

Cunninghame House,
Irvine.

9 September 2015

North Ayrshire Licensing Board

You are requested to attend a meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, Cunninghame House, Irvine on **MONDAY 14 SEPTEMBER 2015** 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 22 June 2015 and 7 August 2015.

2. Chief Constable's Annual Report - Licensing (Scotland) Act 2005, Section 12A for year to 31 March 2015

Submit report to the Licensing Board by the Chief Constable of Police Scotland (copy enclosed).

3. Licences and Applications under the Licensing (Scotland) Act 2005 and Gambling Act 2005

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

4. Consideration of NALB Policy for Festive Period 2015-2016

Submit report to the Licensing Board regarding Occasional Extensions and Occasional Licences during the Festive Period 2015-2016 (copy enclosed).

5. Public Health Report

Submit report to the Licensing Board to update Members on the current position following the updated MESAS Report.

Licensing Board

Sederunt: Ian Clarkson (Convenor)
Tom Marshall (Vice-Convenor)
Robert Barr
John Bruce
John Easdale
Grace McLean
Catherine McMillan
Ronnie McNicol
Donald Reid

Chair:

Attending:

Apologies:

Meeting Ended:

Report

to

North Ayrshire Licensing Board

by

Solicitor (Licensing)

Subject:	Chief Constable's Annual Report - Licensing (Scotland) Act 2005, Section 12A for year to 31 March 2015
Recommendation:	That the Board note the Report

Under Section 12A of the 2005 Act (as inserted by the Alcohol etc. (Scotland) Act 2010) the Chief Constable must, as soon as practicable after the end of each financial year, send a report to the Board setting out—

(a) the Chief Constable's views about matters relating to policing in connection with the operation of the 2005 Act in the Board's area during that year and the following year, and

(b) any steps the Chief Constable—

(i) has taken during that year,

(ii) intends to take in the following year,

to prevent the sale or supply of alcohol to 'Children' or 'Young People' in that area.

The Chief Constable must also send a copy of the report to the Local Licensing Forum.

The Chief Constable of Police Scotland has therefore submitted the attached Report. If the Board so requests, the Chief Constable (or other constable nominated by the Chief Constable) must attend a meeting of the Board to discuss the Report.

The Board is not required to take any action. It will remain the case that if the Police have complaints about particular Licensed Premises, these will be raised using the Review procedures in Sections 36 (Premises Licence) and Sections 84 and 84A (Personal Licence).



**POLICE
SCOTLAND**

Keeping people safe

**CHIEF CONSTABLE'S REPORT TO THE
NORTH AYRSHIRE LICENSING BOARD
FOR THE PERIOD
1ST April 2014 to 31st March 2015**

LVRD/ 04/05/2015 V.1

Foreword

I am pleased to present my Annual Report for 2014/15, in accordance with the requirements of the Licensing (Scotland) Act 2005 (S12A).

This report is set against a backdrop of recorded crime in Scotland reaching a 40 year low and outlines the comprehensive activity which has been undertaken in North Ayrshire over the last twelve months. Going forward, this report confirms the steps we will take in 2015/16 to ensure we continue to improve on our performance and positively impact upon the lives of people throughout Scotland.

Over the last year, our Licensing focus has centred on prevention, supplemented by intervention and enforcement measures. Collectively, these measures are designed to improve our consistency of approach, reduce violence and positively influence behaviour and cultural attitudes towards alcohol across Scotland.

Working in partnership to deliver results remains at the heart of policing. We continue to seek out new partnership opportunities, whilst maintaining and building upon our existing relationships to support the licensed trade, relevant authorities and local communities.

Police Scotland strives to ensure the safety and wellbeing of people, places and communities across Scotland and our focus remains 'Keeping People Safe'.

Sir Stephen House QPM

Chief Constable

Police Scotland

Police Scotland Licensing Overview

Licensing Structure

Following the inception of Police Scotland in 2013; a two tier structure for Licensing was adopted, to support both national and local priorities and service delivery. This is defined through a national policy unit and local licensing teams.

National Perspective

The National Liquor and Civic Licensing Policy Unit (NLCLPU)

The NLCLPU is a specialist department within Licensing and Violence Reduction Division (LVRD) which exists to support territorial divisions across Police Scotland.

It consists of a Chief Inspector, Inspector, Sergeant and a Constable and is based at Dalmarnock Police Office, Glasgow.

Working with divisional licensing teams the NLCLPU shape policy and strategy around the police licensing function and provide practical and tactical advice to police licensing practitioners, operational officers, supervisors and policing Commanders.

The NLCLPU seek to ensure that legislation governing the sale and supply of alcohol is applied consistently across the country and that all opportunities are taken to stop the illegal or irresponsible sale, supply or consumption of alcohol. This is with the intention of preventing and reducing violent crime and disorder.

The National policy unit has particular focus on;

- Scrutiny of the most serious incidents of violence and disorder linked to licensed premises.
- Identifying opportunities to impact on serious and organised crime groups who may seek to exploit the licensed trade
- Working closely with partners to identify and address licensed premises issues and inform personal licence holder training.
- Engaging with Major event and festival organisers to agree alcohol management plans that will set out how alcohol sale, supply and risk are to be controlled.
- Support the development of the National Licensing ICT solution "Innkeeper"

Local Perspective

Police Scotland comprises of 14 divisions each of which has a dedicated licensing team within a Divisional Coordination unit which consist of Police officers and members of police staff.

These teams service the statutory obligation placed on the Chief Constable to respond to the 34 Licensing Boards and have oversight of all licensable activity with their division.

Local Licensing teams regularly work in partnership with the licensed trade and any other relevant body, to prevent violent incidents and vulnerability occurring in and around licensed premises.

Where problems are identified local problem solving is adopted, licensing staff generally take an incremental approach and try to agree a proactive and positive way forward to address ongoing issues.

However, on occasions enforcement activity or an application to review a premises licence may be the solution to the problem and local Licensing teams will report to COPFS and/or Local Licensing Boards as necessary.

Priorities

Both the National Liquor and Civic policy unit and Divisional Licensing work towards Police Scotland National priorities;

- Violence, Disorder and Antisocial behaviour
- Serious organised Crime
- Counter Terrorism
- Protecting people at risk of harm
- Road Safety and Road crime

PART 1: NORTH AYRSHIRE LICENSING BOARD AREA

The Licensing Board area is policed by Ayrshire Division.

Chief Superintendent Gillian MacDonald is the Local Police Commander who has the responsibility for all day-to-day policing functions.

Local Policing Priorities

Following our public consultation process, the policing priorities for Ayrshire Division, as set out in our Local Policing Plan are as follows;

- Drug dealing and drug misuse
- Assault and Violent Crime
- Theft by housebreaking
- Drunkenness and rowdy behaviour

Senior Officers

The senior officers who hold responsibility for licensing with the area of North Ayrshire are as follows;

Superintendent Neil Kerr - Support and Service Delivery

Chief Inspector Brian Shaw – Area Commander

Chief Inspector Tim Ross- Community Engagement and Partnership Working

Licensing Department;

Inspector Annette Morrison
Sergeant Donald McIntosh

Head of Department
Licensing Sergeant

North Ayrshire has a population of approximately 136,000. It is located in the south-west region of Scotland covering 341 square miles and is bordered by the local authority areas of Inverclyde, Renfrewshire, East Ayrshire and South Ayrshire. The largest town, Irvine has an approximated population of 40,000. The area also contains the towns of Ardrossan, Beith, Dalry, Kilbirnie, Kilwinning, Largs, Saltcoats, Skelmorlie, Stevenston, West Kilbride, as well as the Isles of Arran and Cumbrae. This presents a diverse mixture of urban, rural and isolated towns and villages providing officers in the Command Area with a unique set of policing challenges. Building on existing partnerships, problems identified by community consultation are tackled to improve the quality of life for those within North Ayrshire.

PART 2: OPERATION OF THE LICENSING (SCOTLAND) ACT 2005

Alcohol pervades across a wide range of issues in our society and is often a casual factor in violence, domestic abuse and anti-social behaviour; incidents that the Police Service of Scotland deals with every day in each area of the country.

Our focus is to improve safety and wellbeing of people, places and communities in Ayrshire by focusing on Keeping People Safe.

OPERATION OF THE LICENSING (SCOTLAND) ACT 2005

Our focus is to improve safety and wellbeing of people, places and communities in Ayrshire by focusing on Keeping People Safe.

In the North Ayrshire Board Area during the reporting year there was one premise licence review and two personal licence reviews submitted to the board by Police Scotland.

Within the Irvine area a premise was found to have persons consuming alcohol out with the hours of their licence as well as not having proper control of the premises. Police Scotland submitted a Premise Licence review to the Board. The grounds for review were established by the Board and the Premise Licence was varied to restrict the terminal hour to 2300 hours each day. This was for a period of 28 days.

In the Troon area within South Ayrshire, a Personal Licence Holder within a local store was found to have sold alcohol to a person under the age of 18. The Personal Licence concerned had been issued by North Ayrshire and due to this a review was submitted to North Ayrshire Licensing Board. The grounds for review were established but the Licensing Board took no further action on this occasion.

At a premise within the Irvine area, a Designated Premises Manager was found to be operating the premises in a manner that did not adhere to the licensing objectives. This included, allowing excessive drunkenness within the premises and failing to provide information to Police Scotland regarding incidents which had occurred. A review of Personal Licence for the Designated Premises Manager was submitted to the Board by Police Scotland. The grounds for review were established and the Personal Licence was revoked by the Licensing Board.

Pubwatch

There is a successful Pubwatch scheme operating in Saltcoats town centre area which meet monthly and is presided over by a Chairperson from a member premises. A designated police officer from the town centre community policing attends to input on any ongoing trends, best practice or matters arising.

Partnerships

Police officers and members of staff within Ayrshire Division work with a number of partner agencies in addressing alcohol related issues including NHS, Education, Licensing Standards Officer, Licensing Forum, the list is not exhaustive.

Problem Solving

Within Ayrshire Division every crime and incident which occurs in and around a licensed premise is scrutinised and followed up. This results in a greater knowledge and understanding of potential problematic premises which allows a problem solving approach to take place in conjunction with the Premises Licence Holder and Designated Premises Manager. Ayrshire Division operates a Monitored/Problematic Premises list which allows our officers to focus their attention on the premises requiring the most support and attention.

PREVENTING THE SALE OR SUPPLY OF ALCOHOL TO CHILDREN OR YOUNG PEOPLE

Police Scotland can help make a difference on the future outcomes for children by addressing the sale and supply of alcohol to young people. We can address this by targeting problematic licensed premises.

Activity

In North Ayrshire 6 people have been reported to the Procurator Fiscal for contravention of section 105 Licensing Scotland Act 2005, which relates to the purchase of alcohol by or for a child or young person. Ten Test Purchase Operations were carried out on Premises where there was intelligence indicating possible sale or supply of alcohol to young persons. All ten premises passed the test purchase. The introduction of Challenge 25 has however raised awareness to the Trade of the need to ask for identification and this has had a positive impact on the pass rate of Test Purchase Operations.

Proposed Activity

Test Purchase Operations will continue where there is information and/or intelligence to indicate that alcohol is being supplied or purchased from a specific premises. Case Law has indicated the use of this tactic and it is something which is only carried out where there is an indicator which supports the needs for a test.

TACKLING SERIOUS AND ORGANISED CRIME

Serious and Organised Crime (SOCG) presents a clear threat to the Ayrshire Licensing trade and legitimate economy. As a result, Ayrshire Division continues to target known criminality in this area as well as attempting to reduce the opportunity for individuals to exploit legitimate licensing opportunities for their own illegitimate means.

Ayrshire Division Licensing Department has increased its links with the Divisional Intelligence Department and further integration between this department and the Serious and Organised Crime Interventions function is developing. This will ensure greater oversight between both areas allowing the Division to act at the earliest opportunity in providing the Licensing Board with information which may prevent a license being issued or to coordinate disruption activity around an existing license holder more effectively.

At this current time, there are 14 SOCG being managed by the Division with some of these groups having a known interest in a business requiring some form of licence to operate.

This involvement in the licensing trade is often a direct result of the expertise or experience of an individual from their group in that business sector, and/or the chosen business presenting the ability to launder criminal proceeds.

Ayrshire Division continues to carry out targeted premises visits to ensure that all license conditions are being complied with. Such visits will also involve a range of partner agencies including; HMRC, DVSA, DVLA, Scottish Power, SEPA and more.

Within North Ayrshire, such continued scrutiny of problematic premises has had positive results.

As would be expected, detailed inspections of premises resulting in evidence based breaches of the Licensing Objectives will form the basis for matters to be brought to the attention of the Licensing Board with close working between all departments involved to present the best possible factual information.

Examples of SOCG Activity in the Board area: –

In April 2014 U Division Interventions were informed that a male linked to organised crime had submitted an application for a taxi license. Routine checks of police systems were conducted and highlighted that the male was documented as being involved in the supply of class A controlled drugs and linked to an organised crime group. He also held previous convictions, however for the purpose of this application these convictions were deemed spent. The male was subsequently issued a taxi licence on 25/06/2014.

On 03/07/2014 police officers responded to a report of a strange smell coming from an address in Irvine. A large cannabis cultivation was discovered and whilst at this location the male taxi driver attended with keys for the premises in his possession. A further search warrant was obtained for the taxi driver's home address. The search of the home address was carried out and a substantial quantity of cocaine was recovered. The taxi driver was charged with a number of misuse of drugs offences including being concerned in the supply of controlled drugs.

On receipt of the this information U Division Interventions liaised with the Police Licensing department and a letter was submitted to North Ayrshire Council Licensing Board which contained brief details of the circumstances and outlined the pending charges. The taxi licence was immediately removed pending the outcome of the court case.

PROPOSED ACTIVITY FOR THE YEAR AHEAD

Ayrshire Division will continue our focus to “Keep People Safe” and work collaboratively with the licensed trade, partners and local communities to strive towards improved standards and compliance across the licensed trade. We will address business practices that result in;

- excess alcohol consumption
- vulnerability due to excess alcohol consumption
- sale and supply of alcohol to children and young people
- incidents of crime and offending connect to sale of alcohol

Agenda Item 3

14 September 2015

North Ayrshire Licensing Board

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

Purpose: To inform the Licensing Board on the background to applications received under the Licensing (Scotland) Act 2005 and the Gambling 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 the Gambling Act 2005, and for determining questions under these Acts.
- 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.	0432	Summel & Summel Limited 46 Milgarholm Avenue Irvine KA12 0EJ	Gulab Brasserie 2A Stanecastle Road Irvine KA11 1AE	Premises Licence Review Proposal (Second Stage) - Section 37 Continued from 22/06/15
2.	0216	Aquilla Clark 2 Holmwood Court Largs KA30 8RT	Fiddlers & Oceans 4 Townhead Close Main Street Largs KA30 8JL	Premises Licence Review Application - Section 36
3.	0267	Beith Masonic Social Club 3-5 Eglinton Street Beith KA15 1AD	Beith Masonic Social Club 3-5 Eglinton Street Beith KA15 1AD	Application for Variation of Premises Licence - Section 29
4.	0097	Mohammed Khan 5 Barclay Gardens Irvine KA11 2BX	The Kiosk 1 Woodlands Avenue Irvine KA12 0PY	Application for Variation of Premises Licence - Section 29
5.	0140	Greenmill Limited R & J Hart 9 Kilwinning Road Irvine KA12 8RR	Keystore 1/3 Gagarin Terrace Kilwinning KA13 6JA	Application for Variation of Premises Licence - Section 29
6.	0280	Dreghorn Bowling Club 88 Main Street Dreghorn Irvine KA11 4AA	Dreghorn Bowling Club 88 Main Street Dreghorn Irvine KA11 4AA	Application for Variation of Premises Licence - Section 29
7.	0292	Glengarnock Ironworks Bowling Club Lochend Road Glengarnock KA14 3AW	Glengarnock Ironworks Bowling Club Lochend Road Glengarnock KA14 3AW	Application for Variation of Premises Licence - Section 29

- | | | |
|--|---|---|
| 8. UFEC/ Noel Bardon
GMP/9 Bardon Leisure
7 Grocers Road
Rathfriland
County Down
BT34 5GZ | Rivergate Shopping Centre
5 Fullarton Square
Irvine
KA12 8EJ | Application for Grant of
Family Entertainment
Centre Gaming
Machine Permit -
Gambling Act 2005,
Section 247 and
Schedule 10 |
|--|---|---|

Premises Licence Review Proposal (Second Stage) - Section 37

Licence Premises	Gulab
Premises Address	2A Stanecastle Road, Irvine. KA11 1AE
Premises Licence ref.	0432

CONTINUED FROM 22 JUNE 2015

1. Procedure

On 18 May 2015 the Board had a Briefing Note prepared by Grace Cullen, Licensing Standards Officer, and conducted a preliminary consideration under Section 37:

"The Appropriate Licensing Board in respect of any Licensed Premises in relation to which a Premises Licence has effect may, on their own initiative, propose to review the Licence on any of the Grounds for Review."

The statute provides that the possible "Grounds for Review" are—

- (a) that one or more of the conditions to which the Premises Licence is subject has been breached, or
- (b) any other ground relevant to one or more of the Licensing Objectives.

2. The Complaints

The Briefing Note narrated complaints from neighbours of the Premises, the involvement of the LSO, NAC's Out-of-Hours Noise Team and Police Scotland. The complaints cover nuisances including:

- noise
- customer behaviour during licensed hours and at closing time, inside the premises, on their grounds outside, and in the outdoor smoking area (including customers urinating within the grounds of the premises)
- rubbish and glass from the premises ending up in Stanecastle Road and Castlekeep Gardens

The Briefing Note described interactions between the LSO, various agencies, and the PLH, and sets out measures agreed and put in place by the PLH:

- (a) A large fence was built and large planters placed to improve the privacy for neighbours
- (b) Karaoke was to cease at 00.30 a.m.
- (c) A member of staff was to clear the carpark and surrounding area of any rubbish, glass

- (d) All doors and windows were to be closed when karaoke or private function on
- (e) Communicate with karaoke presenter
- (f) Monitor noise from outside premises regularly
- (g) A member of staff would control noise from persons smoking and try and ensure customers smoke at the far end of the carpark away from the takeaway area
- (h) A member of staff would control persons leaving at closing time when waiting on taxis.

3. Initial Procedure

The Board considered the circumstances, including emails listed in the document "Gulab Emails" attached, and then decided:

- (a) to make a Proposal;
- (b) to state what the alleged "Grounds for Review" were (Section 37(4)):
"1. The operation of the Premises on the occasions and in the circumstances listed may have involved breaches of one or more of the Licence conditions;
2. The operation of the Premises may not be consistent with the 'preventing public nuisance' Licensing Objective;"

The fact that the Board, on a preliminary consideration without a Hearing, considered that "Grounds for Review" might exist should not be taken by any person as indicating:

- (a) that the Review should be upheld or
- (b) that any action (such as Suspension of the Licence) should be taken.

The Board would only make a decision on these after Hearing all parties.

4. The Premises Licence

(a) The Licensed Hours

The on-sales hours are:

Monday	11.00 - 24.00
Tuesday	11.00 - 24.00
Wednesday	11.00 - 24.00

Thursday	11.00 - 01.00
Friday	11.00 - 01.00
Saturday	11.00 - 01.00
Sunday	11.00 - 24.00

The Premises are also licensed for off-sales, with the same commencement hours and the terminal hour at 22.00 on all days.

(b) The Licensed activities

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

(c) The Licence Conditions

The Premises Licence is subject to the Board's Standard Conditions, which include:

"C.4 Noise and other nuisances"

C.4.1 The Licensee shall apply best practicable means to prevent persons outside the Premises or any Outdoor Drinking Area being subjected to nuisance from noise, vibration, smell or otherwise.

C.4.2 Signs will be displayed inside the building, near each exit (including any exit leading to an Outdoor Drinking Area), asking customers to respect the local neighbourhood and keep noise levels to a minimum while outside the building or at the entrances to the building. Each sign shall be of at least A4 size, in letters of not less than 12 points in height, and positioned so that is easily readable by customers or drivers.

C.4.3 *The Licensee shall take reasonable steps to ensure that at all times that the Premises are open to the Public (and for 15 minutes after the Terminal Hour) customers do not cause nuisance to neighbouring occupiers or persons outside the Premises.*

C.4.4 *When any of the activities to which this Condition applies take place on the Premises after 22.00, the following requirements apply:*

(a) All windows and doors (both external and internal) shall be kept closed, except that doors may be opened from time to time to permit the immediate passage of people provided that they are then again closed;

(b) Where equipment is used for the amplification, relaying or making of sound, the Premises shall, at the request of an Officer authorised by the Council, use sound limiter equipment set so that the equipment does not operate beyond sound levels agreed.

The activities to which this Condition applies are the playing of Recorded Music, karaoke, the giving of Live performances, Dancing, the performance of Theatre, the showing of Films, and the operation of Radio, Television or Jukebox."

5. Procedure

The Board will have a Report from the LSO, and the written representations from the complainer (in Members' Packs "Gulab Emails").

6. Additional Powers of inquiry

The Board are entitled by Section 38(5) to :

(a) obtain further information from such persons, and in such manner, as the Board thinks fit (the Board would be entitled to take into account information from the Police or from other residents describing the same incidents as are alleged), and

(b) consider any possible Ground for Review even though it is not relevant to any circumstances alleged in the original Review Proposal. If the Board propose to do this, it should inform the Licence Holder of their intention and consider whether an adjournment is appropriate.

7. Board's Powers on Review

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

If the Board are satisfied that a Ground for Review is established, the Board may take any one or more of the following steps if they consider these are necessary or appropriate for the purposes of any of the Licensing Objectives:

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

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

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

The Board are not obliged to take any of these steps, and may decide that although a Ground for Review is established, no action is required, or that a decision on the Review should be deferred.

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

8. Further Action

If the Board decide to Vary or Suspend the Licence, the Board are later entitled to revoke the order if the Holder requests this and the Board are then satisfied that, by reason of a change of circumstances, the order is no longer necessary. A decision to issue a Written Warning or to Revoke a Licence cannot later be revoked.

Premises Licence Review Application - Section 36

Premises	"Fiddlers and Oceans", 4 Townhead Close, Main Street, Largs KA30 8JL
Premises Licence Holder	Aquilla Clark
Ref.	216

1. Background

By letter of 20 August 2015 Diane Mullen, 3 Waterside Street, Largs made a Review Application under Section 36 informing the Board of certain circumstances relating to these Premises. Copies of the letter will be distributed to Members at the Meeting.

2. Ground(s) for Review

The Applicant's letter indicates that there are grounds relevant to the following Licensing Objectives:

- (a) preventing crime and disorder
- (b) securing public safety
- (c) preventing public nuisance
- (d) protecting and improving public health

As well as the usual Licence conditions, the Premises Licence is subject to Additional Conditions prepared specifically for these Premises, including:

"5. If the Premises Manager or any member of staff becomes aware of any act or omission which might give rise to criminal liability, the Police shall be immediately contacted and made aware of the circumstances.

6. No member of the public shall be admitted to the Premises, on payment or not:

where the Terminal Hour is 1.00, after 24.00, or

where the Terminal Hour is 2.30, after 00.30."

The Premises are licensed 23.00 p.m. to 2.30 a.m. four days a week (Thursday to Sunday) for most of the year, but for all seven days a week:

- (a) in the period 18 December and 2 January;
- (b) for one week between 10 March and 30 April.

The Premises are also licensed from 21.00 of Friday and Saturday if there is a booked function.

The Premises do not have a "Late Hours Catering Licence" under Civic Government (Scotland) Act 1982, Section 42. Such a Licence is needed for the sale of food between 23.00 and 5.00 a.m.. There is limited exemption from the need to have such a Licence when Premises with an alcohol Licence supply to their own customers - Section 42(4)(a). However, this only applies to customers who have entered the Premises while they are operating consistently with the alcohol Licence, so there should be no supply of food to customers who have entered after 00.00 a.m..

3. Capacity etc.

The Premises are Licensed for on-sales only and have a capacity:

ground floor : 210 customers
first floor : 171 customers

Activities other than the sale of alcohol:

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

Other activities permitted
Children's parties outwith Core Hours

4. Procedure

Under Sections 36(6)-(8), the Board may reject a Review Application if the Board considers the Application—

(a) is vexatious or frivolous, or

(b) does not disclose any matter relevant to any of the statutory "Grounds for Review".

If the Board rejects the Application it must give notice of the decision, and the reasons for it, to the Applicant.

The Board is entitled (but not obliged) to order that the Applicant should pay the Board's expenses. If it does so, it should specify the sum due.

5. Additional Powers of inquiry

The Board are entitled by Section 38(5) to

(a) obtain further information from such persons, and in such manner, as the Board think fit, and

(b) consider any possible Ground for Review even though it is not relevant to any circumstances alleged in the original Review Application or Proposal. If the Board propose to do this, they should inform the Licence Holder of this intention and consider whether an adjournment is appropriate.

6. Board's Powers on Review

The Board must hear the Applicant and the Licence Holder, and decide whether or not

(a) the Review Application should be rejected as:

(i) vexatious or frivolous, or

(ii) not disclosing any matter relevant to any of the statutory "Grounds for Review".

(b) failing rejection, a Ground for Review is established, and

(c) if established, the Board should hear further from the Licence Holder and decide what action is appropriate.

The Board may take any one or more of the following steps if they consider necessary or appropriate for the purposes of any of the Licensing Objectives:

(a) issue a Written Warning to the Licence Holder;

(b) make a Variation of the Licence - either indefinitely or for a specific time. The Variation may relate to any part of the Licence, for example:

(i) the operating hours for the Premises (or any part);

(ii) the Premises Manager (if any) can be removed;

- (iii) the activities which may be carried on on the Premises (or any part);
 - (iv) the terms for access by persons under 18 to the Premises (or any part);
 - (v) the Licence Conditions (the Variation cannot alter the statutory Mandatory Conditions);
- (c) Suspend the Licence for a specific time. While the Licence is suspended, Annual Fees continue to be charged.

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

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

The Board are not obliged to take any of these steps, and even if a Ground for Review is established, the Board may decide that no further action is required, or that a decision on what steps should be taken should be deferred.

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

7. Further Action

If the Board decide to Vary or Suspend the Licence, the Board are later entitled to revoke the Order if the Holder requests this and the Board are satisfied that, by reason of a change of circumstances, the Order is no longer necessary. A decision to issue a Written Warning or to Revoke a Licence cannot later be revoked.

8. Personal Licence

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

If the Licence Holder is working in Licensed Premises in North Ayrshire, and has had the opportunity to be heard, the Board Meeting which considers the present

Premises Licence Review can consider that review at the same time as the Hearing relating to the Premises Licence.

Otherwise, the Board should either:

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

Whichever Board hold the Review Hearing may, if they consider it necessary for any of the Licensing Objectives:

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

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

Application for Variation of Premises Licence - Section 29

Applicant	Beith Masonic Social Club
Premises	Beith Masonic Social Club, 3/5 Eglinton Street, Beith, KA15 1AD
Ref.	0267

Preliminary

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 4th September 2015:

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. No details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

1. Summary of Variation Request(s)

No.	Variation
1	<i>"Other licensed activities": include (1) the service of food at functions and; (2) karaoke.</i>
2	<i>Amend Operating Plan to allow new arrangements for guests</i>

2. Issues

Variation 1: "Other licensed activities"
Grant (no statutory reason to refuse, and no breach of Board policy)
The current operating plan does not allow the club to serve of food at functions or to host karaoke. It is proposed that both these are activities are included within the operating plan.

Variation 2: Amend Operating Plan to allow new arrangements for guests
Discretionary refusal
<u>General</u>
Under the 2005 Act Clubs are granted a Special Status, which means that they are exempt from several of the obligations which fall on commercial premises, but this Special Status comes at a price. To acquire and keep this status:
<ol style="list-style-type: none"> (a) Clubs are required to limit the use of their facilities to their Members and their <u>bona fide</u> guests. (b) Clubs can apply for a maximum of 12 Occasional Licences each year (during an OL, the limitation in (a) does not apply)

This Special Status reflects the view that Clubs should primarily operate for their Members, and should not be open to the general public.

To keep the Special Status, those Clubs operate a system, commonly called the "Three Guests Rule", whereby a single Member can sign-in no more than three non-Members, who must be his bona fide guests. Such a restriction means that Clubs should not be able to compete unfairly with commercial Premises.

Some Clubs in North Ayrshire found that the OL limit caused them problems, as they depended on being able to cater for a large number of functions such as a wedding receptions or birthday parties. Accordingly the Board introduced an intermediate status ("Part K Clubs", named after Part K of the Board's Standard Conditions).

When a Club chooses to seek Part K status, it amends its Operating Plan so that it undertakes to operate as a Club. In return (if the Board agree to the change) it is released from the OL limit, but it does not have the unqualified Premises Licence that commercial Premises would have, because the sale of alcohol is still limited to Members and their guests. The difference is that sale is also permitted at functions.

"where the Premises are used for a bona fide pre-booked function such as a wedding reception or birthday party, anyone invited to that function can:

- (i) enter the Premises;*
- (ii) use the facilities of the part of the Premises where the function is taking place, and*
- (iii) buy and consume alcohol in that part."*

There is no 'Three Guests Rule' for Part K Clubs. What is important is that the Club should maintain the character of a Club, and restrict the use of its facilities to Members, guests etc., subject to the 'bona fide function' exception.

How the Club achieves the goal of maintaining 'club' character is up to the management, but the obligation is part of the Operating Plan. The Board are entitled to expect that the Club keeps to its undertaking.

This means:

- (a) if the Club later wants to change the arrangements, it should apply for a Variation;
- (b) If the Club changes its arrangements without asking the Board to approve the Variation, this can be the basis of a Review:

When a changed arrangement is proposed, the question for the Board is:

"does the changed arrangement amount to a change in the character of the Club?"

The Board might give guidance on what is, or is not, acceptable, so that the LSO can give appropriate advice to other Clubs, e.g. should Part K Clubs operate a "Three Guests Rule" or something similar?

The present Applicant

The Applicant is a "Part K Club", and therefore offered the Board the undertaking described above.

The Applicant is current applying the "Three Guests Rule" and wishes the Board's permission to cease doing so.

In deciding whether or not to agree, the Board should consider whether the character of the Club would be lost, or whether unfair competition with commercial Premises is likely. The Board may wish the Club to give undertakings as to what arrangements will be put in place of the "Three Guests Rule" to maintain its character as a Club.

Whether or not the Board now agrees to the Variation, the Board would be entitled to review its decision if Review Proceedings were commenced by the Police, LSO or the Board themselves. If that Review was upheld the Board would be entitled vary the Licence, e.g. to state new arrangements for non-members or to revoke Part K Status altogether.

3. Licence Conditions

No variation of the Conditions is appropriate

Application for Variation of Premises Licence - Section 29

Applicant	Mohammed Khan
Premises	The Kiosk, 1 Woodlands Avenue, Irvine KA12 0PY
Ref.	97

Preliminary

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 4 September 2015:

1. *Until the Board has a Certificate of Display, it cannot determine the Application.*
2. *no details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

1. Summary of Variation Request(s)

No.	Variation
1	Increase off-sales capacity from 16.7 sq.m. to 21.6 (about 29%)
2	Change Sunday hours from 12.30 - 22.00 to 10.00 - 22.00
3	Change name of Premises

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 have 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 capacity from 16.7 sq.m. to 21.6 (about 29%)

Discretionary refusal

Notes:

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 a Locality where Applications are especially unlikely to be granted (regardless of the Function Type);
- (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

If the Board wishes details of other similar Premises in the Locality, they might continue consideration to a later Meeting so that a Statement can be prepared and intimated to the Applicant.

Variation 2: Change Sunday hours from 12.30 - 22.00 to 10.00 - 22.00

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

Variation 3: Change name of Premises

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

The current Premises' name is "The Kiosk" and this was the name shown in the documentation issued on 29 May 2015 following the Transfer to the Applicant. The request is to rename the Premises "The Keystore". This is a "Minor Variation" (SSI 2011-151, Reg. 2(a)) so the Board are obliged to grant this Variation: Section 30(2).

3. Licence Conditions

No variation of the Conditions is appropriate.

Application for Variation of Premises Licence - Section 29

Applicant	Greenmill Limited
Premises	Keystore, 1-3 Gagarin Terrace, Kilwinning
Ref.	0140

Preliminary

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 4th September 2015:

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. no details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

1. Summary of Variation Request(s)

No.	Variation
1	"Other licensed activities": include the supply of hot food 7am – 5pm.

2. Issues

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

Note to Applicant: this is not a matter for the Licensing Board, but NAC Planning have advised that the provision of hot food by an existing retail shop may require planning permission for a change of use. Even if the Board grant the Variation, this only affects Licensing Law, and the proposed use can only take place if it is consistent with Planning Law. The Applicant is advised to contact NAC Planning.

3. Licence Conditions

No variation of the Conditions is appropriate.

Application for Variation of Premises Licence - Section 29

Applicant	Dreghorn Bowling Club
Premises	Dreghorn Bowling Club, 88 Main Street, Dreghorn, KA11 4AA
Ref.	0280

Preliminary

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 4th September 2015:

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. No details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

1. Summary of Variation Request(s)

No.	Variation
1	Permit under-18s when accompanied by an adult.

2. Issues

Variation 1: Permit under-18s when accompanied by an adult.
Discretionary refusal
<p>Currently under-18s are permitted access to all areas of the club except the "Club lounge" and the "quiet lounge" (these are the names of the rooms as shown on the Layout Plan).</p> <p>The Application refers to the "bar/lounge", and it is not clear what room or rooms the proposal relates to. The justification for the variation is that the "bar/lounge" is the only place within the Clubhouse where the playing green can be viewed. However the playing green can be viewed from both rooms.</p> <p>The Club are proposing that access for under-18s is extended to allow them to access the "bar/lounge" when accompanied by an adult.</p> <p>The proposed access is also to be permitted during bowling events and at private functions.</p> <p>(a) The Applicant should clarify for the Board which room or rooms are meant.</p> <p>(b) The Applicant should clarify the ages of the under-18s to be admitted if access is extended. The Act distinguishes between</p> <p>(i) Children aged 0-15 years, and</p> <p>(ii) 'Young Persons' (aged 16-17).</p>

If the proposal extends to 'Children' then the Board should consider whether or not this Application is inconsistent with Licensing Objective (e): 'protecting Children from harm'.

The Board have previously taken the view that the L.O. is protected where access is only permitted when the under-18 is accompanied by an adult (a person of 18 or over). Unless the Board say otherwise, that requirement would apply regardless of the reason for the under-18 being on the Premises, e.g. to participate in play, to view play, or to attend a function.

3. Licence Conditions

No variation of the Conditions is appropriate.

Application for Variation of Premises Licence - Section 29

Applicant	Glengarnock Ironworks Bowling Club
Premises	Glengarnock Ironworks Bowling Club, Lochend Road, Glengarnock, KA14 3AW
Ref.	0292

Preliminary

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 4th September 2015:

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. No details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

1. Summary of Variation Request(s)

No.	Variation
1	<i>Amend Sunday opening hours</i>
2	<i>"Other licensed activities": include (i) live performances (ii) recorded music (iii) television; and (iv) service of food</i>
3	<i>Permit outdoor drinking</i>
4	<i>Disapply Licence conditions re occupancy checks when an Occasional Licence is not in operation</i>
5	<i>Disapply Licence conditions re toilet checks when an Occasional Licence is not in operation</i>

2. Issues**Variation 1: Amend Sunday Operating Hours**

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

The current Sunday operating hours are 12.30 pm – midnight. The opening hours for the other 6 days are 11.00 am. The proposal is to bring Sunday hours into line. The Board's policy permits this. The reason that the Sunday hours are currently different is probably linked to the 'permitted hours' under the 1976 Act, and the 'grandfather rights' rules.

Variation 2: "Other licensed activities"

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

The current Operating Plan does not:

(a) allow the Club to host live performances, play recorded music or provide a television for use by members when in the Clubhouse. It is proposed that these activities are included within the operating plan.

(b) include the provision of restaurant or bar meals. The Applicant should

advise the Board what is proposed, e.g. will the service of food is to be included, but this will be restricted to the service of meals to visiting teams, as opposed to providing bar or restaurant meals to members or visitors? If the sale of food (hot or cold) is limited to people to whom alcohol can be sold, within the Licensed Hours, then there is no need for a Late Hours Catering Licence.

Variation 3: Outdoor Drinking

Discretionary refusal

The proposed outdoor drinking area is outlined on the plan provided. It encompasses the outdoor area between the Clubhouse and the bowling green along with the verges around the bowling green. It does not extend into the car park or beyond the front entrance to the Clubhouse. The Clubhouse is not in close proximity to a residential area.

The request is a common one from Bowling Clubs and the Police have stated that they have no comment on the proposal.

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

The Board should clarify with the Applicant the location and extent of the outdoor drinking area. The Board may wish to consider the proximity of the premises and the proposed area to any dwelling houses or other noise sensitive premises.

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.."

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 4: Disapply Licence conditions re occupancy checks when an Occasional Licence is not in operation

Discretionary Refusal

The Board's Standard Conditions for Premises Licences require regular monitoring of occupancy capacity (Conditions C.8.1 & C.8.2).

The proposal is that these requirements be removed during the Club's ordinary operation, but they will continue to be observed throughout the duration of any

Occasional Licence that may be granted.

The Board have previously permitted these Standard Conditions to be dis-applied on a case-by-case basis. The Board may consider that, given that the premises operate as a private members Club:

- (i) capacity is unlikely to be exceeded due to limited membership/admittance,
- (ii) the Club committee will ensure that sufficient toilet checks are undertaken during peak trading times.

Variation 5: Disapply Licence conditions re toilet checks when an Occasional Licence is not in operation

Discretionary Refusal

The Board's Standard Conditions for Premises Licences require toilets and washing facilities to be maintained clean and tidy, with regular inspections, and records kept (C.12.2 & C.12.3).

The proposal and considerations are similar to V4.

3. Licence Conditions

If Variations 4 and 5 are granted then the relevant conditions will be removed from the Licence.

**Application for Grant of Family Entertainment Centre Gaming Machine Permit -
Gambling Act 2005, Section 247 and Schedule 10.**

Applicant	Noel Bardon, trading as "Bardon Leisure", 7 Grocers Rd., Rathfriland, County Down, BT34 5GZ.
Premises	Rivergate Shopping Centre, Irvine

1. Introduction

1.1. The Applicant has applied to the Board for a Permit. The Chief Constable has confirmed he has no objection. This Report sets out Issues which the Board should consider (Part 2), and concludes with "Questions for the Applicant" (Part 3).

1.2. The Applicant holds an Operating Licence issued by the Gambling Commission authorising him

"to supply, install, adapt, maintain or repair (but not manufacture) a gaming machine or part of a gaming machine"

1.3. Gaming Machines are categorised in 4 Categories, from A to D, and there are different levels of stakes and prizes for each. Generally, Category A machines have the highest stakes and prizes, and might be found in casinos, while Category D machines are aimed at children and young people.

1.4. The level of regulation varies according to the Category of Gaming Machine to be used on the Premises: most use of Gaming Machines requires both:

- (a) an Operating Licence issued by the Gambling Commission, and
- (b) a Premises Licence granted by the Licensing Board.

1.5. However, if Premises are to use only the lowest Category of machines (Category D) neither Licence is needed. All that is needed is a 'Family Entertainment Centre Gaming Machine Permit' (not 'Licence') granted by the Licensing Board. A Permit lasts 10 years unless terminated earlier (e.g. if the Permit Holder ceases to use the Premises).

1.6. The Board has no power to revoke or suspend a Permit, and the Permit is not subject to Conditions. The main control is that the Board has a discretion to grant or renew the Permit. In deciding whether or not to grant the Permit, the Board:

- (a) 'may' (not 'shall') have regard to the Licensing Objectives, but in any case
- (b) must have regard to any relevant guidance issued by the Commission.

However, if the Board grant a Permit and later consider that it is not appropriate (e.g. because the place where the Gaming Machines are in fact placed does not satisfy

the definition discussed below) the Board may notify the Permit Holder that the Permit has lapsed.

2. Issues with the Present Application

The Board should invite the Applicant to comment on the following:

- (a) The Application is incompetent
- (b) The Application is unspecific
- (c) The Application is contrary to the Licensing Objectives
- (d) Guidance given by the Gambling Commission
- (e) Other issues

(a) The Application is incompetent

2.1. The statutory definition of "family entertainment centre" is:

"premises (other than an adult gaming centre) wholly or mainly used for making gaming machines available for use" (Section 238)

The Applicant has already placed machines throughout the public spaces of a shopping centre. These premises cannot be described as "*wholly or mainly used for making gaming machines available for use*"; the main use of the Premises is the provision of shopping facilities, not gaming machine facilities.

(b) The Application is unspecific

2.2. Schedule 10, Paragraph 5(c):

"5. An application for a permit must ... (c) contain or be accompanied by such other information or documents as the licensing authority may direct"

The Board will require to know how many machines are to be used, and where they will be. The Applicant should lodge a Layout Plan.

(c) The Application is contrary to the Licensing Objectives

2.3. The Board should have regard to a letter from the Commission dated 29 October 2014. Although this is not a Representation, since it pre-dates and is not directed at this particular Application, it is relevant as it makes general observations about the type of operation proposed. A copy is attached as an Appendix to this Report, but the letter includes:

"One of the key policy intentions behind the Gambling Act 2005 was to curtail so called "ambient gambling", and to confine gambling, as far as possible, to suitable premises, generally those dedicated to gambling (with some exceptions). That is why gaming machines were removed from premises like takeaways and taxi offices. It is also why only premises that are wholly or mainly used for making gaming machines available may hold a uFEC gaming machine permit or an FEC premises licence. ...

"3. Permits issued for entire venues (shopping centres, airports etc)

Frequently uFEC permits have either been applied for or granted for an entire venue, such as a shopping centre or airport. The Commission considers that this is not permissible and indeed is highly undesirable in that it exposes the public, and young people in particular, to the "ambient gambling" that the Act was designed to prevent. The Commission has received a number of complaints from members of the public about this kind of provision; while we have shared that information with the authorities directly concerned, we would encourage all authorities to satisfy themselves that areas subject to a premises licence or permit are appropriately controlled.

An FEC premises must be wholly or mainly used for making gaming machines available (s. 238 GA05). As a result, it is generally not permissible for such premises to correspond to an entire shopping centre or similar. Typically, the machines would be in a designated, enclosed area. (A more detailed explanation of the Commission's view on what constitutes a premises can be found in the Commission's GLA)."

2.4. Paragraph 7(3) is:

"In exercising their functions under this Schedule a licensing authority—

(a) need not (but may) have regard to the licensing objectives"

The Licensing Objectives are set out in Section 1. The Licensing Objective which appears relevant is (c):

"(c) protecting children and other vulnerable persons from being harmed or exploited by gambling."

As defined by Section 45(1) "child" means an individual who is less than 16 years old, and not to older 'Young People'.

2.5. However, the Board's "Statement of Principles" (published under Section 349), includes:

"B.5. The Board regards 'vulnerable persons' as including people who:

(a) gamble more than they want to;

(b) gamble beyond their means;

(c) may not be able to make informed or balanced decisions about gambling due to mental health needs, learning disability or substance misuse relating to alcohol or drugs; or

(d) are 'Young Persons' (aged 16 or 17)."

It is therefore appropriate for the Board to approach this Application on the basis that the machines may be used by under-18s.

2.6. The Statement of Principles include:

"B.7. The Board will consider Applications for Premises Licences, Permits and other permissions on their merits and consider whether or not the proposals are consistent with the Licensing Objectives. In particular, given L.O. 3 (protecting children and other vulnerable persons from being harmed or exploited by gambling) the Board shall give special attention to

- the location of the proposed Premises in relation to nearby schools, residential areas where there may be a high concentration of families with children, and centres for gambling addicts;*
- the location of activities within Premises;*
- the arrangements made to prevent or control access by children and other vulnerable persons to the Premises or certain parts.*

Any such policy must, however, come with the qualification that each case will be decided on its merits, and will depend to a large extent on the type of Gambling that it is proposed will be offered on the Premises. If the Applicant can show how Licensing Objective concerns can be overcome, that will have to be taken into account."

2.7. The Statement of Principles has specific guidelines for UFEC GMPs (see Part F):

"(a) (unlicensed) Family Entertainment Centre - Gaming Machine Permits

(Statement of Principles on Permits - Schedule 10, para. 7)

Where a Premises does not hold a Premises Licence but wishes to provide Gaming Machines, it may apply to the Board for this Permit. The Applicant must show that the Premises will be wholly or mainly used for making Gaming Machines available for use.

The Permit may only be granted if:

- 1. the Board is satisfied that the Premises will be used as an unlicensed FEC*
- 2. the Chief Constable has been consulted on the Application.*

Given the likelihood that such Premises are likely to be frequented by children, and given that the Premises are not regulated by the Commission, the Board will expect Applicants to demonstrate:

- 1. a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs*
- 2. that the Applicant has no 'relevant' convictions (those that are set out in Schedule 7 of the Act)*
- 3. that employees are trained to have a full understanding of the maximum stakes and prizes*

4. that there are policies and procedures in place to protect children from harm.

'Harm' in this context is not limited to harm from gambling but includes wider child protection considerations. The effectiveness of such policies and procedures will each be considered on their merits; they may include checks for staff, training covering how staff would deal with unsupervised children being on the Premises, or children causing perceived problems on/around the Premises.

With regard to renewals of these permits, the Board may refuse an application for renewal of a permit only on the grounds that an authorised Local Authority Officer has been refused access to the Premises without reasonable excuse, or that renewal would not be reasonably consistent with the Licensing Objectives."

(d) Guidance given by the Gambling Commission

2.8. Schedule 10, Paragraph 7(3) is:

"In exercising their functions under this Schedule a licensing authority— ...

(b)shall have regard to any relevant guidance issued by the Commission under section 25."

The current Section 25 guidance is in the Commission document "Guidance to licensing authorities" (4th edition, September 2012, commonly referred to as "GLA4") includes:

"24.7 The licensing authority can grant or refuse an application for a permit, but cannot add conditions. An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application. Unlicensed FECs, by definition, will not be subject to scrutiny by the Commission as no operating (or other) licences will be applied for and issued. Licensing authorities might wish to consider asking applicants to demonstrate:

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs*
- that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act)*
- that employees are trained to have a full understanding of the maximum stakes and prizes."*

(e) Other issues

2.9. The Commission letter includes:

"5. Inadequate or potentially inadequate staff supervision

The Commission has encountered a number of circumstances in which there is no dedicated staff supervision of FEC areas, whether using a premises licence or permit. Often in those circumstances the responsibility is ostensibly placed on security staff associated with the wider development (eg shopping centre). The Commission would encourage licensing authorities to satisfy themselves that any risk to the licensing objectives, particularly in relation to the protection of children and other vulnerable people is being suitably managed."

Questions for the Applicant

3.1. In summary:

- (a) How will the proposed operation include adequate protection for under-18s, e.g. will machines be continuously supervised to ensure that under-18s do not spend more than a specified amount of time or money using machines? The machines currently in place are unsupervised.
- (b) What written policies concerning stakes, prizes and the protection of vulnerable people staff training exist? (the Board will want to see these);
- (c) What arrangements are there for staff training?
- (d) What monitoring is carried out to ensure as far as practicable that all legislative requirements are fulfilled and that policies are implemented?
- (e) Who will the day-to-day manager of the Premises be? Please give:
his/her full name
date of birth
place of birth
all addresses in the past 5 years
details of experience in operating such Premises.
- (f) describe the types of machine proposed here (e.g. "crane grab");
- (g) what will be the stakes and prizes?
- (h) can Applicant confirm that any machines ever on the Premises will always be Category D, even if they have the technical ability to be switched to another Category?
- (i) is the "Skills-with-Prizes" issue (point 6 in the Commission's letter), relevant to the proposed operation?
- (j) who will supply the machines?
- (k) are the suppliers approved by the Commission?

(l) What steps will the Rivergate Management (as opposed to the supplier) take to establish that any machines to be used are within Category D (it is not enough to simply accept the representation of the supplier).

Report
to
North Ayrshire Licensing Board
by
Solicitor (Licensing)

Subject:	Occasional Extensions and Occasional Licences for on-sales – Festive Period 2015-16
Purpose:	To advise the Board about previous and current Policy and procedure
Recommendation:	That the Board determine Policy

1. Background

1.1. The Board are entitled to grant:

"Occasional Extensions" under Section 68 to Premises which are already licensed ("Extended Hours" or "E.H.");

"Occasional Licences" under Part 4 to Premises which are not already licensed ("O.L.").

1.2. The NALB Policy on Terminal Core Hours throughout the year is:

(a) Public Houses and Restaurants: Sunday to Wednesday: 24.00; Thursday to Saturday: 1.00.

(b) Nightclubs: Sunday to Wednesday: 1.00; Thursday to Saturday: 2.30.

(c) Members' Clubs: 7 days - 1.00.

1.3. In previous years, the Board have determined Policy for the Festive Period, which has:

(a) designated the dates of the 'Festive Period', during which extra hours were permitted - in past years, the Festive Period lasted about 5 weeks, starting around 1 December and continuing until the first day before shops and offices re-opened after New Year;

(b) divided the Festive Period in two, allocating the number of days of Extended Hours which could be applied for by each Premises. In past years, the Policy was:

(i) in the period to 15 December, up to four periods;

(ii) in the period from 16 December, up to seven periods.

(c) determined what the authorised extension should be. In past years, this was one hour for each period of Licensed Hours beyond the Policy normally applicable for the particular type of Licensed Premises during the year (except that the extension for nightclubs in the period Thursday to Saturday was only 30", from 2.30 to 3.00 a.m.);

(d) qualified the Policy where Christmas Eve and Hogmanay fell on any of the days Sunday to Wednesday (and would otherwise have earlier closing hours): for the sole purpose of determining the application of Policy, an Application by individual Premises for Extended Hours under Section 68 for those nights would be treated as an Application for a Saturday (e.g. the maximum terminal hour which a public house could seek for those days was 2.00 a.m. during the Festive Period);

(e) directed that a curfew of 00.30 should apply to all on-sales premises (which is the same as during the rest of the year).

1.4. The practice of the other Ayrshire Boards is

(a) South Ayrshire LB:

The festive period is from 1st December to 2nd January. An extra hour is allowed. There is no curfew.

(b) East Ayrshire L.B.

The festive period is from two weeks prior to Christmas Day until 6 January.

Premises can stay open up to 4 days:

nightclub/discos can open to 3.00 a.m. with curfew at 2.15am. (in the rest of the year 2.30 a.m. with curfew at 1.15 a.m.)

other on-sales can open to 2.00 a.m. (rest of the year 1.00 a.m.)

1.5. The Board's Standard Conditions require all Premises open after 1.00 a.m. to have a First Aider and to observe a 00.30 curfew, regardless of the nature of the Licence or permission which authorises opening after 1.00 a.m. (e.g. an Occasional Extension or an Occasional Licence): NALB Conditions C.17, D.1 and D.4.

1.6. The Board have not previously made a Policy on extending off-sales hours. It is not necessary that it should, as most such Premises already have the maximum statutory hours (10.00 - 22.00, 7 days).

1.7. The Board have not used their powers under Section 67 ("Power for Licensing Board to grant general extensions of Licensed Hours"), i.e. PLHs have the option to apply for later hours, but do not automatically have them. Under the Policy Applications are treated on their merits, with the Police and L.S.O. being asked to comment on each proposal.

1.8. The Board's Licensing Policy Statement 2013-2016 includes:

"7.15. Premises can only apply for 'Extended Hours' for the end of a period of Licensed Hours - if the Operating Plan does not already have Licensed Hours for the day in question, the Board must be asked for a Variation, rather than a grant of 'Extended Hours'. "

2. Procedure

2.1. For the convenience of Licensees, the Board accept a single Application Form covering several different days, although these are individual Applications. The prescribed fee per Application is £10, so an Application covering 4 dates would cost £40.

2.2. As with Applications throughout the year, the Board have a Policy requiring Applications to be made at least 28 days in advance of the date requested (detailed in the Board's Licensing Policy Statement 2013-2016, Annex C).

2.3. E.H. Applications are not publicised and there is no scope for public comment. If there is a complaint about the operation of Premises during Extended Hours, this would be dealt with as a normal Review.

2.4. Premises which are otherwise unlicensed (e.g. Community Centres) might be covered temporarily by an Occasional Licence. The Policy on hours during the year is as for Public Houses, with one hour extra during the Festive Period. These Applications are publicised on the Board website for 7 days.

3. Proposed Amendment to Scheme of Delegations

3.1. Both types of Application are sent to the Police and Licensing Standards Officer for Report. These Reports are usually to be given within 10 days (E.H.) or 21 days (O.L.). However, the Board can shorten this period to not less than 24 hours if satisfied that the Application requires to be dealt with quickly (E.H.: Sections 69(4)-(6); O.L.: Sections 57(4) & (5)).

3.2. Most Applications attract no adverse comments from Police etc. and are granted under Delegated Powers.

3.3. In cases that require to be dealt with quickly, the Board has previously delegated authority to the Convenor (whom failing the Vice-Convenor, whom failing any Member) to make both the preliminary decision to reduce the notice period, and thereafter to decide on whether or not to grant the Application itself. This additional Delegation applies throughout the year, and not only in the Festive Period.

4. Issues

4.1 The Board is invited to determine Policy. The Board should consider the Licensing Objectives, and in particular "protecting and improving public health".

4.2. It is suggested that for the forthcoming Festive Period the Policy might be:

(a) the first period should be Sunday 29 November 2015 to Saturday 12 December 2015 (both dates inclusive);

(b) in that period, each Premises can apply for a maximum of 4 periods of Extended Hours;

(c) the second period should be Sunday 13 December 2015 to Saturday 2 January 2016 (both dates inclusive);

(d) in that period, each Premises could apply for a maximum of 7 periods of Extended Hours;

(e) Since Christmas Eve & Hogmanay both fall on Thursdays in 2015 there is no need to have a special rule to treat these nights as if they were Saturdays;

(f) the maximum extension should be for the period from

(1) the end of the particular Premises' Core Hours for that day, until

(2) one hour after the Policy hour normally applicable for the particular type of Licensed Premises during the year,

except that the extension for nightclubs in the period Thursday to Saturday will be only 30", from 2.30 to 3.00 a.m.;

(g) the maximum Terminal Hour for Occasional Licences should be 2.00 a.m. (on all 7 days);

(h) a 00.30 a.m. curfew should apply to all Licences (whether Premises Licences or Occasional Licences).

4.3. (f) is not worded simply as 'one hour after Core Hours' because if the extension is related to the actual hours held by particular Premises during the rest of the year, this might disadvantage those Premises which have chosen to have shorter Terminal Hours throughout the rest of the year.

For example, a restaurant might normally close at 21.00 all week:

(a) If the Extension is linked to NALB Policy (the hours the Premises could have applied for for normal trading), then that restaurant could seek a festive extension to 1.00 (Sunday-Wednesday) or 2.00 (Thursday-Friday), but

(b) If the Extension is linked to actual Core Hours, it could only seek an extension to 22.00.

Report to North Ayrshire Licensing Board**by****Solicitor (Licensing)**

Subject	Public Health
Purpose	To update Members on the current position
Recommendation	That Members note the position

1. Introduction

1.1. This Report draws the Board's attention to information which may be thought relevant to the Overprovision Policy.

2. The Law

2.1. All Boards are obliged by Section 6(1) of the Licensing (Scotland) Act 2005 to adopt a Licensing Policy Statement ("LPS"). The Board adopted their current LPS on 19 November 2013. Under the 2005 Act as originally enacted, the LPS was to be re-published every 3 years (e.g. by 30 November in 2010, 2013 and so on).

2.2. As well as that obligation, under Section 6(2) Boards are entitled, but not obliged, to publish a "Supplementary Licensing Policy Statement" during the LPS period. Prior to a recent change in the Law, this Board did not see the need to review it earlier, since the LPS itself would be reviewed every 3 years.

2.3. However the Air Weapons and Licensing (Scotland) Act 2015 contains a provision altering the frequency of LPS reviews. The intention is to bring the LPS schedule into line with the schedule of Local Government elections. This provision has not yet been commenced, and the Board would be entitled to proceed on the basis that the review period remains 3 years, so that the next LPS would be due by 30 November 2016. However, if and when that provision is commenced, the LPS period may turn out to be longer than expected, so that the Board might consider a Supplementary LPS.

2.4. If the Board wishes to proceed with a Supplementary LPS, the same consultation process is required as with the obligatory LPS. However, if the proposed change is focused on a particular subject, the original LPS would remain valid and would only be superseded by the Supplementary LPS so far as relevant.

2.5. Since the current LPS was prepared, there have been two further Health reports:

(a) "Alcohol-related illness and death in Scottish neighbourhoods: is there a relationship with the number of alcohol outlets?" - Report for Alcohol Focus Scotland produced by the "Centre for Research on Environment, Society and Health" of the Universities of Glasgow and Edinburgh, published 2 October 2014 ("CRESH");

(b) "Monitoring and Evaluating Scotland's Alcohol Strategy", Report published by NHS Health Scotland, 4th Annual Report, published 8 December 2014 ("MESAS 4")

2.6. These were the subject of a Report to Board of 19 January 2015. Since then, the MESAS Report has been updated by "Annual update of alcohol sales and price band

analyses" (August 2015). This is summarised below, but the full Report will be made available if Members wish it and can be viewed at

www.healthscotland.com/documents/25918.aspx

3. Conclusion

3.1. The Board are invited:

- (a) to consider the information in the health Report discussed, and accordingly
- (b) to decide whether or not to instruct the Clerk to proceed with the consultation process leading to a Supplementary LPS.

Summary

"Summary and key points"

Purpose

The purpose of this report is to contribute to the development and evaluation of Scotland's alcohol strategy by providing accurate and up-to-date analyses of data on alcohol sales and price in Scotland and England & Wales.

Methods

Pure alcohol sales data derived from electronic sales records and retail outlet sampling were provided by market research specialists, Nielsen and CGA Strategy, and used to describe trends in per adult (aged ≥16 years) alcohol sales in Scotland and England & Wales. Estimates of sales by discount retailers were not available from 2011 onwards. Adjustment factors were therefore applied using market share estimates derived from Nielsen's 'HomeScan' consumer panel data. The volume of pure alcohol sold off-trade in each of a range of price bands (pence per unit (ppu) of alcohol) was also provided for 2009-2014 for all main drink categories (excluding discount retailers). This provided a price band profile for the volume of pure alcohol sold in each drink category, enabling changes in the price distribution of off-trade alcohol sold in Scotland to be assessed over time. Assumptions were made to allow an assessment of the impact that including alcohol sales by discounters may have on the proportion of alcohol sold below different price thresholds.

Results

- *In 2014, 10.7 litres (L) of pure alcohol were sold per adult in Scotland (20.5 units per adult per week).*
- *Although since 2009 the overall trend in per adult alcohol sales has been downward, analysis of the most recent data suggests that this may be flattening.*
- *In 2014, per adult sales in Scotland were 6% higher than the beginning of the time series in 1994.*
- *In Scotland, the volume of pure alcohol sold per adult through the on-trade decreased by 39% from 4.8L in 1994 to 3.0L in 2014, whereas off-trade sales increased by 48% over the*

same time period, from 5.2L in 1994 to 7.7L in 2014. It is estimated that 72% of all pure alcohol sold in Scotland in 2014 was sold through the off-trade, the highest market share observed over the time period analysed.

- The downward trend in off-trade sales in Scotland between 2010 and 2012 has not continued with the most recent data providing an early indication that off-trade sales may be returning to an upward trend.

- In general, similar patterns were observed in England & Wales: the downward trend in total per adult sales seems to have stalled due to off-trade sales levelling off between 2013 and 2014.

- In 2014:

- 1.6L more pure alcohol per adult were sold in Scotland (10.7L) compared to England & Wales (9.0L); per adult sales in Scotland were 18% higher.

- 94% of the total difference in per adult sales between Scotland and England & Wales was due to higher off-trade sales in Scotland.

- 58% of the off-trade difference was due to higher per adult sales of spirits in Scotland.

- Vodka explained 33% of the difference in off-trade sales; per adult sales of vodka through the off-trade in Scotland were 2.1 times higher than in England & Wales.

- The average price of a unit of alcohol sold through the off-trade in Scotland was 52 pence per unit (ppu). This was the same as in 2013, the first time since 2007 that the average pence per unit of off-trade alcohol sold in Scotland has not increased annually since 2007. The average price of alcohol sold through the on-trade in 2014 in Scotland was 166ppu.

- Between 2013 and 2014, the price distribution of off-trade alcohol sales was very similar. For beer and cider, a higher proportion of alcohol was sold at below 50ppu in 2014 compared with the previous year.

- Compared with England & Wales, higher off-trade sales were common across the entire price distribution in Scotland and across most drink types. However, this was particularly marked in the 35-54.9ppu range, especially for spirits.

Conclusions

- There is evidence to suggest that the downward trend in the volume of pure alcohol sold per adult in Scotland since 2009 is flattening.

- There is an early indication that off-trade sales are increasing after several years of decline. This has been driven primarily by higher wine, beer and cider sales.

- A higher volume of pure alcohol is sold per adult in Scotland than in England & Wales. This is driven by higher off-trade sales of spirits, particularly lower priced vodka.

AGENDA ITEM 5

- *The average price per unit of off-trade alcohol in Scotland did not increase between 2013 and 2014. This is reflected in a similar proportion of alcohol being sold at different price thresholds across both years."*