

Cunninghame House,  
Irvine.

24 April 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 28 APRIL 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 Meetings held on 20 January 2014 and 3 March 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. Licensing (Scotland) Act 2005 and e-cigarettes**

Submit report to the Licensing Board following correspondence from The Royal Institute of Environmental Health of Scotland (REHIS)



---

## Licensing Board

---

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:



---

## Agenda Item 2

28 April 2014

### North Ayrshire Licensing Board

---

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

---

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

---

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

---

#### 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 No.	Applicant/Licence Holder	Premises	Comments
1.	NA1670	Janice Healy 14 Balloch Crescent Millport Isle of Cumbrae KA28 0BY		Application for Grant of Personal Licence - Section 74
2.	NA1503	Shaun Paul Arnold 4 Sorbie Road Ardrossan KA22 8AQ		Personal Licence Review Hearing - Section 83(7)
3.	NA1177	Wilma Scott 5 Craigview Springside Irvine KA11 3AA		Personal Licence Review Hearing - Section 84A
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 Continued from 03/03/2014
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 & 03/03/2014
6.	0275	Largs Golf Club Irvine Road Largs KA30 8EU	Largs Golf Club Irvine Road Largs KA30 8EU	Application for Variation of Premises Licence - Section 29
7.	0416	John Angus MacInnes 118 Main Street Dreghorn Irvine KA11 4EE	Kidron House 122 Main Street Dreghorn Irvine KA11 4EE	Application for Variation of Premises Licence - Section 29

8.	0282	Fairlie Bowling Club 127 Main Road Fairlie KA29 0BA	Fairlie Bowling Club 127 Main Road Fairlie KA29 0BA	Application for Variation of Premises Licence - Section 29
9.	0351	Arran View Bar Services Limited 145-147 St John Street London EC1V 4PW	Harbour Lights 6 Harbour Street Irvine KA12 8PY	Application for Variation of Premises Licence - Section 29
10.	0411	Tesco Stores Limited Tesco House Delamare Road Cheshunt Hertfordshire EN8 9SL	Tesco Express 6 Aitken Street Largs KA30 8AU	Application for Variation of Premises Licence - Section 29
11.	0241	Revels Sports Bar and Diner Limited 53 Main Street Kilwinning KA13 6AN	Revels 53-59 Main Street Kilwinning KA13 6AN	Application for Variation of Premises Licence - Section 29
12.	0452	Martin McColl Limited Martin McColl House Ashwells Road Brentwood Essex CM15 9ST	McColls 97 High Street Irvine KA12 0AL	Application for Grant of Provisional Premises Licence - Section 45
13.	0453	Mark Bulloch MacLean 46a Bay Street Fairlie KA29 0AL	Deli-licious 89 Main Road Fairlie KA29 0AD	Application for Grant of Provisional Premises Licence - Section 45
14.	0454	Field Studies Council Head Office Preston Montford Montford Bridge Shrewsbury Shropshire SY14 1HW	Millport Field Studies Centre Marine Parade Millport KA28 0EG	Application for Grant of Premises Licence - Section 20
15.	0455	Linda Shepherd 30 Kings Road Beith KA15 2BJ	Smugglers Tavern 53/55 Main Street Beith KA15 2AD	Application for Grant of Premises Licence - Section 20



**Application for Grant of Personal Licence - Section 74**

Applicant	Janice Healy 14 Balloch Crescent, Millport, Isle of Cumbrae, KA28 0BY (DOB: 03.05.1985)
Ref.	NA 1670

**1. Summary**

The Applicant has applied for a Personal Licence. The Application is not advertised and the only consultation involves the Chief Constable, who is to provide the Board with a letter confirming whether or not the Applicant has been convicted of 'relevant or foreign offences'.

A copy of the letter will be given to Members.

The Chief Constable has reported that this Applicant has been convicted of one or more such offences.

The information was also supplied by the Applicant.

**2. Police Recommendation**

If the Chief Constable considers that it is necessary for the purposes of any of the Licensing Objectives that the Application should be refused, he may recommend this under Section 73(4). He has not done so.

**3. Procedure**

A copy of the Police letter and of this Report has been sent to the Applicant, together with Intimation of the Board Hearing.

At the Hearing, the Board must have regard to

- (a) the Chief Constable's letter
- (b) any comments made by the Applicant.

**4. Board's Powers**

If the Board is satisfied that it is necessary to refuse the Application for the purposes of any of the Licensing Objectives, it must do so. Otherwise, it must grant the Application.

All Personal Licences are valid for 10 years, and can be renewed indefinitely at 10 year intervals. The Board cannot limit the length of the grant or attach conditions.

**5. Subsequently**

The Applicant can appeal to the Sheriff if the Application is refused. The Chief Constable cannot appeal if the Application is granted.

After a decision to grant, if any of these occur:

- (a) the Licence Holder is convicted of an offence during the currency of the Licence, or
- (b) the Board, while dealing with a Premises Licence Review, makes a finding that the Holder has acted in a manner which was inconsistent with any of the Licensing Objectives, or
- (c) the Chief Constable considers that the Holder has acted in a manner which is inconsistent with any of the Licensing Objectives,

the Board will be entitled to hold a Hearing which may lead to the Revocation, Suspension for up to 6 months, or the Endorsement of the Licence. If 3 Endorsements are imposed within a 5-year period, the Board may Suspend or Revoke the Licence.

The Holder must obtain a fresh Licensing Qualification every 5 years, failing which the Licence is automatically revoked, without Board discretion or Appeal to the Sheriff.

**Personal Licence Review Hearing - Section 83(7)**

Licence Holder	Shaun Paul Arnold 4 Sorbie Road, Ardrossan, KA22 8AQ DOB: 25/03/1992
Ref.	NA1503

**1. Background**

The Board has received confirmation from the Chief Constable that the Personal Licence Holder has been convicted of a 'relevant or foreign offence'. Copies of the letter will be distributed to Members at the Meeting.

The information was not supplied by the Holder within one month after the date of the conviction. Failure to do so without reasonable excuse is an offence under Section 82(5).

The Holder supplied the information three months after the date of the conviction on 12th February 2014. Copies of the letter received from the Holder will be distributed to Members at the Meeting.

The Chief Constable is entitled to make a recommendation that the Personal Licence should be Revoked, Suspended or Endorsed, but has not done so.

**2. Procedure**

Under Section 83(7) the Board must, on receipt of that confirmation, hold a Hearing and give the Personal Licence Holder and the Chief Constable an opportunity to be heard.

At the Hearing, the Board must have regard to

- (a) the conviction
- (b) any comments made by the Personal Licence Holder,
- (c) any comments made by the Chief Constable.

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

If the Board it considers it is necessary for any of the Licensing Objectives, the Board may:

- (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 a holder gets 3 Endorsements in a 5 year period, then there is a further Hearing, at which the Licence might be Suspended (for up to 6 months) or Revoked.

The Board is not obliged to take any of these steps, and may decide to take no further action. The Personal Licence Holder can appeal to the Sheriff against any decision taken at a Hearing.

**Personal Licence Review Hearing - Section 84A**

Licence Holder	Wilma Scott 5 Craigview, Springside, Irvine, KA11 3AA DOB:11.12.1964
Ref.	NA1177

**1. Background**

Section 84A entitles the Chief Constable to report to the Board where he considers that any Personal Licence Holder has acted in a manner which is inconsistent with any of the Licensing Objectives.

By letter of 4 February 2014 the Chief Constable reported certain circumstances relating to the Personal Licence Holder. Copies of the letter will be distributed to Members at the Meeting.

**2. Procedure**

Under Section 84A(2) the Board must, on receipt of that Report, hold a Hearing and give the Personal Licence Holder and the Chief Constable an opportunity to be heard.

At the Hearing, the Board must have regard to

- (a) the Report
- (b) any comments made by the Personal Licence Holder,
- (c) any comments made by the Chief Constable.

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

If the Board it considers it is necessary for any of the Licensing Objectives, the Board may:

- (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 a holder gets 3 Endorsements in a 5 year period, then there is a further Hearing, at which the Licence might be Suspended (for up to 6 months) or Revoked.

The Board is not obliged to take any of these steps, and may decide to take no further action. The Personal Licence Holder can appeal to the Sheriff against any decision taken at a Hearing.



### 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	Withdrawn: Increase occupant capacity from 310 to 358 people
4	Extend under-18 access to that outdoor area

#### Preliminary

*This Application was before the Board on 3 March 2014. The Board heard the PLH and objectors:*

*Mr. Ian Turnbull, 1 Highet Gardens  
Mr. Wilson Smith, 11 Highet Gardens  
Mr. William Young, 12 Kilwinning Road*

*and then continued consideration of the Variations 1, 2 and 4 (3 having been withdrawn) until 28 April.*

*The Board wished to establish what barrier might separate two parts of the proposed outside area, i.e. the area where smokers would be and the area where other customers might be. The plan already lodged by the PLH demarcated a "Smoking Area" at the south end of the terrace, which (according to the plan) was to be separated by a planter. The Board had recently carried out a site visit, and ascertained that the planter was not there. The Board wanted to know what alternative barrier would be put in place.*

*In addition to the letters of objection listed below, there has been an exchange of correspondence between Mr. Turnbull and the Solicitor (Licensing), and at Mr. Turnbull's request these letters will be in Members' packs:*

- 1. Letter from Mr. Turnbull to the Solicitor (Licensing), 1 April 2014*
- 2. Reply of 10 April 2014*
- 3. Mr. Turnbull's further letter of 11 April 2014*

*As they are being seen by the Board, they have been copied to the PLH.*

#### 1. Objections and Representations

Police	No objection
Community Council	No response
Fire	No objection

Health Board	No response
NAC Building Standards	No objection
NAC Planning	No objection (see note on Variation 2)
Other Objections or Representations?	See below

Name	Address	Received
J. Wyllie	6 Highet Gardens	18 Feb 2014
Margaret McCreadie	8 Kilwinning Road	18 Feb 2014
Dr & Mrs. J.C. Lovie	7 Highet Gardens	20 Feb 2014
Mr. & Mrs. J.W. Smith	11 Highet Gardens	20 Feb 2014
Ann McCurry	5 Highet Gardens	20 Feb 2014
W. R. Young	12 Kilwinning Road	21 Feb 2014
T.M. & Ann McBurnie	27 Kilwinning Road	19 Feb 2014*
Ian Turnbull	1 Highet Gardens	20 Feb 2014
Helen & Tim Swan	8 Highet Gardens	20 Feb 2014

\* : sent by email with a confirming signed letter

## **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: Add Outdoor Drinking Area on ground floor</b>
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):  <i>"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."</i>  The present Application seeks to overturn this in part, since the proposal now is to use the ground-floor terrace at the front of the building. There is no proposal to use the grass area between the terrace 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."

C.5.2 (referred to in the next Variation) also applies.

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'.

If the variation is granted, the condition would read:

"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., except that the areas shown on the Layout Plan may be used for the taking of tea, coffee and other soft drinks from 8.00 a.m.."

#### 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 terrace unless the PP is varied.*

### **Variation 3: Increase occupant capacity from 310 to 358 people (Withdrawn)**

Discretionary refusal

Notes:

At the meeting on 3 March 2014 the PLH intimated that Variation 3 was not insisted in. Accordingly there is no need for the Board to obtain a report from the Chief Building Standards Officer or to determine this Variation.

*Note to Applicant: OP7 still omits to state Off-Sales Capacity. The Report considered by the Board when granting the Licence in 2013 included:*

*"Not stated. Applicant must advise the Board of the correct figure, either in writing or by attending the Board Meeting."*

<b>Variation 4: <i>Extend under-18 access to that outdoor area</i></b>
--

Discretionary refusal
-----------------------

Notes:
--------

The Applicant proposes to extend to the outdoor area the same arrangements which already apply to the building itself. If the terrace is to be licensed, there are no grounds for refusing this particular variation.
---

### **3. Licence Conditions**

No variation of the Conditions is appropriate, except that if Variation 2 is granted the Condition C.5.2 should be amended as above.
--

### Application for Variation of Premises Licence - Section 29

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

*Continued from Meetings of 20 January and 3 March 2014. The Applicant amended the Application after lodging, and accordingly the Application was intimated to third parties (e.g. Police, Health Board). The Applicant's solicitor was involved in an accident shortly before the later Board and a continuation was granted.*

#### **Preliminary**

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

No.	Variation
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.

##### **Variation 1: Increase Off-Sales Terminal Hours to 10.00 - 22.00, 7 days**

Grant (no statutory reason to refuse, and no breach of Board policy)

##### **Variation 2: Increase Off-Sales capacity from 10.9 sq.m. to 20.9 sq.m.**

Discretionary refusal

Notes:

There appears to be one issue: 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 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 & Torranside)

(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 Variation of Premises Licence - Section 29

Applicant	Largs Golf Club
Premises	Clubhouse, Irvine Road, Largs
Ref.	275

#### Preliminary

*No details of comments from third parties are given here. If there are any, the Applicant will be advised and copies will be handed to Members.*

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

No.	Variation
1	<i>Surrender special status as a 'Section 125 Club'</i>
2	<i>Appoint a Premises Manager</i>
3	<i>Vary Outdoor Drinking condition to permit soft drinks from 8.00 a.m.</i>
4	<i>Vary on-sales hours to 10.00 a.m. in the building</i>
5	<i>Permit outdoor drinking from 10.00 a.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: Surrender special status as a 'Section 125 Club'</b>
Discretionary refusal - Possible reason: The Variation may create Overprovision
Notes:  Variation 2 follows from Variation 1: if Variation 1 is refused, Variation 2 will be unnecessary, but if Variation 1 is granted, Variation 2 is essential.  At present, the Club has the Special Status given to Clubs by Section 125 of the Act. This Special Status means that the Club has lower Licensing fees, does not require to have either a Premises Manager or Baby-Changing Facilities, and the Club is not taken into account in any consideration of Overprovision.  A consequence of having the Special Status is that the Club can have no more than 12 Occasional Licences per year.  The purpose of the present Variation is to surrender the Special Status. This will mean that the Club will be licensed like any commercial Premises (such as a Public House or a Restaurant) although, by applying special Licence Conditions known as 'Part K of the Board's Standard Conditions', the character of the Club will be preserved.

Entry to the Premises, the use of facilities and the consumption of alcohol will be limited to Members 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:

- (a) enter the Premises,
- (b) use the facilities of the part of the Premises where the function is taking place, and
- (c) buy or consume alcohol in that part.

As 'ordinary' Premises, the Club will no longer have to be concerned with getting Occasional Licences, as catering for functions will be dealt with as part of its Operating Plan. The Club will have to pay higher licensing fees: the Annual Fee will be higher, and based on Rateable Value (as fees for commercial Premises are).

The Board requires to decide whether the proposed Variation is desirable, in that it introduces into the locality an extra set of Licensed Premises which are subject to any Overprovision Assessment.

#### **Overprovision**

Since there is no proposed change in capacity, no details of overprovision are given in this Report. However, there is a presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement. If the Board is minded to refuse for this reason, it should continue consideration of the Application to a later Meeting, when a detailed statement of the Board's policy, with information as to the population and capacity of similar Premises in the locality, will be prepared.

#### ***Variation 2: Appoint a Premises Manager***

Mandatory Grant : The request is for a 'Minor Variation'

Notes: This variation is needed if the Premises cease to be treated as a 'Section 125 Club'.

The PM is to be Yvonne Webster who has Personal Licence NA 0034.

#### **Variation 3: Vary Outdoor Drinking condition to permit soft drinks from 8.00 a.m.**

Discretionary refusal

Notes:

The proposal is to vary the Board's Standard Condition:

*"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.."*



So as to permit the use of the outdoor area from 8.00 a.m. for teas, coffee and soft drinks.

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'. The Beer Garden is on the south side of the building, and it is not close to residential property.

If the Board agrees to the proposal, the Condition will be amended to read:

*"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., except that they may be used from 8.00 a.m. for teas, coffee and soft drinks."*

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.

<b>Variation 4: Vary on-sales hours to 10.00 a.m. in the building</b>
Discretionary refusal
<p>Notes:</p> <p>This proposal is contrary to the Board's Policy. The Board's Licensing Policy Statement 2013-2016 includes:</p> <p><i>"7.5. The Board considers that the commencement of On-sales of alcohol before 11.00 a.m. is likely to be inconsistent with the Licensing Objective "protecting and improving public health". Exceptionally the Board may allow early-opening to permit the provision of breakfast facilities for shift workers from nearby factories, markets, etc..</i></p> <p><i>On a case-by-case basis the Board may agree to the hours starting at or after 10.00 a.m. if the Licence Holder satisfies the Board that there is a need for this, arising from the particular circumstances of the Premises. The Board would expect evidence, and not simply anecdotal evidence, that there is an actual need for the hours already licensed.</i></p> <p><i>7.6. Where Applicants seek the grant or variation of Premises Licence to permit On-sales before 11.00 a.m.:</i></p> <p><i>(a) The Operating Plan will have to indicate an intention to provide certain facilities, e.g. the provision of cooked meals throughout the early opening period (snacks and crisps are not considered to constitute 'meals');</i></p> <p><i>(b) The Applicant will require to satisfy the Board that there is a demonstrable demand from patrons to provide those facilities. It is not sufficient to refer generally to 'customer demand'. What is required is evidence that there is a quantifiable demand."</i></p> <p>The fact that the Premises here consists of a Golf Club is not a justification from</p>

departing from the policy. The LPS already caters for temporary extensions linked to particular sporting events, as opposed to a general extension:

*"7.9. Although the normal earliest opening time permitted is 11.00 a.m., the Board might permit a temporary Occasional Extension ("Extended Hours") to allow early-opening if the request relates to:*

*(a) the activities of customers of the Premises associated with a sporting event, for example the participation of customers in a sports tournament, ..."*

Earlier in 2014, as indicated by Paragraph 7.8, the Board commenced Review action with a view to varying Licences of other premises which already have 'early hours'. This process has been suspended pending a review, but the Health Board supports the process, contending that the availability of alcohol is a factor in health problems.

Whatever the merits of the process involving existing 'early hours', it would be inconsistent to grant new 'early hours'.

#### **Variation 5: Permit outdoor drinking from 10.00 a.m.**

Discretionary refusal

Notes:

This proposal is contrary to the Board's Policy. The Board's Licensing Policy Statement 2013-2016 includes:

*"7.10. Regardless of any decision about early hours, any Outside Drinking Areas associated with the Licensed Premises will be permitted to operate no earlier than 11.00 a.m. and no later than 10.00 p.m.."*

Accordingly the Board should consider Variations 4 and 5 separately.

If the Board agrees to the proposal, the Condition (possibly as varied by Variation 3) so as to refer to "10.00 a.m." rather than "11.00 a.m..".

### **3. Licence Conditions**

If Variation 1 is granted, the Conditions for 'Section 125 Clubs' (Part I) should be deleted and replaced by Part K.

If Variation 3 is granted, Condition C.5.2 should be varied as indicated.

If Variation 5 is granted, Condition C.5.2 should be further varied as indicated.

## Application for Variation of Premises Licence - Section 29

Applicant	John MacInnes
Premises	Kidron House, 122 Main St., Dreghorn
Ref.	416

*No details of comments from third parties are given here. If there are any, the Applicant will be advised and copies will be handed to Members.*

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

No.	Variation
1	Add 'music' to O.P.
2	Allow use of Premises for 'club or other group meetings'
3	Allow Premises to provide 'conference facilities'
4	Add off-sales
5	Add second Outdoor Drinking Area to 122 Main St.
6	Add Outdoor Drinking Area to 118 Main St.
7	Disapply NALB conditions requiring capacity and toilet checks
8	Vary NALB condition on use of Outdoor Drinking Area before 11.00 a.m.

**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: Add 'music' to O.P.</b>
Grant (no statutory reason to refuse, and no breach of Board policy)
Notes: the proposal is to play recorded music in the background

<b>Variation 2: Allow use of Premises for 'club or other group meetings'</b>
Grant (no statutory reason to refuse, and no breach of Board policy)
<i>Note to Applicant</i>
<i>This is not an issue the <u>Board</u> will take into account when deciding whether or not to grant this Application, but for the Applicant's information:</i>
<i>(a) the Council's Planning Department advise that the proposal at present is limited to occasional use. If use is to be more frequent, an Application for Planning Permission may be required. The Applicant is advised to keep in contact with the Council's Planning Department.</i>

(b) *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.

*If the Premises are open outside these hours then there must be no gaming and any Gaming Machines should be switched off (see Gambling Act 2005, Section 278(1)(c)).*

<b>Variation 3: Allow Premises to provide 'conference facilities'</b>
---

Grant (no statutory reason to refuse, and no breach of Board policy)
--

Notes: the same observation about Planning applies here (see Variation 2, observation (a)).
---

<b>Variation 4: Add off-sales</b>
-----------------------------------

Grant (no statutory reason to refuse, and no breach of Board policy)
--

Notes:
--------

<p>The proposal is to sell alcohol to residents, e.g. a bottle of wine for consumption in their rooms. There is no proposal to sell alcohol to the general public. The Health Board do not object. On the view that the premises are already entitled to sell to the same people for on-sales consumption, there is no increase in capacity and no question of Overprovision arises.</p>
--

<p>The hours requested (10.00 - 22.00, 7 days a week) are within statute and Board Policy.</p>
--

<p>To comply with the legislation, the Applicant will have to state the location and capacity of the off-sales display, e.g. the dimensions of a gantry.</p>
--

<b>Variation 5: Add second Outdoor Drinking Area to 122 Main St.</b>
--

Discretionary refusal
-----------------------

Notes:
--------

<p>The Premises already have one such area. The proposal is to add a second area, between the building and the B7081 road. The area can only be accessed from within the building.</p>
--

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'.

The Board is entitled to ask the Applicant to vary the proposal, e.g. to alter the times or locations of activities which might lead to noise or other 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.

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.."

There is a proposal (Variation 8) to qualify C.5.2 so as to allow the taking of tea, coffee and other soft drinks before 11.00 a.m..

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 6: Add Outdoor Drinking Area to 118 Main St.**

##### **Mandatory Refusal**

##### **Notes:**

The existing Licence relates to 122 Main St. only. 118 Main St. is a different building, on the opposite side of a minor road, and cannot be regarded as part of the Licensed Premises. If the Applicant seeks to permit the sale of alcohol on 118, a second Premises Licence should be applied for.

Even if the application was competent, the Board should not determine it as there has not been full intimation: only the neighbour beside 122 has been told of the present application.

#### **Variation 7: Disapply NALB conditions requiring capacity and toilet checks**

##### **Discretionary refusal**

The relevant NALB licensing conditions are:

**"C.8      Occupancy Capacity**

*C.8.1      The Licensee shall have monitoring arrangements in place to verify the number of persons present to ensure that the occupancy capacity set by the Board is not exceeded;*

*C.8.2      Monitoring shall take place at regular intervals and shall particularly focus on peak trading times.*

**C.12      Condition of Premises**

...

*C.12.2    Toilets and washing facilities must be maintained clean and tidy, and should be inspected by staff regularly;"*

The conditions are monitored by the L.S.O., who will ask to see records of capacity and toilet inspections. The conditions are local to NALB (and not national mandatory conditions which automatically apply), and the Board can agree to waive or vary them on a case-by-case basis. They were adopted having regard to the Licensing Objectives re public safety and public health.

**Variation 8: Vary NALB condition on use of Outdoor Drinking Area before 11.00 a.m.**

Discretionary refusal

Notes:

The proposal is to qualify the usual Board Condition (C.5.2) so as to allow the use of an Outdoor Drinking Area for the taking of tea, coffee and other soft drinks before 11.00 a.m..

If the variation is granted, the condition would read:

*"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., except that the areas shown on the Layout Plan may be used for the taking of tea, coffee and other soft drinks before 11.00 a.m.."*

**3.      Licence Conditions**

If Variation 4 is granted, the Conditions for Off-Sales (Part B) should be added

If Variation 7 is granted, the Conditions referred to should be deleted

If Variation 8 is granted, Condition C.5.2 should be varied as indicated

## Application for Variation of Premises Licence - Section 29

Applicant	Fairlie Bowling Club
Premises	Fairlie Bowling Club, 127 Main Road, Fairlie, KA29 0AB
Ref.	0282

**Preliminary**

*No details of comments from third parties are given here. If there are any, the Applicant will be advised and copies will be handed to Members.*

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

No.	Variation
1	Alter Layout Plan to allow for new Premises.
2	Increase capacity from 60 to 106 persons

**2. Changes**

A new clubhouse is currently being built to replace the existing clubhouse. The new building is between the north of the bowling green and the private car park, and is scheduled for occupation in mid-May 2014. At that time it is proposed to move all operations from the existing clubhouse to the new clubhouse. The variation to the existing premises licence therefore seeks to cover the new clubhouse building and its increased capacity.

**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.

<b>Variation 1: Alter Layout Plan to allow for new Premises.</b>
Mandatory Grant

<b>Variation 2: Increase capacity from 60 to 106 persons</b>
Grant (no statutory reason to refuse, and no breach of Board policy)
Notes: Where other premises seek an increase in capacity, a possible reason for refusal is Overprovision, but this does not apply to the present Premises which are occupied by a 'Section 125 Club' (Section 125(2)(e)).

**4. Licence Conditions**

No variation of the Conditions is appropriate.



### Application for Variation of Premises Licence - Section 29

Applicant	Arran View Bar Services Ltd.
Premises	"Harbour Lights", 6 Harbour St., Irvine
Ref.	351

#### Preliminary

*No details of comments from third parties are given here. If there are any, the Applicant will be advised and copies will be handed to Members.*

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

No.	Variation
1	Add upstairs area into the licence
2	Vary Core Hours on Sundays to 11.00 a.m. (both on- and off-sales)
3	Amend under-18 conditions and access times

#### 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.

Variation 1: Add upstairs area into the licence
Grant (no statutory reason to refuse, and no breach of Board policy)
Notes:
<p>(a) The proposal is to use the upper level (currently unlicensed) as a restaurant. When the Board granted the transitional licence on 1 December 2009, this was limited to the lower level. The application had originally included the upper level (then unlicensed) but following an exchange of correspondence the then Applicant withdrew that part of the Application in November 2009.</p> <p>There is no proposal to change capacity. Neither Health Board nor Police have any objection. Building Standards also have no objection but observe that a Building Warrant approval would be needed to convert the upper floor to a restaurant.</p> <p>(b) The Layout Plan submitted with the current variation application is almost identical to the plan submitted for the transitional licence. That application referred to two "External Drinking Areas" to the rear of the property (the premises have a narrow street frontage and extend to the rear, where they are close to residential property. These areas were also withdrawn in 2009 and were deleted in the version of the Plan issued by the Board. However, they appear again in the present plan. The application form does not refer to these and this Report has been prepared on the basis that these are not now included. The applicant might advise the Board whether these areas are requested, or if the plans are simply incorrect.</p>

If the former, the Board may wish to defer a decision until a later meeting. When the Board carried out intimation to neighbours, only the form (not the plan) was sent (the statute distinguishes between neighbours, who only see the form, and bodies such as Police, Health Board etc. who see the form and plan. The neighbours are simply told that the plan is available for inspection at the NALB office, but if there is nothing in the form to alert them to a proposal they might not do so.

**Variation 2: Vary Core Hours on Sundays to 11.00 a.m. (both on- and off-sales)**

Grant (no statutory reason to refuse, and no breach of Board policy)

Notes: At present the Premises open at 11.00 Mon - Sat. They are licensed from 12.30 on a Sunday. Many premises have such Sunday hours, as the Permitted Hours under the 1976 Act started on a Sunday at 12.30. The Premises were not able to seek earlier hours when applying for their 'transitional' licence as it was a condition of 'grandfather rights' that premises did not apply for hours beyond what they were already entitled to.

**Variation 3: Amend under-18 conditions and access times**

Grant (no statutory reason to refuse, and no breach of Board policy)

Notes:

(a) This variation assumes that the other 2 requests will be granted. At present, under-18s (of whatever age) are allowed on the Premises at all licensed hours, when accompanied by an adult for the purposes of consuming a meal or attending a function.

The proposal is to have different arrangements for the lower and upper levels.

Lower: 11.00 a.m. to 9 p.m.

Upper: all operating times

(b) there appears to be a typo in the O.P. produced (6(d)) and the Clerk has assumed that the Applicant means the period 11 a.m. to 9 p.m. (the current arrangement).

(c) At present, O.P. 6(e) (parts of premises under-18s have access to) contains the words "shall not be permitted to stand or sit at the bar counter". The wording proposed by the Applicant omits this. It may make little difference if under-18s are attending for a meal, as they would be seated at a table, but it may do so if they are attending a function.

### 3. Licence Conditions

No variation of the Conditions is appropriate.



## Application for Variation of Premises Licence - Section 29

Applicant	Tesco Stores Ltd.
Premises	Tesco Express, 6 Aitken Street, Largs
Ref.	411

**Preliminary**

*No details of comments from third parties are given here. If there are any, the Applicant will be advised and copies will be handed to Members.*

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

No.	Variation
1	Alter layout, increase display capacity from 23.5 to 36.0 sq.m. (about 53%)

**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.

**Variation 1: Alter layout, increase display capacity from 23.5 to 36.0 sq.m. (about 53%)**

Discretionary refusal

Notes:

There appears to be one issue: the Variation may create Overprovision.

**(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 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 1 (North Coast: Skelmorlie, Largs, Isle of Cumbrae, Fairlie, Seamill & West Kilbride).

(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 not 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") so the Additional Factor related to Locality does not apply;
- (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

A statement of (d) will be placed before the Board and given to the Applicant.

**3. Licence Conditions**

No variation of the Conditions is appropriate.





## Application for Variation of Premises Licence - Section 29

Applicant	Revels Sports Bar and Diner Ltd.
Premises	Revels, 53-59 Main Street, Kilwinning
Ref.	0241

**Preliminary**

*No details of comments from third parties are given here. If there are any, the Applicant will be advised and copies will be handed to Members.*

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

<b>No.</b>	<b>Variation</b>
1	<i>Amend terminal hour on Thursday and Friday from midnight to 1.00 am</i>
2	<i>Amend Sunday commencement hour from 12.30pm to 11am for on- and off-sales</i>

**2. Changes****Variation of Hours - On-Sales**

	<b>Current</b>	<b>Proposed</b>
Monday	10.00 - 24.00	No change
Tuesday	10.00 - 24.00	No change
Wednesday	10.00 - 24.00	No change
Thursday	10.00 - 24.00	<b>10.00 - 01.00</b>
Friday	10.00 - 24.00	<b>10.00 - 01.00</b>
Saturday	10.00 - 01.00	No change
Sunday	12.30 - 24.00	<b>11.00 - 24.00</b>

**Variation of Hours - Off-sales**

	<b>Current</b>	<b>Proposed</b>
Monday	10.00 - 22.00	No change
Tuesday	10.00 - 22.00	No change
Wednesday	10.00 - 22.00	No change
Thursday	10.00 - 22.00	No change
Friday	10.00 - 22.00	No change
Saturday	10.00 - 22.00	<b>11.00 - 22.00</b>
Sunday	12.30 - 22.00	<b>11.00 - 22.00</b>

### **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.

<b>Variation 1: <i>Amend terminal hour on Thursday and Friday from midnight to 1.00 am</i></b>
--

Grant (no statutory reason to refuse, and no breach of Board policy)
--

<b>Variation 2: <i>Amend Sunday commencement hour from 12.30pm to 11am for on- and off-sales</i></b>
--

Grant (no statutory reason to refuse, and no breach of Board policy)
--

Notes: this variation is a common request, because at the time of Transition premises were obliged to seek no greater hours than they already had. Under the 1976 Act, the 'Permitted Hours' for on-sales on a Sunday started at 12.30.
---

### **4. Licence Conditions**

No variation of the Conditions is appropriate.
--

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

Applicant	Martin McColl Limited (Reg. No 298945)
Premises	"McColl's", 97 High Street, Irvine, KA12 0AL
Ref.	452

#### **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: Display of Site Notice*

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

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL).

The proposal is to adapt the extent of the existing convenience goods store to sell a wider range of goods including alcohol.

The PPL relates to Premises which are to be constructed or 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 construction or 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.

#### **2. Objections and Representations**

Police	No objection
Community Council	Letter will be handed to Members
Fire	No objection
Health Board	Letter will be handed to Members

NAC Building Standards	No objection
NAC Planning	No objection
Others	None

### **3. Detailed proposal**

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

The Premises sell off-sales only.

The request is for 10.00 - 22.00, 7 days a week. This is the maximum permitted by the legislation and is within NALB Policy.

#### **(b) Capacity**

Off-Sales (sq. mtr.s)	11.3 square metres
-----------------------	--------------------

### **4. 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. It is the Clerk's opinion that the Application does not appear to be inconsistent with any of the Licensing Objectives.

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

In addition, the Board must consider another potential ground of refusal: whether or not the premises are unsuitable for the sale of alcohol.

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 4 : Irvine and Area (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torranyard).

(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

A statement of (d) will be placed before the Board and given to the Applicant.

**4. 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)
- B (Off-Sales)

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

Applicant	Mark MacLean
Premises	Deli-licious, 89 Main Road, Fairlie, KA29 0AD
Ref.	453

#### **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.*

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

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL).

The proposal is a deli shop offering an off-sales facility and an outside catering service.

The PPL relates to Premises which are to be constructed or 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 construction or 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.

#### **2. Objections and Representations**

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

NAC Planning	No objection
Others	See below

Name	Address	Date Received	Late or OK
Mr. & Mrs. W. Docherty	91A Main Road, Fairlie	4 April	OK

### **3. Detailed proposal**

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

The Premises sell off-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	10.00 – 22.00	OK
Tuesday	10.00 – 22.00	OK
Wednesday	10.00 – 22.00	OK
Thursday	10.00 – 22.00	OK
Friday	10.00 – 22.00	OK
Saturday	10.00 – 22.00	OK
Sunday	10.00 – 22.00	OK

#### **(b) Capacity**

Off-Sales (sq. mtr.s)	7.2 square metres
-----------------------	-------------------

### **4. 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 Application does not appear to be inconsistent with any of the Licensing



Objectives, although the Applicant should advise the Board what the Home Delivery proposed will consist of, and if alcohol is to be supplied, to state what checks will be carried out on a purchaser's age. The Applicant's attention is drawn to Paragraph 2.23 of the Board's Licensing Policy Statement, set out below, and to the need for a "Challenge 25" Policy.

**(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 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 1 : North Coast (Skelmorlie, Largs, Isle of Cumbrae, Fairlie, Seamill & West Kilbride).

(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 not 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") so the Additional Factor related to Locality does not apply;
- (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

A statement of (d) will be placed before the Board and given to the Applicant.

#### 4. 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)

## B (Off-Sales)

Licensing Policy Statement:"Home Delivery

2.23. Where alcohol (whether with or without food or any other goods or services) is supplied by delivery away from Licensed Premises (e.g. if a customer orders it by telephone) then:

(a) alcohol can only be sold within Licensed Hours, which cannot be outside the period 10 a.m. to 10.00 p.m. (Section 65) and might be shorter if the Board specifically directs this in relation to the particular Premises;

(b) alcohol can be delivered outside those hours, but cannot be delivered between 12 midnight and 6.00 a.m. (Section 120);

(c) the Board is likely to regard a delivery operation as being inconsistent with both the 'crime and disorder' and 'protecting children from harm' Licensing Objectives if alcohol is supplied unless:

(i) the supplier on arrival at the delivery address first carries out the same checks about the recipient's age as would be appropriate to a sale (see Section 102);

(ii) the supplier refuses delivery unless and until such evidence of age is produced.

(d) under Section 119, two records must be made before the Alcohol leaves the Premises:

(i) in a Day Book kept on the Premises; and

(ii) in a Delivery Book or Invoice carried by the person delivering the Alcohol.

(e) The information to be recorded in both cases is:

(i) the quantity, description and price of the Alcohol, and

(ii) the name and address of the person to whom it is to be delivered.

(f) It is illegal to deliver Alcohol to an address which is not recorded in both records. The records must be shown to a Police Constable or L.S.O. on request."



## Application for Grant of Premises Licence - Section 20

Applicant	Field Studies Council
Premises	Millport Field Studies Centre, Marine Parade, Millport KA28 0EG
Ref.	454

**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.*

*This Report was prepared provisionally before the end of the Site Notice display period, which ends on 18 April 2014.*

*No objections have been received to date. Any objections received prior to 18 April will be copied to the Applicant and all letters will be handed to Members at the Meeting.*

*The Applicant should lodge the following Certificates. Until the Board has all of them it cannot determine the Application:*

- 1. Display of Site Notice*
- 2. Planning*
- 3. Building Control*

**1. Summary of Proposal**

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

The proposal is:

"A social or rest area within a residential educational property"

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.

**2. Detailed proposal**

The Premises sell both on-sales & off-sales

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

On-Sales

	<b><i>Proposal</i></b>	<b><i>Policy</i></b>
Monday	12.00 - 24.00	OK
Tuesday	12.00 - 24.00	OK
Wednesday	12.00 - 24.00	OK
Thursday	12.00 - 24.00	OK
Friday	12.00 - 24.00	OK
Saturday	12.00 - 24.00	OK
Sunday	12.00 - 24.00	OK

Off-sales

	<b><i>Proposal</i></b>	<b><i>Policy</i></b>
Monday	12.00 - 22.00	OK
Tuesday	12.00 - 22.00	OK
Wednesday	12.00 - 22.00	OK
Thursday	12.00 - 22.00	OK
Friday	12.00 - 22.00	OK
Saturday	12.00 - 22.00	OK
Sunday	12.00 - 22.00	OK

(b) Capacity

On-Sales (persons)	98
Standing / Seated	56 /42 (57%/43%)
Off-Sales (sq. mtr.s)	<i>Not stated. Applicant has failed to include this in the mandatory Operating Plan and must advise the Board of the correct figure either in writing or by attending the Board Meeting. Regulations require locations and dimensions of all Off-sales display areas. Dimensions required are length and height. The capacity figure will be added to O.P. 7 if the Licence is granted.</i>

(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	
Dance facilities	
Theatre	
Films	
Gaming	
Indoor/Outdoor sports	
Televised sport	
Outdoor Drinking	X
Adult entertainment	

	Other activities
<b>Proposed</b>	Occasional lectures may be given in the premises during licensed hours.  There will be a TV on the premises but Sky sports will not be shown

(d) Access for Under-18s

No access.

**3. 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 Application does not appear to be inconsistent with any of the Licensing Objectives.

**(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

There is an observation from the Community Council, saying that they have no objection to the proposal provided it remains residential only. The Application seeks off-sales as well as on-sales, and the Applicant should indicate to the Board whether or not non-residents will be able to buy off-sales.

Apart from that, it is the Clerk's opinion that there are no issues arising in this respect. 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 1 : North Coast (Skelmorlie, Largs, Isle of Cumbrae, Fairlie, Seamill & West Kilbride)

(b) the Function Type of the Premises

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

The Subject Premises are in: Function Type 3 (On-sales other than entertainment venues, e.g. public houses)

(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 not 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") so the Additional Factor related to Locality does not apply;

(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

A statement of (d) will be placed before the Board and given to the Applicant.

#### 4. Observations

(a) The Applicant wishes the Board to remove the conditions requiring regular monitoring of capacity and toilets.

The relevant NALB licensing conditions are:

"C.8 Occupancy Capacity

*C.8.1 The Licensee shall have monitoring arrangements in place to verify the number of persons present to ensure that the occupancy capacity set by the Board is not exceeded;*

*C.8.2 Monitoring shall take place at regular intervals and shall particularly focus on peak trading times.*

**C.12 Condition of Premises**

...

*C.12.2 Toilets and washing facilities must be maintained clean and tidy, and should be inspected by staff regularly;"*

The conditions are monitored by the L.S.O., who will ask to see records of capacity and toilet inspections. The conditions are local to NALB (and not national mandatory conditions which automatically apply), and the Board can agree to waive or vary them on a case-by-case basis. They were adopted having regard to the Licensing Objectives re public safety and public health.

(b) The Applicant proposes an Outdoor Drinking Area (shown in green on the Layout Plan). The Board's Standard Conditions include:

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

**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)
- B (Off-Sales)
- C (On-sale Premises)

## Application for Grant of Premises Licence - Section 20

Applicant	Linda Shepherd
Premises	Smugglers Tavern, 53/55 Main Street, Beith, KA15 2AD
Ref.	0455

**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.*

*This Report was prepared provisionally before the end of the Site Notice display period, which ends on 18 April 2014*

*No objections have been received to date. Any objections received prior to the 18 April 2014 will be copied to the Applicant and all letters will be handed to Members at the Meeting.*

**1. Summary of Proposal**

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

The proposal is

A public house in a terraced building in Main Street, Beith. The public bar and lounge will form the lower part of the premises and the upper part will provide accommodation for the owner.

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.

**2. Detailed proposal****(a) Licensed Hours**

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

**On-Sales**

	<i>Proposal</i>	<i>Policy</i>
Monday	10.00 - 24.00	OK
Tuesday	10.00 - 24.00	OK
Wednesday	10.00 - 24.00	OK

Thursday	10.00 - 1.00	OK
Friday	10.00 - 1.00	OK
Saturday	10.00 - 1.00	OK
Sunday	11.00 - 24.00	OK

Off-sales

	<b>Proposal</b>	<b>Policy</b>
Monday	10.00 - 22.00	OK
Tuesday	10.00 - 22.00	OK
Wednesday	10.00 - 22.00	OK
Thursday	10.00 - 22.00	OK
Friday	10.00 - 22.00	OK
Saturday	10.00 - 22.00	OK
Sunday	11.00 - 22.00	OK

(b) Capacity

On-Sales (persons)	149
Standing / Seated	79 / 70 (53% / 47%)
Off-Sales (sq. mtr.s)	<i>Not stated. Applicant has failed to include this in the mandatory Operating Plan and must advise the Board of the correct figure either in writing or by attending the Board Meeting. Regulations require locations and dimensions of all Off-sales display areas. Dimensions required are length and height. The capacity figure will be added to O.P. 7 if the Licence is granted.</i>

(c) Activities other than the sale of alcohol

	<b>Proposed</b>
Accommodation	
Conference facilities	
Restaurant facilities	
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	x
Indoor/Outdoor sports	x
Televised sport	x
Outdoor Drinking	

Adult entertainment	

	Other activities
<b>Proposed</b>	Indoor sports – dart board and pool table. Dominoes and cards for fun.

(d) Access for Under-18s

No Access

### **3. 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 Application does not appear to be inconsistent with any of the Licensing Objectives.

#### **(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 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 3 (On-sales other than entertainment venues, e.g. public houses).

(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 not 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") so the Additional Factor related to Locality does not apply;
- (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

A statement of (d) will be placed before the Board and given to the Applicant.

**4. 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)
- B (Off-Sales)
- C (On-sale Premises)
- F (Entertainment)





Report to North Ayrshire Licensing Board

by

Solicitor (Licensing)

<b>Subject</b>	<b>Licensing (Scotland) Act 2005 and e-cigarettes</b>
<b>Recommendation</b>	<b>That the Board should note the situation</b>

**1. Introduction**

The Royal Institute of Environmental Health of Scotland (REHIS) has written to the Chief Executive of NAC:

*"At its meeting in Edinburgh on Saturday 1 March this year, the Council of the Institute discussed the sale and use of e-cigarettes in Scotland's public places.*

*After a lengthy and well-informed discussion, a number of proposals were agreed including one directing me to write to all local authorities requesting that their Licensing Boards consider imposing a ban on the use of e-cigarettes in licensed premises.*

*I would be grateful if you would forward this request to the Licensing Board of your Council for consideration.*

*Thank you in anticipation of your assistance."*

**2. Power to attach Conditions**

The Board is entitled to attach conditions to Premises Licences. Section 27 provides two sources of conditions:

(a) National conditions: the statute prescribes Mandatory Conditions (Schedule 3, e.g. conditions about Premises Managers and Irresponsible Drinks Promotions);

(b) Local conditions: Section 27(6) provides:

*"Without prejudice to subsection (5), where a Licensing Board grants a Premises Licence, the Board may impose such other conditions (in addition to those to which the Licence is subject by virtue of subsection (1) or (3)) as they consider necessary or expedient for the purposes of any of the Licensing Objectives."*

There are no National conditions about e-cigarettes. Boards must have regard to Guidance issued by Scottish Ministers under Section 142. The Guidance was issued in 2007 and says nothing about e-cigarettes.

NALB attaches local conditions using the Standard Conditions adopted by the Board in 2008 and amended from time to time since. These also say nothing about e-cigarettes.

**3. Limitations on the power to attach conditions.**

3.1 Boards do not have an unfettered power to attach local conditions, as Section 27(6) is subject to Section 27(7):

*"A Licensing Board may not impose a condition under subsection (6) which—  
...*

*(c) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment."*

3.2 At the moment there is no such regulation. However there is already regulation of smoking in the Smoking, Health and Social Care (Scotland) Act 2005. Some offences under that Act are included in the statutory list of 'relevant offences', and therefore convictions can be reported to the Board, e.g. a conviction under Section 1 ("Offence of permitting others to smoke in no-smoking premises") committed by a Premises Licence Holder or Premises Manager would be reported to the Board, and might lead to a Review Hearing which, if upheld, might lead to the revocation, suspension or variation of the Premises Licence or the issue of a written warning, or the revocation, suspension or endorsement of a Personal Licence.

3.3 Many contraventions of the Act are in fact dealt with by the issue of a Fixed Penalty, so there is no conviction. It would be open to the Chief Environmental Health Officer to make a Review Application or to report the circumstances to the Board, but a Review Hearing would not be automatic and it would be for the Board to decide what action, if any, should follow.

3.4 Despite the apparent width of the Board's condition-making power, it has limits. The case which is usually cited in this context is Brightcrew Ltd v The City of Glasgow Licensing Board 2011 CSIH 46, although a more pertinent case here is a decision of the House of Lords: Stewart v Perth and Kinross Council, [2004] UKHL 16.

3.5. The Stewart case concerned a different form of licensing (second-hand motor vehicles) but the relevant legislation also granted the Council power to make reasonable conditions. In Stewart the Council's conditions were supported by the Police and Trading Standards, and were similar to conditions adopted by two-thirds of the Councils in Scotland. The conditions were aimed at public safety and crime prevention.

3.6. In reversing the Council one of the judges said:

*"37. It is plain that condition 2.5(a) was directed to a laudable object and to a matter which was of very real concern to the public. We were shown a copy of a report by the Chief Executive to the District's General Purposes Committee on 25 May 1988 which states that the introduction of conditions in 1986 was preceded by consultation with the police, the Trading Standards Department and the Scottish Motor Trades Association and that they were reconsidered following concerns which certain dealers had expressed about them. We were told that about two thirds of all the licensing authorities in Scotland have followed the District Council's example and have introduced similar conditions*

*into the licences which they have issued to dealers in second-hand motor vehicles. The idea of regulating the relationship between these dealers and their customers evidently has wide support throughout Scotland. In the light of this background I would not wish to disturb the practice of inserting a condition of this kind into second-hand motor vehicle dealers' licenses unless this was absolutely necessary. But wide support for the condition is not enough to make it legitimate. That depends on the intention that is to be ascribed to Parliament.*

*38. For the reasons which I have given, I would hold that Parliament did not intend the licensing system to be used in this way. The practice of Parliament is to provide for the protection of consumers by means of primary legislation which can be applied uniformly across the country. It is not its practice to delegate powers to legislate in this area to individual local authorities. I consider that the majority in the Extra Division were right to hold that condition 2.5(a) was ultra vires."*

#### **4. Evidence**

The Board's power to attach conditions only arises where the Board is satisfied that the conditions are "necessary or expedient for the purposes of any of the Licensing Objectives."

Prior to the Board adopting its three-yearly Licensing Policy Statement in November 2013, there was consultation with many public bodies and the consultation was open to the public. The Board received extensive representations from the Health Board concerning the consumption of alcohol, but there were no representations about e-cigarettes, and the Board's LPS did not mention them.

The Board does not at present have evidence that conditions prohibiting the use of e-cigarettes would be justified. Without evidence that a prohibition would advance the Licensing Objectives, the Board should not make such conditions.

#### **5. Alternative ways to proceed**

Assuming that there is an evidential basis for the suggested prohibition, the question could be addressed in other ways:

- (a) by new primary legislation enacted by the Scottish Parliament;
- (b) by secondary legislation. Scottish Ministers can by secondary legislation add, delete or amend a national Mandatory condition where they consider this necessary or expedient for the purposes of any of the Licensing Objectives;
- (c) by prescription of conditions. Under a power which has not yet been exercised (Section 27A, added by the Alcohol (Scotland) Act 2010, effective 1st October 2011) Scottish Ministers can prescribe conditions which Boards can apply globally, i.e. without having individual hearings. This would apply here only if any Scottish Ministers' prescription covered e-cigarettes.

These alternatives have these features:

(i) the same change would apply throughout Scotland, rather than each individual Board having to decide whether or not there should be a prohibition, and (if so) what exemptions should apply;

(ii) the change would come into force immediately. At present, if a Board wished to attach a new Condition to a Licence, there would have to be individual Review Hearings. There are over 400 Premises in North Ayrshire alone, and the process would take years. It is possible that the need for individual hearings might disappear in the future, but this depends on Scottish Ministers exercising the power of prescription (see (c) above).

## **5. Conclusion**

The Board may consider that it would not be proper for it to intervene here, in the absence of legislative authority, and that the issues should instead be addressed by the Scottish Government.