref.	450

#### **Preliminary**

*The Board is entitled, but not obliged, to request a report from the Chief Constable detailing all cases of Antisocial Behaviour, and all complaints or other representations made to Police which have taken place on, or in the vicinity of, the Premises, in the previous year. (The Board's power is under Section 24A, as added by the Criminal Justice and Licensing (Scotland) Act 2010).*

*Before proceeding to determine the Application itself, the Board should decide whether or not to request a Report. If it does, it must defer further consideration until the Report is produced.*

*The Applicant should lodge the following Certificate. Until the Board has it, it cannot determine the Application:*

*Building Control*

#### **Summary of Proposal**

The Applicant has applied for the Grant of a Premises Licence.

The proposal is a single storey ground floor premises situated near the centre of Kilbirnie comprising a restaurant, male and female toilet accommodation, kitchen, dishwashing area with provision for storage, office and cellar.

The Board decision on the Licence relates only to licensing legislation, and does not act as permission or certification under other legislation, such as Planning or Building Control.

#### **Detailed proposal**

##### **(a) Licensed Hours**

The Premises will sell on-sales only.

Either the request is within NALB Policy on licensed hours, and is shown 'OK', or the Policy is shown.

	<b><i>Proposal</i></b>	<b><i>Policy</i></b>
Monday	16.00 – 23.00	OK
Tuesday	16.00 – 23.00	OK
Wednesday	16.00 – 23.00	OK
Thursday	16.00 – 23.00	OK
Friday	16.00 - 24.00	OK
Saturday	16.00 - 24.00	OK
Sunday	16.00 - 23.00	OK

(b) Capacity

On-Sales (persons)	80
Standing / Seated	0/80
Off-Sales (sq. mtr.s)	Not Applicable

(c) Activities other than the sale of alcohol

	<b><i>Proposed</i></b>
Accommodation	
Conference facilities	
Restaurant facilities	x
Bar meals	
Receptions (including weddings, funerals, birthdays, retirements, etc.)	x
Club or other group meetings	x
Recorded music	x
Live performances	x
Dance facilities	x
Theatre	
Films	
Gaming	
Indoor/Outdoor sports	
Televised sport	
Outdoor Drinking	
Adult entertainment	

	Other activities
<b><i>Proposed</i></b>	None

(d) Access for Under-18s

Terms and Ages (OP 6(b) & (c))	Children (0-15 years) and young persons (16-17 years) when accompanied by an adult:  (i) for a meal or;
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	(ii) in attendance at a reception or meeting of the type identified above at (c) proposed activities
Times (OP 6(d))	Children of all ages allowed during full extent of core licensed hours or (if later than the end of the core hours period) until the terminal time of a function.
Parts (OP 6(e))	All public areas of Premises

## **Issues**

The Board has a discretion to grant or refuse the Application. The Board should consider all the potential Grounds of Refusal set out below. If any apply, the Board must refuse. If none apply, the Board must grant: Section 23(4)-(5).

However, the Board is obliged to grant the Application if the Applicant accepts a suitable modification to the Operating Plan or Layout Plan (or both), where that modification deals with the potential ground for refusal: Section 23(7).

### **(1) Licensing Objectives**

In all Applications, whether or not there are third-party objections, the Board must consider whether or not the Application is inconsistent with any of the Licensing Objectives.

The L.O.s which appear to apply are

#### **(a): 'preventing crime and disorder'**

The applicant has been convicted of a relevant offence under sec. 102(1) of the Licensing (Scotland) Act 2005 (sale of alcohol to a child or young person). The Board may consider that this is not consistent with this L.O..

#### **(e): 'protecting Children from harm'**

This L.O. relates to Children aged 0-15 years, and not to older 'Young Persons' (aged 16-17).

The Board may consider that the proposal to allow Children (aged 0-15) on the Premises after 22.00 is not consistent with this L.O.

### **(2) Other considerations**

In addition, the Board must consider two other potential grounds of refusal:

- (a) whether or not the premises are unsuitable for the sale of alcohol.
- (b) whether or not overprovision would arise if the premises were licensed.

(a) The Premises are unsuitable for the sale of Alcohol

It is the Clerk's opinion that there are no issues arising in this respect, however the Board may wish to inspect the Premises or have a LSO report before determining this Application.

(b) Overprovision may result if the Application is granted

There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2016, Annex E). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:

- (a) the existing number and capacities of Premises in that Locality and in that Function Type is already sufficient,
- (b) Overprovision would result if the Application was to be granted, and
- (c) the Application should be refused.

The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

The Board will expect Applicants who are seeking the grant of a new Premises licence or a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application.

This report to the Board supplies the following information:

- (a) the Locality of the Premises
- (b) the Function Type of the Premises
- (c) any Additional Factors
- (d) other similar premises in the Locality

(a) the Locality of the Premises

The Board has determined that there are 6 'localities' in its area (coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).



The Subject Premises are in:

Locality 5 : Garnock Valley (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie & Lugton)

(b) the Function Type of the Premises

The Board's Overprovision Policy distinguishes Premises by 'Function Types'.

The Subject Premises are in:

Function Type 4 (On-sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment and the supply of alcohol for consumption is only ancillary to that purpose; 'meal' means a substantial meal eaten at a table, counter or other structure which serves the purpose of a table. Snacks and crisps are not considered to constitute 'meals'.

(c) Additional Factors

The likelihood that the Application will be granted or refused will be influenced by the Locality and the Function Type:

(1) Locality: the Premises are in one of 4 Localities where Applications are especially unlikely to be granted (regardless of the Function Type) - "Three Towns"; "Kilwinning"; "Irvine etc."; or "Garnock Valley";

(2) Function Type: the Premises are in FT4 (On-Sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment), so the Board is entitled to refuse the Application but is not bound to do so by its Overprovision Policy.

(d) other similar premises in the Locality

In the Locality, there are 4 premises of the same Function Type as the Subject Premises. The Locality has a total capacity of:

on-sales: 5,783 customers

off-sales : 1,156 square metres

The population of that Locality is: 20,059 people

(Source: Population from 'Scottish Neighbourhood Statistics' 2011).

### Observations

(i) The Application states:

*"The Applicant will wish to take advantage of such additional hours as the Licensing Board may permit during the Festive Season each year."*

The Licence will not permit operation outside the Core Hours specified in Q2/Q3 (i.e. the ordinary trading hours, 7-days-a-week). The Applicant requires to include in OP Q4 the intention to seek extra hours, but this is only an intention.

The way for Premises to obtain extra hours is to apply to the Board for Extended Hours (an Occasional Extension) as and when the hours are wanted. Applications should be lodged at least 28 days in advance (see Statement of Practice in Licensing Policy Statement 2013-16, Annex C - on Board's www). The individual requests are then copied to the Police, who can make representations. The Extension will be granted only if within Board Policy.

(ii) Since the Premises are to admit children under 5, the Mandatory Condition requiring Baby-Changing Facilities accessible by both genders applies (Sch. 3, Para. 12, SC C.3). The Application does not indicate where these facilities would be.

Applicant should:

- (a) state where such facilities will be, or
- (b) amend OP to exclude children under 5; or
- (c) give Board an undertaking that the Premises will not open until necessary facilities are in.

Without such facilities, or without children under 5 being excluded, the Board may consider that reasons to refuse exist:

- (a) Application is inconsistent with L.O. (d) ("protecting and improving public health");
- (b) Application is inconsistent with L.O. (e) ("protecting children from harm");
- (c) Premises are unsuitable for use for the sale of alcohol.

### Licence Conditions

If the Licence is granted, it will be subject to the following parts of the NALB Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions):

- A (All Premises)
- C (On-sale Premises)
- F (Entertainment)

**Application for Transfer and Variation of Premises Licence - Sections 33 & 35**

Applicant	Garnock Community Social Club
Transferee	Kilbirnie Commercial Ltd.
Premises	63 Main St., Kilbirnie
Ref.	264

*Preliminary: this Report was prepared provisionally, before the end of the period during which the Applicant is obliged to display a Site Notice (21 February 2014). Until the Board has a Certificate confirming that this has been done, consideration must be continued to a later meeting.*

**1. Introduction**

GCSC has two separate Premises Licences, for two separate buildings:

- (a) NALB ref. 264 - 63 Main St., Kilbirnie (referred to as "the top club")
- (b) NALB ref. 288 - Loadingbank Road, Kilbirnie ("the bottom club")

The present Report concerns Premises (a). There will separately be a Review Hearing at the Board of 3 March 2014 concerning Premises (b).

The holder of the Licence has requested the Board to vary the Licence and then Transfer it.

The Licence is currently held by a Club which is restricted to selling alcohol to its Members, as opposed to the general public, and accordingly has 'Special Status' under Section 125. The proposal is to vary the Licence:

- (1) to change the name to "The Commercial", and
- (2) to appoint a Premises Manager.

No other Variation is requested, and the Premises will continue with the same layout and licensed hours as at present:

	On-Sales	Off-Sales
Monday	11.00 - 23.00	11.00 - 22.00
Tuesday	11.00 - 23.00	11.00 - 22.00
Wednesday	11.00 - 24.00	11.00 - 22.00
Thursday	11.00 - 23.00	11.00 - 22.00
Friday	11.00 - 23.00	11.00 - 22.00
Saturday	11.00 - 24.00	11.00 - 22.00
Sunday	12.30 - 24.00	12.30 - 22.00

The Applicant has stated that the Transfer Application is contingent on the grant of the Variation Application. Therefore, the Board must determine the Variation Application before determining the Transfer Application. If the Board refuses the Variation Application, the Transfer Application automatically falls (Sections 35(3-4)).

## **2. Consultation**

Variation: since the requests are both "Minor Variations" within the statute, there is no need for any publication or intimation. However, the intended effect of what the Applicant wishes is a Major Variation, so as to surrender the 'Special Status'. Therefore, in the unusual circumstances here third parties have been advised of the Application, and there is scope for objections or representations, and the Applicant is obliged to display a Site Notice. Also, the change raises the issue of Overprovision (see 'Issues' below).

Transfer: the legislation requires that the Chief Constable be asked to report on the proposed Transferee and any Connected Person. The Chief Constable has stated that there are no relevant convictions, and has made no refusal recommendation. There is no need for any publication or intimation.

Police	No objection
Community Council	Letter will be handed to Members
Fire	No objection
Health Board	No response yet
NAC Building Standards	No response yet
NAC Planning	No objection
Others	Below

Name	Address	Date Received	Late or OK
Anthony Everett	78 Barony Terrace, Kilbirnie	18/02/2014	OK
Mrs W Everett	78 Barony Terrace, Kilbirnie	19/02/2014	OK
Tracy Reid		20/02/2014	OK

## **Petition**

Section 22(4) is:

*"A Licensing Board may reject a notice of Objection or Representation received by the Board under subsection (1) if the Board considers the Objection or Representation is frivolous or vexatious."*

The Licensing Policy Statement 2013-2016 (adopted 19 November 2013) includes at Annex H ("Board Business etc."), Part (f) ("Third Party Comments and Complaints"):

*"2. It is not possible to raise issues with the Licensing Board which relate to legislation other than the Licensing (Scotland) Act 2005. For example, issues about parking and Planning Permission are dealt with by the Roads (Scotland) Act 1984 or the Town and Country Planning (Scotland) Act 1997, and the Licensing Board cannot deal with these."*

*However, the Board may accept that the issues raised are relevant to the Licensing Objectives or statutory Grounds for Refusal."*

3. *It is important that a comment should be specific. It is not enough to say "I object" or "I complain", without giving an explanation for that view.*

*For example, in an Application for a new Premises Licence, the Board must make a decision based on the "Grounds for Refusal" stated in Section 23(5) (the position is similar with Major Variations, where the "Grounds for Refusal" are stated in Section 30(5)). An O/R would have to state in what way the proposal would give rise to one or more of the "Grounds for Refusal".*

*If the O/R is insufficiently specific, the Board may reject it as "frivolous or vexatious" (Section 22(4)), and if the O/R is rejected then the Board may recover expenses from the person making it (Sections 22(5) and 22(6)).*

*For these reasons, a Petition is unlikely to be accepted as a valid O/R. If 100 people sign a Petition, they are unlikely to all have the same complaints. The Board has to determine the weight to be placed on individual comments. In the common example of an objection or complaint based on nuisance or Anti-social behaviour, the Board is likely to be more influenced by comments from immediate neighbours of the Premises than from residents further away. If a person signs a Petition without specifying his address his comment is likely to be disregarded."*

Accordingly the Board should consider whether or not:

- (a) a Petition is sufficiently specific or whether it should be disregarded entirely, and
- (b) if accepted, what weight (if any) should be attached to it.

### **3. Issues**

There appear to be no issues in relation to the Licensing Objectives (although this assessment has been made before the Site Notice display period has expired so it is possible that the Board may receive objections or representations).

There is one possible reason to refuse the proposed variation: Overprovision may result if the Application is granted (Section 30(5)(d)).

There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2016, Annex E). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:

- (a) the existing number and capacities of Premises in that Locality and in that Function Type is already sufficient,
- (b) Overprovision would result if the Application was to be granted, and
- (c) the Application should be refused.

The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

The Board will expect Applicants who are seeking the grant of a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application.

This report to the Board supplies the following information:

- (a) the Locality of the Premises
- (b) the Function Type of the Premises
- (c) any Additional Factors
- (d) other similar premises in the Locality

(a) the Locality of the Premises

The Board has determined that there are 6 'localities' in its area (coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership). The Subject Premises are in Locality 5 : Garnock Valley (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie & Lugton).

(b) the Function Type of the Premises

The Board's Overprovision Policy distinguishes Premises by 'Function Types'. At present, Overprovision does not apply to the Premises because it is a 'Special Status' Club. However, if the Variation sought is granted, Premises will be in Function Type 3 (On-sales other than entertainment venues, e.g. public houses), so Overprovision is a relevant issue if the proposal is to move from one Function Type to another.

(c) Additional Factors

The likelihood that the Application will be granted or refused will be influenced by the Locality and the Function Type:

- (1) Locality: the Premises are in one of 4 Localities where Applications are especially unlikely to be granted (regardless of the Function Type) - "Three Towns"; "Kilwinning"; "Irvine etc."; or "Garnock Valley";
- (2) Function Type: The presumption of refusal applies to FT 2, 3 & 6 (nightclubs, pubs, and 'Part K' Clubs (regardless of the Locality);

(d) other similar premises in the Locality

In the Locality, there are 23 premises of the relevant Function Type (pubs).

The Locality has a total capacity of:

on-sales: 5,783 customers

off-sales : 1,165 square metres

The population of that Locality is 20,059 people (Source: Population from 'Scottish Neighbourhood Statistics' 2011).

**4. Consequence of Transfer**

If the Variation is granted, the effect will be that the Special Status will no longer apply. The Licence conditions will be changed accordingly, and the change will have other consequences:

1. All premises are liable to pay an Annual Fee. At present, the Club is only obliged to pay the minimum Annual Fee (£180). If the Variation is granted, the Annual Fee will be based on the Rateable Value of the Premises, so the Annual Fee will be £220 (the RV is £5,000);
2. This does not apply to these particular Premises, since they do not permit under-18s, but On-sales premises, other than Clubs with the Special Status, require to provide Baby-Changing Facilities if they permit under-5s.

**5. Observation**

The Premises hold a "Club Machine Permit" (NALB ref. 14/264) which authorises the use of up to 3 Category 3A gaming machines. If the variation is granted, that Permit automatically lapses (SSI 2007-504, Reg. 17(2)).

After that, the options are:

- (a) The Premises can notify the Board that they wish to use the "automatic entitlement" for Gaming Machines given to on-sales Premises under Gambling Act 2005, Section 282 and pay a one-off fee of £50. However, this is limited to 2 Category C or D machines;
- (b) The Premises can apply for a "Licensed Premises Gaming Machine Permit" under Gambling Act 2005, Section 283. This permits an unlimited number of Category C or D machines; the initial Fee is £150 and there is an Annual Fee of £50.

No gaming or use of machines is permitted unless either the Notification in (a) is given or the Permit in (b) is granted.

The change in status also may also affect the stakes and prizes permitted in gaming such as poker.

The provisions of the Gambling Act 2005:

- allowing "Equal Chance Gaming" (such as Poker) without a Permit
- allowing the use of Gaming Machines without a Permit (called "the Automatic Entitlement")
- allowing the playing of Bingo without a Licence
- Licensed Premises Gaming Machine Permits

only apply during the Core Licensed Hours, so if the Premises are open outside these hours (e.g. opening early to provide breakfasts or for functions) then there must be no gaming and any Gaming Machines should be switched off.

## **6. Hearing**

Since

- (a) the Variations requested are all "Minor Variations", and
- (b) there are no relevant convictions and the Chief Constable has not recommended refusal of the Transfer Application,

the Board is obliged to grant those Applications, but it has a discretion to decide whether or not to allow the Major Variation altering the status of the Premises.

If the Board grants the Major Variation, it may also vary the Licence (Section 30(6)). At present, the Licence is subject to the Conditions appropriate to a 'Special Status' Club (Parts A, B, C, F and I of the NALB Standard Conditions). If the Variation sought is granted, the Licence will be subject to the following parts of the NALB Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions):

- A (All Premises)
- B (Off-Sales)
- C (On-sale Premises)
- F (Entertainment)

In addition, the Club was granted an exemption from the '3 guests rule'. This will no longer be relevant and will be deleted from the Licence.



## Premises Licence Review Proposal - Section 37

Licence Holder	Garnock Community Social Club
Premises Address	Loadingbank Road, Kilbirnie
Premises Licence ref.	288

1. Introduction

1.1. On 20 January 2014 the Board, after a preliminary consideration, decided that the current operation of the Club may not be consistent with the "preventing crime and disorder" Licensing Objective, and accordingly made a Premises Licence Review Proposal under Section 37. Accordingly on 3 March 2014 the Board is to hold a Review Hearing.

1.2. The fact that the Board has determined that there may be a Ground of Review should not be taken by the Board or any party as indication that the Board has concluded that a Ground of Review is or should be established. The Board would have to decide on the information it receives during the Hearing whether or not the Review should be upheld.

1.3. The Board is not limited to the Ground for Review referred to, or to the information contained in this Report. Under Sections 38(5) & (6), it may:

- (a) obtain further information from such persons, and in such manner, as the Board thinks fit;
- (b) take the information into account;
- (c) request the attendance of any person for the purpose of providing information, and the production of documents in any person's possession or under that person's control;
- (d) take into account any information relevant to any Ground for Review even though it is not relevant to any circumstances alleged in the Review Proposal.

1.4. Due to the circumstances here, this Report has been intimated to all interested parties. The Premises Licence is held by Garnock Community Social Club ("GCSC") and only GCSC and its office-bearers will be entitled to be heard by the Board. This does not imply a judgment about any later action which allegedly has replaced the Management Committee: the Board is not empowered to make such a judgment. The Board has a discretion to hear any other party, but is not obliged to do so (see Paragraph 1.3). If the Board chooses to allow anyone to speak, this does not indicate acceptance of that person's right to speak for the Club.

1.5. Since it is likely that any summary of the situation would be disputed by someone, for the avoidance of doubt any statement made here is not to be taken as the Board's view that anyone is acting, or has acted, legally or illegally. Prior to making the Review Proposal, the Board considered a Briefing Note which had the object of bringing to the Board's attention circumstances that indicated that there might appear to be matters for concern. It may be that on fuller consideration, and

after hearing from the Premises Licence Holder the Board is satisfied that there are in fact no matters of concern. The Board has endeavoured to treat all sides equally, and has invited parties to resolve their differences (the text of the Board's email of 4 December 2013 from Board to Mr. Asbury, cc Mr. James Smith, is set out at the end of this Report).

## 2. Narrative

2.1. The Club holds Premises Licences for two properties in Kilbirnie: Main St. (Licence 264) and Loadingbank Rd (Licence 288). This Report concerns the Licence for Loadingbank Road. That Licence was granted on 1 September 2009, and on 14 September 2010 the Licence was varied to 'Part K' (see below).

2.2. The Club is also a Registered Charity (SCRO No. SC 041852). The Board is not responsible for the application of the law on charities, and this information is only supplied here as background.

2.3. There is a dispute relating to the Management Committee of the Club and other people. This dispute relates to a firm ("JNS Thistle Services") operated by James and Neil Smith which the Club engaged on 23 October 2013 to operate its facilities. For convenience these two factions are here referred to as 'the Management Committee' (represented by the Secretary, Mark Asbury) and 'the Smiths', although there may be other people asserting that they are the proper Club Management.

2.4. The Board has the following information:

4 July 2013: GCSC advised that the office-bearers were:

Chairman: Mr. John Kilpatrick  
Secretary: Mrs. Yvonne Hepburn  
Vice-Chairman: Mr. Peter Andrews

23 October 2013: Club and JNS Thistle Services agree "Heads of Terms", making various provisions. These included:

The Club "is appointing JNS Thistle Services to trade, operate and manage all licensed trade in all bar, lounge and function areas."

"Only JNS Thistle Services directors, staff and authorised persons will have access to behind the bar and stock areas of [the Club]"

The Board will be given a copy.

29 November 2013: GCSC advised that the office-bearers were:

Chairman: Mr. John Kilpatrick  
Secretary: Mr. Mark Asbury  
Vice-Chairman: Mr. Peter Andrews

7 January 2014: The Board received emails from Sharon Robertson stating that there had been a vote of 'no confidence' in the existing Committee and that the 'interim committee' consisted of

her  
Councillor Ian Walker  
Yvonne Hepburn  
Christina McDowall  
Joanne Waldron  
Elizabeth Johnstone

2.5. The Smiths invested money in the Club, but the other faction contends that the financial arrangement with the Smiths placed the Club at a disadvantage and was used by the Smiths to operate a profit-making business under the cover of the Club's charitable status. The Smiths contend that, had it not been for their involvement and investment, the Club would have closed due to substantial debt, that their involvement benefited the community because it kept a community asset going, and that they withdrew from involvement with the Club on 23 December 2013.

2.6. The Board's only concerns are with the correct application of the Licensing legislation, and the operation of the Premises consistently with the Licensing Objectives and the Licence Conditions. The Board has no powers to intervene in private disputes and parties should take independent legal advice. If Court action is appropriate, the Board would not be a party. However, the situation and whatever arrangement is finalised after resolution of any dispute might be of importance to the Licence. The Board is entitled to expect that a Club actually keeps to its Constitution and licence conditions.

### 3. Issues

3.1. There appear to three issues:

- (a) The statutory Transfer scheme may have been circumvented;
- (b) Licence Conditions may have been breached;
- (c) Criminal offences may have occurred.

#### (a) The statutory Transfer scheme may have been circumvented:

3.2. Whatever the type of Premises, the licence-holder can make any arrangements it pleases as to the operation of the bar etc., but the provision here limiting access to JNS staff etc. effectively excluded the Club's own office-bearers from these areas. The Licence is held by the Club, not JNS, and the Board remains entitled to look to the Club for the maintenance of the Licence conditions. When the undertaking was transferred to a third party, the Club ceased to be in a position to comply with the legal obligations falling on a licence-holder. This agreement might be interpreted as purporting to transfer the undertaking of the Club to a third party, without going through the statutory Transfer procedure overseen by the Board, and therefore without any Police vetting of the proposed 'transferee'.

**(b): Licence Conditions may have been breached**

3.3. The legislation (principally Section 125) places Premises in one or other of two categories:

(a) 'special treatment Clubs' - Clubs which are not conducted for profit and have constitutions making specified provisions. The overall effect is that Clubs should operate for their Members, and should not be commercial enterprises. Special Treatment Clubs:

- (i) they have lower licence fees than commercial premises,
- (ii) they do not require to have baby-changing facilities, and
- (iii) they do not require to have a Premises Manager.

but they are limited in the number of Occasional Licences they can have.

(b) any other Premises - this covers commercial premises.

3.4. The strict distinction between (a) and (b) caused some clubs financial problems. Those clubs had become dependent on providing regular functions for non-members, such as weddings, parties and funerals. This meant that their habitual operations were inconsistent with the licensing legislation, and they could not obtain sufficient numbers of Occasional Licences.

To accommodate such clubs, the Board extended its Standard Conditions, and in effect created an intermediate status:

"Clubs which still retain the character of Members Clubs but are entitled to operate without the Occasional Licence limitation."

These additional Standard Conditions are known as 'Part K Conditions', and any Club can ask the Board to vary its Licence from Part I to Part K.

3.5. When a Club asks the Board to make the change, the Club nominates a Premises Manager, signs a declaration and its office-bearers attend a Board Meeting with the object of satisfying the Board that the character of the Club will be retained. The Board makes a decision on the merits, and if the Variation requested is granted then the Club's Licensing Conditions are varied.

3.6. The Club is still expected to operate as a Club, in the sense that it will restrict the use of its facilities to its Members, as opposed to the public at large, except where the Premises are used for a bona fide pre-booked function such as a wedding reception or birthday party, when persons other than Members can use the facilities of the part of the Premises where the function is taking place, and buy or consume alcohol there.

3.7. As is normal with Clubs entitled by statute to special treatment, the Loadingbank Road Premises were originally subject to Part I of the Board's Standard

Conditions (which is based on Section 125 and the related Regulations). In 2010 the Board agreed to a request by the Club to vary the Loadingbank Road Licence by surrendering the special status, and accordingly Part I of the Conditions was replaced by Part K (no change was requested for Main Street, which continues to have Part I conditions).

#### No Premises Manager

3.8. One of the consequences of seeking Part K status is that the Club must have a Premises Manager. GCSC did appoint a Premises Manager, Brian Kirk. Mr. Kirk no longer works at the Premises, and there has been no Variation requested. The issue was first raised by the Board with Mr. James Smith on 11 September 2013, and the same day the Solicitor (Licensing) emailed him explaining that the absence of a Premises Manager was an issue. Section 54 permits Premises to operate without a Premises Manager for up to 6 weeks, but that period had already expired. GCSC had not informed the Board that Mr. Kirk had ceased to be Premises Manager, which is an essential precondition of Section 54.

3.9. On 4 October 2013 the Board granted a Variation so as to substitute Ms. Amanda McFaulds as Premises Manager. The Board's staff believe that Ms. Faulds is an employee of the Smiths, and that she ceased working there on 23 December 2013. It therefore appears that the operation of the Club prior to 4 October involved a continuing breach of one of the Mandatory Licensing Conditions for Premises (2005 Act, Schedule 3, Paragraph 4(1)(a)):

"Alcohol is not to be sold on the Premises at any time when ... there is no Premises Manager in respect of the Premises ..."

If the Premises operated after 23 December the breach would recur.

#### Constitution

3.10. Although the two GCSC Premises have different sets of Licence Conditions, what is common to both is that:

- (a) they should conform to the Club's Constitution (I.2 and K.4);
- (b) the Premises are still required by Condition to be under the management of the Club, so the apparent Transfer to JNS might be seen as inconsistent with that obligation.

3.11. In the Loadingbank Road Licence, Condition K.4 requires that the Club's Constitution should make certain provisions, including:

"(d) That no member of the Committee and no manager or staff employed in the Premises shall have any personal interest in the sale of alcoholic liquor in the Premises or in the profits arising from such sale;"

3.12. While it is a private matter for any Club to arrange for the running of its bar, the purchase of stock etc., and it is quite permissible for a Club to engage a third

party to do these things (subject to there being a Premises Manager in a Part K Club), it is not permissible for the third party to derive any profit from the activity.

Generally, the Board's approach (and the statute) reflects the view that Clubs should act as clubs. They are not supposed to be businesses - any profit should go to the Club itself, and the sale of alcohol is restricted.

**(c): Criminal offences may have occurred**

3.13. The main criminal offence in the 2005 Act is in Section 1: Alcohol is not to be sold except under and in accordance with a Licence.

There are two conditions, which must be satisfied together, to avoid prosecution. The Premises have a Licence, so the 'under' requirement is met, but the 'in accordance with' requirement would not be met:

- if the Premises operate without a Premises Manager.
- if the Constitution is breached;

**4. Procedure**

4.1. As with any other Review, the Board first has to consider the question:

*"is a 'Ground for Review' established?"*

If the Board answers "no", the Review Proposal is discharged and there is no further procedure.

4.2. If the Board answers "yes", a second question arises:

*"what action (if any) is necessary or appropriate for the purposes of any of the Licensing Objectives?"*

The Board would be entitled (but not obliged) to take any of the steps stated in Section 39(2):

- (a) to issue a Written Warning to the Licence Holder,
- (b) to make a Variation of the Licence,
- (c) to Suspend the Licence for such period as the Board may determine,
- (d) to Revoke the Licence.

The Board might consider that no action was required; for example, if it was satisfied that any cause for concern had been resolved and was unlikely to recur.

4.3. If the Board considered that either Variation or Suspension was appropriate, but was later satisfied, on application by the Licence Holder, that that order was no longer necessary, the Board would be entitled to recall the order (Section 40). For

example, if the Board considered that a situation justified Suspension but was later satisfied that the issue which had led to the Suspension had been addressed and was unlikely to recur, the Board might decide to recall the Suspension before it expired.

5. Email of 4 December 2013 from Board to Mr. Asbury, cc Mr. James Smith:

"Dear Mr. Asbury

I refer to our conversation yesterday (3 Dec 2013). I am copying this to Mr. James Smith, your solicitor Mr. Stewart, and the Convenor of the Licensing Board and LSO.

I have discussed this with the Convenor. In my email of 28 Nov I mentioned the possibility of Review procedure. Under Section 37 of the Licensing (Scotland) Act the Board, on its own initiative, can commence Review procedure. This can result in the Board taking any of the steps stated in Section 39(2):

- (a) to issue a Written Warning to the Licence Holder,
- (b) to make a Variation of the Licence,
- (c) to Suspend the Licence for such period as the Board may determine,
- (d) to Revoke the Licence.

The Board has its next scheduled meeting on Monday 20 Jan 2014. If the Board then thinks that the operation of the Premises involves failure to comply with the Loadingbank Licence conditions, it is possible that Review procedure will be commenced, with the issue being determined at a Hearing of the Club on 3 March.

I have been asked by the Convenor to impress upon all parties that the Licence itself is in jeopardy, and that it is in the interests of everyone that there be a resolution which ensures that the Licence conditions are complied with. By 'everyone' I do not mean only the Club, although I would point out that since the Licence is not held by Mr. Smith, he would have no right to be heard at the Board or to appeal to the Sheriff Court against any decision."





Report

to

North Ayrshire Licensing Board

by

Solicitor (Licensing)

Subject:	Schemes of Delegations for Licensing (Scotland) Act 2005 and Gambling Act 2005
Purpose:	To advise the Board of the issues
Recommendation:	That the Board should approve the draft Scheme of Delegations.

1. The Board deals with two systems of regulation:

- (a) alcohol licensing under Licensing (Scotland) Act 2005;
- (b) licensing of gaming and gaming machines under Gambling Act 2005.

A large amount of business conducted by the Board both Acts is dealt with under Delegated Powers, in accordance with Schemes of Delegations made under those Acts.

2. The original Scheme for the Licensing (Scotland) Act 2005 was adopted in 2007, shortly before Transition. It has been amended from time to time since. The Board adopted a Scheme for the Gambling Act 2005 in 2011 and the proposed Scheme of Delegations repeats the substance of the Board's decision of 7 December 2011 when it considered a Report titled "Scheme of Delegation under the Gambling Act 2005 (Sections 154, 155 & 304)" and approved the Recommendations made there.

3. The schemes have now been revised:

- consolidating the original Scheme with amendments made by the Board from time to time;
- due to the passage of time some parts of the alcohol licensing scheme have been superseded: as well as referring to the 2005 Act, it also referred to the 1976 Act and the Transitional regulations, and these are now omitted;
- the Schemes have been amended to take account of changes in personnel (e.g. the position of 'Senior Solicitor (Licensing)' has since been renamed as 'Solicitor (Licensing)');
- The opportunity has been taken to increase the detail in the Scheme.

4. The Board is invited to adopt the consolidated schemes proposed.



**North Ayrshire Licensing Board**

**Schemes of Delegation under the Licensing (Scotland) Act 2005, and the  
Gambling Act 2005**

General

The Board's policy is to provide a speedy, efficient and cost-effective service to all parties involved in the licensing process and has therefore made the following provisions.

Any delegation can only be exercised if the application is within the Board's policies as stated in its current policy statements:

(A) sale of alcohol - Licensing Policy Statement under Licensing (Scotland) Act 2005;

(B) gaming and use of gaming machines - Statement of Principles under Gambling Act 2005,

(as qualified from time to time by directions given by the Board as to altered practice).

Although the Board expects that where authority has been delegated to a person, the decision will be in fact be made by that person, it is accepted that any person might in a particular case decline to exercise delegated powers, in which case the person should bring the matter to the attention of either the Board or a more senior officer with the same delegated power.

**(A) Scheme of Delegation under the Licensing (Scotland) Act 2005**

In terms of Schedule 1, Paragraph 10, the Board may delegate its functions, although some functions cannot be delegated and are reserved to the Board. Accordingly, any matters which are not the subject of a specific delegation listed here shall be determined at a meeting of the Licensing Board.

The specific delegations are in 3 parts:

- (1) Delegation to the Convenor and other Board Members
- (2) Delegation to the Clerk and other Solicitors
- (3) Delegation to other staff

**(1) Delegation to the Convenor and other Board Members**

**(a) One-year bar**

Under Section 25, where a Licensing Board has refused a Premises Licence Application, the Board must refuse any subsequent Premises Licence Application in respect of the same Premises made before the expiry of the period of one year beginning with the date of the earlier refusal, unless either

- (i) at the time of the earlier refusal, the Board directed that the subsection would not apply to any subsequent Application, or
- (ii) the Board is satisfied that there has been a material change of circumstances since the earlier refusal.

There is a similar provision for Premises Licence Variation Applications (Section 32).

The Convenor is authorised to make such a direction under Sections 25 or 32.

If another Member chairs all or any part of a Meeting, that Member has the same authority.

**(b) Anti-Social Behaviour report**

Under Section 24A the Board may, at any time before determining a Premises Licence Application, request the Chief Constable to give the Board such a report.

The Convenor is authorised to request a report at any time prior to the determination by the Board of a Premises Licence Application.

If the Application is considered while another Member chairs that part of the Meeting, that Member has the same authority during that part.

**(c) Occasional Licences**

Where the Application for an Occasional Licence cannot be determined by the Clerk or others (for example, because of an adverse Police Notice, or because the Application is outside Policy) and it is not practicable to refer an Application to a scheduled Board Meeting prior to the date requested in the Application, the Convenor (whom failing the Vice-Convenor, and whom failing any Member of the Board) may exercise the following powers under Section 59(3)-(5):

Provided that where there are adverse Notices or Reports, objections or adverse representations:

- (a) the Applicant should be sent copies or advised orally or by email of their contents;
- (b) the Applicant should be invited to lodge written or email comments within 72 hours.

The powers delegated are:

- to determine to grant or refuse the Application;
- if granting
  - to attach the Board's Standard Conditions;
  - to authorise departure in the case of that Application from the Board's Policy on hours or any other matter,
  - to vary the Board's Standard Conditions in the case of that Application.

(d) Extended Hours

Where the Application for Extended Hours cannot be determined by the Clerk or others (for example, because of an adverse Police Notice, or because the Application is outside Policy) and it is not practicable to refer an Application to a scheduled Board Meeting prior to the date requested in the Application, the Convenor (whom failing the Vice-Convenor, and whom failing any Member of the Board) may exercise the following powers:

Provided that where there are adverse Notices or Reports:

- (a) the Applicant should be sent copies or advised orally or by email of their contents;
- (b) the Applicant should be invited to lodge written or email comments within 72 hours.

The powers delegated are:

Section 69(4): to determine that the Application requires to be dealt with quickly (so that the period for response from Police and LSO is reduced from 10 days to such shorter period of not less than 24 hours as the Board may determine;

Section 69(5): in a Section 69(4) case, to determine what the shorter period should be;

Section 70(2)(3): in all cases, to decide whether or not a Hearing should be held for the purpose of determining the Application.

Section 70(1): to determine the Application; and, if granting:

- to attach the Board's Standard Conditions;
- to authorise departure in the case of that Application from the Board's Policy on hours or any other matter,

Section 70A: to make such variation of the Conditions to which the Premises Licence is subject as the Board considers necessary or expedient for the purposes of any of the Licensing Objectives (including addition, deletion or other modification of the Conditions).

(e) Occasional Hours/Extended Hours : Breach of Statement of Practice

Where an Application for Occasional Hours or Extended Hours is lodged less than 14 days before the requested date, the Convenor (whom failing the Vice-Convenor, and whom failing any Member of the Board) may exercise the following power:

To determine whether or not the Application should be accepted despite the breach of policy.

*Note:*

*This determination is only a preliminary, and the acceptance of the Application does not mean that the Application has been or will be granted.*

*If accepted, the Application will be accepted and processed as usual; the reason given for lateness will be recorded;*

*If not accepted, the Application will be rejected. The fee will not be refunded.*

*If there are several Applications using the same form (e.g. requests for Extended Hours on different dates), there will be only one contact with the Member.*

(f) Grant of Personal Licence

Under Section 74(5A), where a person applies for a Personal Licence and the Chief Constable reports that he has a 'relevant or foreign conviction' but does not make a Refusal Recommendation, the Board is entitled to determine the Application without a Hearing. If the Board determines that there should not be a Hearing, the Application must be granted.

The power delegated is to determine whether or not there should be a Hearing.

(g) Renewal of a Personal Licence

Under Section 74(5A) (as applied to Renewal procedure by Section 78(5)), where a person applies for a Personal Licence and the Chief Constable reports that he has a 'relevant or foreign conviction' but does not make a Refusal Recommendation, the Board is entitled to determine the Application without a Hearing. If the Board determines that there should not be a Hearing, the Application must be granted.

The power delegated is to determine whether or not there should be a Hearing.

**(2) Delegation to the Clerk and other Solicitors**

The Clerk, the Solicitor (Licensing), and other Solicitors employed by North Ayrshire Council as may be appointed by the Clerk to exercise Licensing functions, each have authority to grant the following descriptions of applications:

(a) Sections 29 to 31: Minor Variation of Premises Licence (including Variation to substitute new Premises Manager) -

(b) Sections 33 to 35: Transfer of Premises Licence – where all of these conditions are satisfied:

(1) The Chief Constable has confirmed that the Transferee has not been convicted of any "Relevant or Foreign Offence";

(2) The Chief Constable has not made a "Refusal Recommendation" (Section 33(7));

(3) There is either no Application for Variation or any Application is for one or more "Minor Variations";

(c) Section 46: Confirmation of a Provisional Premises Licence where, since the Licence was granted:

(1) there have been no Variations, or

(2) any Variations are either within the term "Minor Variation" or have been granted by the Board;

(d) Section 47(2): Temporary Premises Licence

(1) to issue a Temporary Premises Licence;

(2) to determine its duration (being a period not exceeding 2 years; however the decision under Section 47(6) to extend the duration is reserved to the Board);

(3) to determine what exceptions or variations (if any) to the Conditions of the Premises Licence in respect of the Principal Premises are appropriate.

(e) Section 59 (Occasional Licence): to determine the Application where all of these conditions are satisfied:

- (1) no objections or representations have been received;
- (2) The Chief Constable has not lodged a notice recommending refusal;
- (3) the Licensing Standards Officer does not recommend refusal.

(f) Section 70 (Occasional Extension of Licensed Hours): to determine the Application where all of these conditions are satisfied:

- (a) The Chief Constable has not lodged a notice recommending refusal;
- (b) the Licensing Standards Officer does not recommend refusal.

(g) Section 74 (Grant of Personal Licence): to determine the Application where the applicant has not been convicted of a "Relevant or Foreign Offence" and the other conditions stated by Section 74(2) are all satisfied;

(h) Section 78 (Renewal of a Personal Licence): to determine the Application where the applicant has not been convicted of a "Relevant or Foreign Offence" and the other conditions stated by Section 74(2) are all satisfied;

(i) to exercise the Board's discretion in relation to Standard Condition 1.2(g) (three visitors) and to make a determination, dispensation and variation, or to review the same from time to time.

*Note:*

*Standard Condition 1.2(g) applies a 'three visitors' rule to Clubs Other than Clubs which are regulated by Part K of the Standard Conditions), but includes:*

*'Where the Board determines that either*

- (i) the primary object of the Club is participation in golf, football, bowling or another sport, or*
- (ii) that the special circumstances of the Club's operation merit a departure from the 'three visitors' requirement,*

*and that the supply of alcohol would be merely ancillary to the primary object or special circumstances,*

*the Board may, on the written Application of the Club, dispense with the limitation to three visitors, but it shall remain the case that all visitors must be signed-in by a Member in a book kept for the purpose. From time to time, on one or more occasions, the Board may reconsider the question of dispensation and may withdraw or vary it.'*



(j) to disregard the fact that an Applicant for an Occasional Licence or Extended Hours has failed to do anything required of him by the Board's Statement of Practice (which amongst other things requires Applicants to give at least 28 days notice), where in the officer's opinion the failure is justified by exceptional circumstances;

(k) in relation to an application for a dispensation from Standard Conditions C.10.3 (d) and (e) (darts, pool and similar games):

(1) to exercise the Board's discretion in relation to those Standard Conditions;

(2) to make a dispensation;

(3) to review from time to time a dispensation previously allowed so as to vary it.

(j) to carry out any function of the Board other than one which is excluded from delegation by Schedule 1, Paragraph 10(2); provided that any use of this delegation should be reported to the next practicable Board Meeting;

**(3) Delegation to other staff**

In addition to the delegations to the Clerk and others, the Licensing Administration Officer, the Administration Assistants and Senior Clerical Assistants employed in the Licensing Section are each authorised to grant the following Applications (subject to the same conditions as apply to the delegation to the Clerk and others):

- (a) Minor Variation (Sections 29 to 31);
- (b) Transfer of Premises Licence (Sections 33 to 35);
- (c) Occasional licence (Section 56 - 60)
- (d) Extension of Licensed Hours (Section 68 - 70A);
- (e) Personal Licence (Section 74);
- (f) Renewal of a Personal Licence (Section 78).

**(B) Scheme of Delegation under the Gambling Act 2005**

In terms of Sections 155 and 233 certain of the Board's functions may be delegated. Any matters which are not the subject of a specific delegation listed here shall be determined at a meeting of the Licensing Board. The specific delegations are in 3 parts:

- (1) Delegation to the Convenor and other Board Members
- (2) Delegation to the Clerk and other Solicitors
- (3) Delegation to other staff

**(1) Delegation to the Convenor and other Board Members**

Under Part 9 the holder of an Operating Licence may give the Board one or more "Temporary Use Notices", stating the intention to use Premises for "equal chance gaming" for a total of no more than 21 days in a period of 12 months (no Licence or Permit is needed for that temporary use). If the Board think that the Notice should not have effect, or should have effect only with modification, the Board may give a Counter-Notice under Section 224.

All the Board's functions under Part 9, except for Counter-Notice functions, may be delegated to:

- (a) a committee of the Board
- (b) a member or members of the Board
- (c) the Clerk, or
- (d) any person appointed to assist the Clerk.

However, Counter-Notice functions may only be delegated to (a) and (b) (Section 233).

The Convenor (whom failing the Vice-Convenor, and whom failing any Member of the Board) may exercise the following powers under Section 224:

- (a) to decide whether or not a Counter-Notice should be issued;
- (b) if so, what the content of it should be;

**(2) Delegation to the Clerk and other Solicitors**

The Clerk, the Solicitor (Licensing), and other Solicitors employed by North Ayrshire Council as may be appointed by the Clerk to exercise Licensing functions, each have authority:

- (a) to grant any Application under the 2005 Act and subordinate legislation if there are no objections or adverse representations, and to carry out any function of the Board, other than one expressly reserved to the Board by the legislation;

- (b) to exercise the Board's powers to designate additional or alternative "Authorised Persons" for the purpose of the Gambling Act 2005 and subordinate legislation (in addition to the Licensing Standards Officers for the Licensing (Scotland) Act 2005 already appointed by the Board on 7 December 2011) who may or may not be L.S.Os: Section 304(2) and 304(3);
- (c) in the case of Section 304(3), to limit the authorisation to particular Premises or classes of Premises as the officer exercising the power of designation sees fit;
- (d) to exercise all functions of the Licensing Authority in respect of Temporary Use Notices under Part 9, other than the power to issue a Counter-Notice under Section 224.

**(3) Delegation to other staff**

In addition to the delegations to the Clerk and others, the Licensing Administration Officer, the Administration Assistants and Senior Clerical Assistants employed in the Licensing Section are each authorised to exercise the following powers (subject to the same conditions as apply to the delegation to the Clerk and others).

The powers delegated are to grant and renew the following Licences, Permits and Registrations:

**Part 8 (Premises Licences) (Sections 150 - 213)**

For any type of Premises Licence, including:

"Adult Gaming Centre Premises Licence" (Section 172(1)).

"Bingo Premises Licence" (Section 172(7))

"Betting Premises Licence" (Section 172(8))

the decisions on Applications for

Grant (Section 162-163)

Variation (Section 187(3))

Transfer (Section 188)

Reinstatement of a lapsed Licence (Section 195)

Provisional statement (Section 204)

**Part 10 (Gaming Machines) (Sections 235-251)**

"Family Entertainment Centre Premises Licence" (Section 238)

"Family Entertainment Centre Gaming Machine Permit" (Section 247)

Part 12 (Clubs, Fairs, Bingo etc) (Sections 266 - 287)

"Club Gaming Permit" (Section 271)

"Club Machine Permit" (Section 273)

"Licensed Premises Gaming Machine Permit" (Sections 283 and 285)

Schedule 11 (Exempt Lotteries)

Registration of societies which promote "Small Society Lotteries".