

Cunninghame House
Irvine
KA12 8EE

29 May 2019

North Ayrshire Licensing Board

You are requested to attend a Meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, Ground Floor, Cunninghame House, Irvine on **Monday 3 June 2019 at 10.00 A.M.** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

1. Minutes

Submit Minutes of the Board Meeting held on 8 April 2019.

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. Scottish Government Consultation on Occasional Licences

Submit report to the Licensing Board for Consideration of the Scottish Government Consultation on reviewing the fee for Occasional Licences and considering a limit on the number and duration of Occasional Licences.

Licensing Board

Sederunt: Ronnie McNicol (Convenor)
Todd Ferguson (Vice-Convenor)
Robert Barr
John Easdale
Scott Gallacher
Jean McClung
Davina McTiernan
Donald L Reid
Angela Stephen

Chair:

Apologies:

Meeting Ended:

Agenda Item 2

3 June 2019

North Ayrshire Licensing Board

Title:	Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005.
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Purpose:	To advise the Board of the Law and the factual background.
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Recommendation:	That the Board determines whether or not to grant the Applications listed.
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1. Executive Summary

- 1.1 The Licensing Board is responsible for determining Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005 (such as Review Hearings involving holders of Premises Licences and Personal Licences).
- 1.2 The Board has approved a Scheme of Delegation whereby certain matters can be delegated to the Clerk and other licensing staff. Matters which cannot be delegated, or where the officers have declined to exercise the delegation, are referred to the Board.

2. Background

- 2.1 The Applications and other matters before the Board are detailed in the attached appendices. Each appendix contains a Report prepared by licensing staff for each individual case before the Board. These Reports set out the particular factual and legal issues which licensing staff consider arise in each case, and set out the action which the Board would be entitled to take.
- 2.2 Where relevant, the reports have been copied to the Applicants or Licence-Holders. Where objections or representations are competent, these have been copied to the Applicant so that a response might be made at the Board Hearing.

3. Proposals

- 3.1 In each case, after considering the Application and after hearing any submissions for the Applicant and persons making objections or representations, the Board should determine whether or not to grant the Application or take appropriate action.

4. Implications/Socio-economic Duty

Financial:	There are possible financial implications in relation to any Licensing decision.
Human Resources:	None.
Legal:	There are possible legal implications in relation to any licensing decision. Many Board decisions may be appealed against, but not all, and not all parties to a case have a right of appeal.
Equality/Socio-economic Duty:	<p>Equality Act 2010 imposes duties on the Council: Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council:</p> <p>"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage".</p> <p>Section 149(1) ("Public sector equality duty") the Council:</p> <p>"must, in the exercise of its functions, have due regard to the need to-</p> <ul style="list-style-type: none">(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];(b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;(c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it." <p>The "Relevant Protected Characteristics" are age; disability; gender reassignment, pregnancy and maternity; race; religion or belief; sex; and sexual orientation.</p> <p>The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Board otherwise in a particular case, there are no significant impacts to be considered.</p>

Children and Young People:	None.
Environmental & Sustainability:	None.
Key Priorities:	An effective licensing system, for example monitoring the ‘fit and proper’ status of licence-holders and the suitability of premises, helps progress towards one Priority Outcome of the draft North Ayrshire Council Plan 2019-2024: “North Ayrshire’s residents and communities are safe”.
Community Benefits:	Not applicable, as the Report does not relate to tendering or procurement exercises.

5. Consultation

- 5.1 Consultation has taken place in line with statutory requirements. The requirements vary depending on the particular issue raised, and where appropriate these are detailed in the report for each case.

Aileen Craig
Clerk

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

Background Papers

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APPENDIX A

Premises Licence Applications or any other Applications requiring a Hearing

Case No.	Licence No.	Applicant/Licence Holder	Premises	Comments
1.	0504	David Castelvechi	Haylie Convenience Stores 90 Irvine Road Largs KA30 8ES	Application for Grant of Provisional Premises Licence – Section 45
2.	0494	JNS Hotels Limited	The Roebank Hotel & Wedding Venue Roebank Road Beith KA15 2DY	Application for Variation of Premises Licence – Section 29
3.	0042	Kathleen McGee	The Station Bar 18 Station Road Stevenston KA20 3NL	Application for Variation of Premises Licence – Section 29
4.	0187	Iceland Foods Limited	Iceland Foods Limited Second Avenue Deeside Industrial Park Deeside Flintshire CH5 2NW	Application for Variation of Premises Licence – Section 29
5.	0053	HF Irvine Hotel Limited	Riverside Lodge Hotel Roseholm 46 Annick Road Irvine KA11 4LD	Application for Variation of Premises Licence – Section 29

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Application for Grant of Provisional Premises Licence - Section 45

Applicant	David Castelvechi
Premises	"Haylie Convenience Stores", 90 Irvine Road, Largs, KA30 8ES
Ref.	504

Preliminary

1	<p><i>This Report was prepared provisionally before the end of the Site Notice display period, which ends on Friday 17 May 2019.</i></p> <p><i>No information about any objections or representations is noted here. If there are any, these will be copied to the Applicant, and all letters will be given to Members.</i></p>
2	<p><i>At the date of preparing this report, the Board does not have a Notice from the Chief Constable confirming whether or not the Applicant, any Connected Person, or any Interested Party, has any Relevant or Foreign convictions (Section 21(3)). Until the Board has this Notice, the Board cannot decide the Application.</i></p>

1. Summary of Proposal

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL). The proposal is to add an alcohol Licence to a convenience store which is already operating. The Premises held an Off-Sales Licence under the previous legislation (the Licensing (Scotland) Act 1976) until the current licensing system commenced in 2009. They did not apply for a Licence under the new system and operated without the sale of alcohol for several years.

The present Application is generally similar to the Application which the Board considered and refused on 26 June 2017 (Case 493). The Applicant requested a Statement of Reasons and this was provided by the Board. The Applicant did not appeal to the Sheriff.

The 2017 Application initially proposed an off-sales display capacity of 42.0 square metres, although the Applicant's Solicitor explained to the Board that that figure was an error, and he asked the Board to amend the figure to 9.03 square metres in total, being 3.78 sq.m. as the inaccessible area and 5.25 sq.m. as the accessible area. The Board agreed to this. The present 2019 Application again proposes 9.03 sq.m..

Since the 2017 decision the Board has adopted a new Licensing Policy Statement (dated 19 November 2018). The earlier decision was based on Overprovision, and the 2018 Licensing Policy Statement included an Overprovision Policy that was substantially the same as that which applied when the Board considered the earlier Application in 2017.

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

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issued. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

The requirement to lodge a Food Hygiene Certificate depends on whether or not there is a 'Food Business' within the Food Safety Act 1990. A FHC is needed even for a shop which sells tinned or packaged food, as well as for a restaurant or any Premises serving prepared food.

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. Detailed proposal

(a) Licensed Hours

The Premises sell off-sales only. The proposal 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)	9.03
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3. Procedure

The Board should hear from the Applicant and all parties making comments on the Application, in relation to the 'issues' set out below.

The Board should ask themselves two questions in relating to a third-party comment:

1. Should it be rejected as "frivolous or vexatious" ?
2. If the comment is not rejected, what weight should be put on it?

1. Should it be rejected as "frivolous or vexatious" ?

2005 Act, Section 22(4) is:

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

The Board may therefore disregard any third-party comment which:

- does not raise any of the statutory "grounds for refusal" (listed in Section 23(5)); and/or
- does not give the Applicant fair notice, by specifying the comment.

The Board are not entitled to determine matters which are regulated by other legislation, such as Planning and Parking. 2005 Act, Section 27(7) is:

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*"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. "*

Planning is a matter for North Ayrshire Council under the Town and Country Planning (Scotland) Act 1997. Parking is a matter for the Police (under the Road Traffic legislation) and the Council Roads Department under the Roads (Scotland) Act 1984.

2. If the comment is not rejected, what **weight** should be put on it?

If the Board choose not to reject the comment, they should take it into account in deciding on the Application, but they are not obliged to follow the comment (for example, they do not have to refuse the Application).

They may

- treat the comment as having little weight, as against the other issues before the Board
- consider that there are other avenues open to the party, such as a complaint to another Authority
- consider that the concerns underlying the comment are already addressed by the Licence Conditions
- consider that extra Licence Conditions should be specially-written for this case

4. Issues

The Board have a discretion to grant or refuse the Application. 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 Board should consider all the potential Ground(s) for Refusal set out below:

- (a) The Application may be inconsistent with Licensing Objective(s)
- (b) Overprovision may result if the Application is granted

If any Ground for Refusal applies, the Board must refuse. 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).

If none apply, the Board must grant: Section 23(4)-(5).

4(a). Issue: Licensing Objectives

Licensing Objective (d): 'protecting & improving public health' expressly states

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'improving'. Opinions may differ as to whether the creation of a new facility to sell alcohol (or the expansion of an existing facility):

- (i) damages public health, or
- (ii) makes no difference,

but the Board might consider that it is unlikely to 'improve' public health.

The Board has accepted that alcohol is not 'just another commodity'.

In other cases, the Board has heard the submission that "it makes no difference", the argument being that adding a facility here does not increase the overall amount of alcohol consumed in society, because the free market will operate so as to re-distribute existing business. The Board has not accepted such submissions.

The Licensing Objective also refers to 'public' health. The Act directs the Board to look at the effect on wider society. Any supposed health benefits enjoyed by the Licensee or staff (e.g. gaining profits or wages) cannot outweigh the potential damage caused by alcohol consumption.

The factors relevant to this L.O. overlap with the issue of 'Overprovision' (see below).

4(b). Issue: Overprovision

1. Section 23(5)(e) is:

"(5) The Grounds for Refusal are— ...

(e) that the Board considers that, if the Application were to be granted, there would, as a result, be Overprovision of Licensed Premises, or Licensed Premises of the same or similar description as the subject premises, in the Locality."

Section 23(5) was amended by the Air Weapons and Licensing (Scotland) Act 2015, Section 55(3) with effect from 30 September 2016 (Commencement Order 4, S.S.I. 2016-132).

2. There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2018-22, Annex D). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

3. The application of the Board's Overprovision Policy in a particular case is affected by two issues:

- (a) the 'Locality' of the Premises (The Board has determined that there are 6 'Localities' in their area, coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).
- (b) the 'Function Type' of the Premises (there are 6):

1. Off-sales Premises;
2. Nightclubs (or parts of Premises which operate as nightclubs);
3. Other On-sales Premises (Public Houses);
4. Hotels, Restaurants and other On-sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment and the supply of alcohol for consumption is only ancillary to that purpose;
5. Members' Clubs which are entitled to the Special Treatment allowed by Section 125;
6. Members' Clubs which have chosen to give up their entitlement to that Special Treatment (the Board calls these 'Part K Clubs').

4. 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.

5. The starting-point of any consideration of an Application for a new Licence (or for an increase in capacity in an existing Licence) is that there is a presumption of refusal. This presumption applies anywhere in North Ayrshire, regardless of the type of licensed Premises, but the presumption becomes stronger in certain parts of North Ayrshire and with certain types of Premises.

6. While there is a presumption of refusal of all Applications, the presumption in a particular case is strengthened if one of the 'Additional Factors' relating to 'Locality' or 'Function Type' is present. The presumption of refusal is further strengthened if both 'Additional Factors' occur.

7. Applying the Policy to the present case:

- (a) Locality: The Subject Premises are in the "North Coast" Locality (Skelmorlie, Largs, Isle of Cumbrae, Fairlie, Seamill & West Kilbride) (Locality 1);
- (b) 'Additional Factor' (Locality): this 'Additional Factor' is not present;
- (c) Function Type: The Subject Premises are in FT 1 (Off-sales);
- (d) 'Additional Factor' (Function Type): any Application for Premises in FT 1 (Off-sales) is especially unlikely to be granted (regardless of the Locality).

8. One of the 'Additional Factors' is present here, so the presumption of refusal is strong.

9. 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 Licence (or the increase in capacity in 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.

10. The Licensing Policy Statement includes:

"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." LPS 2018-22, Annex D, Paragraph 3.6.

11. The Licensing Board's Licensing Policy Statement 2018-22 is on the Board's website, with the documents which the Board considers supports its Overprovision Policy:

- (a) Alcohol Facts and figures
- (b) Traffic Light Chart
- (c) Monitoring Report 2018 (Alcohol-specific Deaths)
- (d) Alcohol Related Harm in Scotland 2016
- (e) Alcohol Information - North Ayrshire
- (f) Alcohol Outlet and Harm
- (g) Licensing Indicators
- (h) Alcohol Statistics (Scotland and NA)
- (i) Alcohol-related crimes in NA (Police)
- (j) Fires and Alcohol-related incidents
- (k) Premises Licences in North Ayrshire

Document (b) uses a 'Traffic Light' system how three health indicators in North Ayrshire compare with the Scottish average:

The health indicators are:

Life expectancy: males
Life expectancy: females
Alcohol-related hospital stays

The colour system is:

red : Statistically significantly 'worse' than Scottish average
amber : Statistically not significantly different from Scottish average
green : Statistically significantly 'better' than Scottish average

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Over each of the 6 Localities in North Ayrshire:

	red	amber	green
1. North Coast	1	11	6
2. Three Towns	15	9	3
3. Kilwinning	4	5	3
4. Irvine etc.	8	27	1
5. Garnock Valley	3	14	1
6. Arran	0	1	0

(The Localities have different numbers of Intermediate Zones)

In the Board's view the 'Additional Factor' related to Locality should apply in Localities 2, 3, 4 and 5, but not in Localities 1 or 6.

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)

Application for Variation of Premises Licence - Section 29

Applicant	JNS Hotels Ltd.
Premises	The Roebank Hotel and Wedding Venue, Roebank Road, Beith, KA15 2DY
Ref.	494

1. Proposal

The Licence-Holder invites the Board to grant a second Outdoor Drinking Area, being the whole of the ground containing the Licensed Premises, lying to the south of the building.

2. Background

The Board granted a Provisional Premises Licence under the Licensing (Scotland) Act 2005 on 30 October 2017, and that was later confirmed.

The building is the former Trinity Church. It is situated in a residential area and is bounded on the south side by Trinity Crescent and on the west side by Roebank Road. There are houses on the other side of each street.

When the Licence was granted, as well as the building itself, the Board approved a small outdoor drinking area on the north side of the building - that is, on the opposite side of the building from nearby houses. In the present Application the Licence-Holder seeks the Board's authority to extend the Licence to the whole of the ground to the south of the building. Patrons using this ground would be in the line-of-sight of those houses.

On the proposed layout plan, both areas are coloured pink:

- the north area (already licensed) is marked "External drinking/smoking area".
- the south area (proposed) is marked "Area 1", "Area 2" and "Area 3".

3. Licence Conditions

Throughout North Ayrshire, Premises Licences are subject to the Board's Standard Conditions, including:

"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."

The Applicant requested that Condition C.5.2 should not apply at all, but the Board kept it with an amendment, so that it read:

"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 teas, coffees and

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other soft drinks may be taken into or consumed in the area Outdoor Drinking Area adjacent to the building on its north side prior to 11.00 am."

In addition, the Licence contained the condition:

"No Fireworks may be used on the Premises."

4. Procedure

The Board should hear from the Applicant and any person making representations, and consider any written representations.

The Board should consider whether or not either of two "Grounds for Refusal" exist. If one or more exist, the Application must be refused. If neither exists, the Application must be granted.

The possible "Grounds for Refusal" are set out in Section 30(5):

"(b) that the Licensing Board considers that the granting of the Application would be inconsistent with one or more of the Licensing Objectives,

(c) that, having regard to—

- (i) the nature of the activities carried on or proposed to be carried on in the Subject Premises,*
- (ii) the location, character and condition of the Premises, and*
- (iii) the persons likely to frequent the Premises,*

the Board considers that the Premises are unsuitable for use for the sale of Alcohol in accordance with the proposed Variation,"

5. Ground for Refusal: Inconsistency with Licensing Objective (Section 30(5)(b))

Whenever the Board considers a proposal to grant or extend an Outdoor Drinking Area, it should consider the Licensing Objective 'preventing public nuisance'. The Board should consider whether or not the proposal is consistent with that L.O., considering the location and the distance from dwelling-houses. 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.

6. Ground for Refusal: the Variation may make the Premises Unsuitable for the sale of alcohol (Section 30(5)(c))

The Board may wish to inspect the Premises or have a LSO report before determining this Application.

The Board is not entitled to determine matters such as Planning and Parking which are regulated by other legislation. Section 27(7) is:

CASE 2

"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. "

Planning is a matter for North Ayrshire Council under the Town and Country Planning (Scotland) Act 1997. Parking is a matter for the Police (under the Road Traffic legislation) and the NAC Roads Dept. under the Roads (Scotland) Act 1984.

7. Human Rights

The Board requires to balance competing rights:

(a) Regularly exposing neighbours to noise and other nuisances may breach neighbours' human rights to respect for private life, family life and home under European Convention on Human Rights, Article 8. If the Board was being asked to permit nuisance (by granting or varying a Licence), its decision might be the basis of a claim for compensation by them against the Board (such a claim has been recognised by the European Court of Human Rights - Gomez v Spain [2004] ECHR 633); but

(b) The Licence Holder has a right to free enjoyment of his possessions (the Licensed Premises): ECHR, Protocol 1, Article 1.

Neither right is absolute. The Board is obliged to have regard to the Licensing Objectives, but the duty is solely to 'have regard' to them. None of the considerations (Licensing Objective, "unsuitable premises", or Human Rights) are conclusive. They do not oblige the Board to impose such a substantial variation that the Premises become uneconomic.

8. Licence Conditions

The Board is entitled to vary the conditions (Section 30(6)), but no variation of the Conditions is necessary as the existing Conditions (as amended) quoted above would apply to the second area.

9. Further action

Even if the Board permits the Outdoor Drinking Area on the south side initially, it may review that decision later if satisfied that the operation of that Area is not consistent with that L.O. on application by any resident.

10. Other legislation

If the Board grants the variation requested, that decision will not act as permission or certification under other legislation (the Board's decision is not, for example, Planning Permission, Building Warrant, Roads Consent or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Board only deals with licensing legislation.

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Planning Permission under the Town and Country Planning (Scotland) Act 1997 was granted by North Ayrshire Council on 16 August 2017 for "Change of use and alterations to church buildings to form hotel and wedding venue" (N/17/00518/PP).

The Decision Notice expressly excluded the proposed south area. Condition 6 was:

"That outdoor drinking, smoking and dining shall take place only on the designated area as illustrated on the plans hereby approved."

The plan in question identified the small area to the north of the building as "External drinking/smoking area." The land which is the subject of the present Variation Application is shown variously with the words "gravel", "grass", "staff parking", and "concrete slabs".

Even if the Licensing Board granted the requested variation of the Premises Licence to include the south area, that area could not be used unless Planning Permission was granted.

CASE 3

Application for Variation of Premises Licence - Section 29

Applicant	Margaret Emmanuel
Premises	"Station Bar", 18 Station Road, Stevenston, KA20 3NL
Ref.	042

Preliminary

This Report has been prepared provisionally before the Applicant has lodged the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.

1. Summary of Variation Request(s)

No.	Variation
1	Vary Sunday on-sales and off-sales opening from 12.30 p.m. to 11.00 a.m.
2	Increase under-16 access from 8.00 p.m. to 10.00 p.m.
3	Add Outdoor Drinking

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 Licensing Objectives or Board Policy are highlighted.

Variation 1: Vary Sunday on-sales and off-sales opening from 12.30 p.m. to 11.00 a.m.

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

Note:

Apart from Sunday, the Premises already have Board Policy on-sale hours, opening at 11.00 a.m. and closing at midnight (Sunday to Wednesday) or 1.00 a.m. (Thursday to Saturday).

The proposals for both on-sale hours and off-sale hours are within Board Policy.

Variation 2: Increase under-16 access from 8.00 p.m. to 10.00 p.m.

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Advice: The Board has a discretion to grant or refuse the Application. In all Applications, whether or not there are third-party objections, the Board must consider whether or not any Ground for Refusal exists.

The Ground which appears to apply is the Application may be inconsistent with the Licensing Objective: 'protecting Children and Young Persons from harm'.

Note:

Currently the Licence permits access by "Children" (under 16) until 8.00 pm on all 7 days, and "Young People" (aged 16-17) for whole Core Hours.

The Applicant's Variation form explains proposed Variation 2 as "in line with the amended opening hours". However, Variation 1 only affects opening hours during the day, so this is not relevant to an increase of night access.

The Operating Plan allows "Children" and "Young People" only in the Lounge, and in both cases they must be accompanied by an adult who can only be served three drinks.

Variation 3: Add outdoor drinking

Advice: Discretionary refusal

Notes:

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 Premises are in a residential area. The proposal relates to the courtyard at the rear of the building. This adjoins Canal Crescent and Murdoch Crescent.

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.

The Board requires to balance competing rights:

(a) Regularly exposing neighbours to noise and other nuisances may breach neighbours' human rights to respect for private life, family life and home under Article 8 of the European Convention on Human Rights. If the Board was being asked to permit nuisance (by granting or varying a Licence), its decision might be the basis of a claim for compensation by them against the Board (such a claim has been recognised by the European Court of Human Rights - Gomez v Spain [2004] ECHR 633).

(b) The Licence Holder has a right to free enjoyment of his possessions (the Licensed Premises): ECHR, Protocol 1, Article 1.

Neither right is absolute. There is no precedent for a Board having liability for failing to prevent a nuisance. The Board is obliged to have regard to the Licensing Objectives, but the duty is solely to 'have regard' to them. The Licensing Objectives are not conclusive, and do not oblige the Board to close Premises or to impose such a substantial variation that Premises become uneconomic.

The 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.."

The reason for the phrase "alcoholic or not" is that the Board is unlikely to know that a container contained Alcohol, e.g. if the Board received a complaint, all that the complainer might be able to say was "I saw a customer drinking from a container" - without being able to say that there was Alcohol in it.

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.

3. Effect on Licence Conditions (Section 30(6))

The Licence was granted subject to an earlier Edition of the Board's Standard Conditions - before the most recent revision. The existing Conditions should be replaced by the current Edition 5 (this will be noted on any Premises Licence and Summary issued later).

Notes to Applicant

1. The Board's decision will not act as permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all permissions or certifications.

2. The Operating Plan includes "Adult Entertainment to consist of comedians, exotic dancers, adult entertainers and stag and hen nights." The Licensing Committee will consider on 21 August 2019 whether or not to make a Resolution requiring the licensing of "Sexual Entertainment Venues" under Civic Government (Scotland) Act 1982, Part III. If the Committee makes such a Resolution, then a further licensing system will operate from 12 months later, which will mean that the current alcohol Premises Licence will no longer be enough, and the Licence-Holder will have to apply for and be granted a second Licence.

Application for Variation of Premises Licence - Section 29

Applicant	Iceland Foods Ltd.
Premises	"Iceland", The Braes, Saltcoats, KA21 5EP
Ref.	187

Preliminary

This Report has been prepared provisionally before the Applicant has lodged the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.

1. Summary of Variation Request(s)

No.	Variation
1	<i>Extend off-sales from 8.00 p.m. to 10.00 p.m. (7 days)</i>
2	<i>Delete reference to 'seasonal variations'</i>
3	<i>Allow recorded music both during and outwith Core Hours</i>
4	<i>Add to 'Additional Information'</i>
5	<i>Alter 'any other activities' part of OP to include home delivery & samples</i>
6	<i>Increase capacity from 4.4 sq.m. to 4.55 sq.m. (about 3%)</i>
7	<i>Vary Layout Plan</i>

The background to the variations is the redesign of the 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 has a discretion whether to grant or refuse the request. Possible issues with Licensing Objectives or Board Policy are highlighted.

Variation 1: Extend off-sales from 8.00 p.m. to 10.00 p.m. (7 days)

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

Note:

Board Policy for off-sales is 10.00 a.m. to 10.00 p.m. daily, which is the maximum legal entitlement.

Variation 2: Delete reference to 'seasonal variations'

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

Note:

If Premises intend to state to operate differently at certain times of year, for example at the Festive Period, they require to state this intention in the Operating Plan. However, this statement is not a Licence, so if the Licence-Holder wishes to operate beyond the Operating Plan already approved by the Board, the Licence-Holder should ask the Board to approve a Variation, Occasional Licence or Extended Hours.

Variation 3: Allow recorded music both during and outwith Core Hours

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

Variation 4: Add to 'Additional Information'

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

Note:

All Licence-Holders must state in the Operating Plan everything they wish to do, including the activities to be carried-on on the Premises. The Applicant proposes to state:

"Sale of groceries, including fresh and frozen foods and other non-food items to be provided both within and outwith the Core Licensing Hours. But not before 7.00 a.m. or after 11.00 p.m.. Activities outwith Core Hours may occur as ancillary."

The reference to "not ... after 11.00 p.m." means that the Premises would not need a "Late Hours Catering Licence" under the Civic Government (Scotland) Act 1982.

Variation 5: Alter 'any other activities' part of OP to include home delivery & samples

Advice: The Board has a discretion to grant or refuse the Application. In all Applications, whether or not there are third-party objections, the Board must consider whether or not any Ground for Refusal exists.

The Ground which appears to apply is:

- the Application may be inconsistent with the Licensing Objectives**

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If any Ground for Refusal applies, the Board must refuse. If no Ground for Refusal applies, the Board must grant.

Note:

See Variation 4. Another part of the Operating Plan (Question 5(f)) allows the Licence-Holder to state 'any other activities'. The Applicant proposes to state:

"The sale of alcohol by retail for consumption off the premises is ancillary to the sale of groceries and other non-food items. The above shall include deliveries made using our home delivery and ecommerce services, subject to compliance with sections 119 and 120 of the Licensing (Scotland) Act 2005. The premises will also, on occasion, be used to launch new products, have product sampling and food tasting events, and host 'friends and family' membership evenings."

The provisions referred to are:

Section 119 - "Delivery of Alcohol from Vehicles etc." and

Section 120 - "Prohibition of late-night deliveries of Alcohol"

These provisions require record-keeping and prohibit alcohol deliveries between the hours of midnight and 6.00 a.m..

The NALB Licensing Policy Statement (2013-18) states:

"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: ...*

(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."

The Applicant should describe the arrangements proposed, e.g. what training will the person who delivers to the customer have? The Applicant should show the Board training documents and example delivery records.

Alcohol samples

The Board should consider whether or not the proposal is inconsistent with the Licensing Objective "protecting and improving public health". The Applicant should tell the Board what volumes will be available for consumption; for example, the Applicant might state:

CASE 4

"samples for spirits or other alcohol with an ABV of 20% or more will be no more than 12.5ml, and samples for wine/beers will be no more than 25ml."

Conditions

If the Board permits consumption of samples of alcohol in off-sales Premises, it should consider adding Conditions under Section 30(6):

- (a) the display of alcohol for consumption on the Premises will only be permitted in the area which is already marked on the Layout Plan as licensed for the display of alcohol for sale, or between shelves which are so licensed, or between a shelf which is so licensed and the point of sale;
- (b) consumption can only take place within "Licensed Hours" shown in part 3 of the Operating Plan (even if the Premises are also open outside those hours for the sale of non-alcohol products);
- (c) Alcohol should not be consumed by anyone under 18.

Reasons for these Conditions:

Condition (a): The definition of capacity in 2005 Act, Section 147 is

"...(b) in relation to Licensed Premises (or any part of such Premises) on which Alcohol is sold for consumption off the Premises (or, as the case may be, that part), the amount of space in the Premises (or, as the case may be, that part) given over to the display of Alcohol for sale"

The object of the free samples is to encourage potential buyers to buy a full bottle or can of the sample, so although the alcohol in the sample is not itself "for sale", it is part of "the display of Alcohol for sale". Therefore the Board is entitled to expect that the display will be within the designated Layout Plan area, although the Board may accept that the area between the designated display area and the point of sale can also be used for the display and consumption of free samples

Condition (b): Licensing (Scotland) Act 2005, Section 63(1) provides:

"Subject to subsection (2), a person commits an offence if, outwith Licensed Hours, the person— ... (b) allows Alcohol to be consumed on Licensed Premises ..."

The word is 'consumed', not 'sold'. Subsection (2) contains various exceptions (e.g. the 15 minutes drinking-up time in on-sales) but none of these are likely to apply to an off-sales shop.

Condition (c): in the Act, "Child" means a person aged under 16, and a "Young Person" is 16-17). Section 106 is:

"(1) A Child or Young Person who knowingly consumes Alcohol on any Relevant Premises commits an offence."

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(2) Any Responsible Person who allows a Child or Young Person to consume Alcohol on any Relevant Premises commits an offence."

Examples of a "Responsible Person" would be the Premises Manager and any member of staff.

Variation 6: Increase capacity from 4.4 sq.m. to 4.55 sq.m. (about 3%)

Advice: The Board has a discretion to grant or refuse the Application. In all Applications, whether or not there are third-party objections, the Board must consider whether or not any Ground for Refusal exists.

The Ground which appears to apply is:

- Overprovision may result from the grant of the Variation

If any Ground for Refusal applies, the Board must refuse. If no Ground for Refusal applies, the Board must grant.

Variation 7: Vary Layout Plan

Advice: the Board is legally obliged to grant this request (as this is a 'Minor Variation').

3. Effect on Licence Conditions (Section 30(6))

If the 'samples' part of Variation 5 is granted, the Conditions should be varied as suggested above.

Note to Applicant

The Board's decision will not act as permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all permissions or certifications.

Application for Variation of Premises Licence - Section 29

Applicant	HF Irvine Hotels Ltd.
Premises	Riverside Lodge Hotel, 46 Annick Road, IRVINE KA11 4LD
Ref.	053

Preliminary

This Report has been prepared provisionally before the Applicant has lodged the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.

1. Summary of Variation Request

The proposal is to add an Outdoor Drinking Area on the terrace to the rear of the restaurant, and accessed only from inside the restaurant. This will have an area of 145 square metres and a seating capacity of up to 80. The ODA would not operate after 10.00 p.m., in accordance with Board conditions.

2. Issues

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

Notes:

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 proposed ODA is on the far side of the building, as seen from nearby houses, and there are no dwelling-houses or other noise-sensitive premises (e.g. schools, hospitals, and sheltered housing) nearby.

The Premises are licensed for drinking inside the building:

11.00 a.m. to midnight (Sunday - Wednesday)
11.00 a.m. to 1.00 a.m. (Thursday - Saturday)

The Board requires to balance competing rights:

- (a) Regularly exposing neighbours to noise and other nuisances may breach neighbours' human rights to respect for private life, family life and home under Article 8 of the European Convention on Human Rights. If the Board was being asked to permit nuisance (by granting or varying a Licence), its decision might be the basis of a claim for compensation by them against the Board (such a claim has been recognised by the European Court of Human Rights - Gomez v Spain [2004] ECHR 633).

(b) The Licence Holder has a right to free enjoyment of his possessions (the Licensed Premises): ECHR, Protocol 1, Article 1.

Neither right is absolute. There is no precedent for a Board having liability for failing to prevent a nuisance. The Board is obliged to have regard to the Licensing Objectives, but the duty is solely to 'have regard' to them. The Licensing Objectives are not conclusive, and do not oblige the Board to close Premises or to impose such a substantial variation that Premises become uneconomic.

The 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.."

The opening hour of 11.00 a.m. and the terminal hour of 10.00 p.m. apply even if the Licensed Hours inside the building are greater.

The Application states that the ODA will be operated "during daylight hours and not exceeding 22.00 hours".

If the Licence-Holder wishes to start the ODA before 11.00 a.m., he/she should

- ask the Board to vary Condition C.5.2
- specify an alternative time
- specify the proposed activities

The Board has allowed early use of such areas in other cases, adding to C.5.2 words such as

"except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 10.00."

The reason for the phrase "alcoholic or not" is that the Board is unlikely to know that a container contained Alcohol, e.g. if the Board received a complaint, all that the complainer might be able to say was "I saw a customer drinking from a container" - without being able to say that there was Alcohol in it.

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.

3. Effect on Licence Conditions (Section 30(6))

The Licence was granted subject to an earlier Edition of the Board's Standard Conditions - before the most recent revision. The existing Conditions should be replaced by the current Edition 5 and these will apply as read with later amendments

CASE 5

of the statutory mandatory conditions (this will be noted on any Premises Licence and Summary issued later).
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If the Board allows opening of the ODA before 11.00 a.m., Condition C.5.2 should be varied as agreed.

Note to Applicant

The Board's decision will not act as permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all permissions or certifications.

AGENDA ITEM 3

Committee:
Licensing Board

Date of Committee Meeting:
3 June 2019

Title	Scottish Government Consultation on reviewing the fee for Occasional Licences, and considering a limit on the number and duration of Occasional Licences
Purpose	To inform the Members of the questions to be answered
Recommendation	That Members consider the questions and instruct the Clerk how to respond

1. Executive Summary

This Report relates to a Scottish Government Consultation on Occasional Licences (here "OLs") which invites responses by Tuesday 16 July 2019. The Board is asked to consider the Consultation questions, and to instruct the Clerk to respond accordingly.

2. Background

2.1. OLs are granted for Premises that are normally unlicensed, for example to allow a Community Hall to have a temporary bar to accommodate a party or other social function.

2.2. The procedure when the Board receives an OL Application is that it places an advert on its public website, and sends the Application to the Police and Licensing Standards Officer for comment. The Application must be advertised for seven days, to allow members of the public to state objections or representations. The position after 7 days is that, if there are no adverse comments from the public, Police, or LSO, the Application is granted under Delegated Powers.

2.3. OLs are cheap and quick. The fee is £10 and the Application form is only 4 pages, and gives little information about the proposal (in contrast to the Premises Licence, which involves a detailed Operating Plan, Layout Plan, and statutory certificates of Planning, Building Control and in many cases Food Hygiene).

2.4. There were 956 OLs granted by the Board during 2017-18 - about 4 new Applications were received by the Board every working day. Due to the amount of business, a large amount of staff time is taken up in processing Applications. Delegated Powers are usually used - under 1% of Applications require to be referred to a Board Meeting.

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2.5. The consultation questions are in two groups:

- (a) fees, and
- (b) possible limits on the numbers of OLs that can be granted.

(a) Fees

2.6. At present the fee is £10 for an OL. Although many OLs last only a few hours, according to the Applicant's requirements, the legislation permits a single OL to last up to 14 days. The fee for a 14-day OL would still be £10 - there is no additional daily charge.

2.7. The £10 fee was set by Regulations which apply throughout Scotland, so local Boards cannot alter it. The fee was set in 2007, before the commencement of the Licensing (Scotland) Act 2005, and has not been changed since. The equivalent under the Licensing (Scotland) Act 1976 involved a fee of £17.00. The new Act added requirements on the Board to advertise and consult the LSO, but the fee was reduced.

2.8. The low fee has implications:

- Although the LSO could legally visit OL venues in the same way that she visits venues with Premises Licences, this very rarely happens. OLs are subject to Mandatory Conditions (2005 Act, Schedule 4 and also any extra conditions imposed by the local Board). However, the fee income attributable to OLs is so low that it is uneconomic for Councils to monitor compliance with OL Licence Conditions in the same way that they would monitor compliance with Premises Licences Licence Conditions
- The legislation does not oblige the Board to consult with the Health Board or Council Departments, unlike the position with Premises Licences, so the Board does not do so. The legislation permits a Board to refuse an OL on the basis that the Premises are 'unsuitable', but since there are no Section 50 Certificates as to Building Control and Planning, and the Premises are almost never inspected in advance, this provision is rarely used.

(b) Limits

2.9. At present, there are no limits on the numbers of OLs which an Applicant can request if he/she already holds a Premises Licence or Personal Licence. For example, some publicans operate a second business of providing temporary bars.

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2.10. There are limits on the number and duration of OLs which a Voluntary Organisation can have. Over a 12-month period a Voluntary Organisation can have

- not more than 4 OLs of 4 days or more in duration;
- not more than 12 OLs of less than 4 days in duration
- with a maximum total of 56 days.

2.11. Members Clubs can also have OLs which allows them to sell alcohol to the general public temporarily, and not just their members. The limits are similar to those for Voluntary Organisations.

2.12. Part of the Consultation relates to the possible use by Scottish Ministers of their power to make Regulations limiting when a Licensing Board may issue an OL. The OL legislation was amended by the Alcohol etc. (Scotland) Act 2010, section 13, and allowed for Regulations to set limits, but these powers have not been used.

The legislation permits limits on

- the number of OLs that could be issued to the same applicant in a 12-month period,
- the number of OLs that could be issued in relation to the same premises in a 12-month period,
- the number of days in a 12-month period that can be covered by OLs issued to the same applicant;
- the number of days that the OLs issued in relation to the same premises in a 12-month period could have effect, and
- the number of continuous days that a series of occasional licences can have effect in relation to the same premises.

The Scottish Government is seeking views on

- (a) whether to prescribe limits, and if so,
- (b) what they should be.

3. Proposals

These are the Consultation Questions. To assist discussion, the Clerk has drafted possible responses.

Fees

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1. Do you agree that the fee for an occasional licence should be increased from the current level of £10? (Yes / No)

A1. Yes

2. Why?

A2. *The fee was reduced from its 1976 Act level, while the legislation made OL procedure substantially more labour-intensive for Councils.*

The Office of National Statistics publishes monthly Consumer Price Index ("CPI") figures, from January 1988 to date (the figures do not go back to when the 1976 Act commenced). The CPI in January 1988 was 48.4. The most recent CPI is for April 2019, when the index was 107.6. Over the period since 1988, the CPI has increased by a factor of 2.22. Even if the base in 1988 was £17.00, the proportionate fee would be £37.79. That fee would be appropriate if the current OL system was simply a repeat of the 1976 Act system, but it is not.

3. Do you agree that £50 is an appropriate new fee level? (Yes / No)

A3. Yes

4. Why?

A4. See A2.

5. Do you agree that £75 is an appropriate new fee level? (Yes / No)

A5. No.

6. Why?

A6. *The fee should not be set so high that it acts as a deterrent.*

7. Do you agree that £100 is an appropriate new fee level? (Yes / No)

A7. No.

8. Why?

A8. See A6.

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9. If you do not think that any of the proposed fee levels are appropriate, what do you believe would be a suitable fee level?

A9. *Not applicable.*

10. What evidence, based on cost recovery, can you supply for an appropriate fee level for occasional licences?

A10. *It is not possible to provide exact figures because all members of staff in the licensing section will have some involvement from time to time in every sort of Licence - not just OLs, Personal Licences and Premises Licences under the 2005 Act but also Taxi Licences etc. under the Civic Government (Scotland) Act 1982 and the other Licensing statutes. However, we estimate that the aggregate of staff time just dealing with OLs is close to 1.0 Full Time Equivalent.*

Limits

11. Do you agree that limits should be placed on the number and duration of occasional licences for holders of a premises licence and holders of a personal licence? (Yes / No)

A.11. *Yes*

12. Why?

A.12. *Issues:*

- *there is the possibility of unfair competition with permanent Premises;*
- *some businesses provide bars to parties, community centres etc. and would be affected if there was a limit on the numbers of OLs they could apply for;*
- *The ease of getting OLs normalises alcohol consumption*

Since Premises using OLs are not regularly visited by the LSO, breach of conditions is unlikely to be detected, and since the OL is necessarily temporary the Board cannot revoke or suspend it.

There are some venues which operate on Occasional Licences, paying only £10 a time and not having to have a Premises Manager, obey the Conditions, or pay the hundreds of pounds

AGENDA ITEM 3

For example, there is a place in North Ayrshire which describes itself as a 'performance & event venue bar' on Facebook, e.g.

*"Hogmanay Bash
bar prices 8pm - 10pm
£20 Ticket from 10pm - 2am includes all beers wines and spirits"*

That suggests an Irresponsible Drinks Promotion:

*"(2) Subject to sub-paragraph (3), a drinks promotion is irresponsible if it—
... (d) involves the supply of unlimited amounts of Alcohol for a fixed charge (including any charge for entry to the Premises), (2005 Act, Sch. 4, Para. 7(2)(d))"*

13. What do you think would be an appropriate limit on the **number** of occasional licences that could be issued to the same **applicant** in a 12 month period, and why?

A.13. Similar to the existing Voluntary Organisation limit. Any limit might be easily circumvented; we already have a "three strikes and you're out" practice to limit late OL applications, but we find that it is occasionally circumvented by an Applicant asking a colleague to apply instead.

14. What do you think would be an appropriate limit on the **number** of occasional licences that could be issued to the **same premises** in a 12 month period, and why?

A.14. The limit should be similar to the existing Voluntary Organisation limit, but with an exception. There are legitimate venues which might have dozens of unconnected events throughout the year, for example a local Community Hall might cater for many social events. There should be a procedure where any venue can apply to the Board to be treated as an exception to the limit, and the Board would have to be satisfied that the particular venue was a genuine provider of services to the community and that there would be no connection between the events.

15. What do you think would be an appropriate limit on the **number of days** that occasional licences issued to the **same applicant** in a 12 month period could have effect, and why?

A.15. See A.13.

16. What do you think would be an appropriate limit on the **number of days** that the occasional licences issued in relation to the **same premises** in a 12 month period could have effect?

A.16. See A.15.

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17. What do you think would be an appropriate limit on the **number of continuous days** that a series of occasional licences can have effect in relation to the **same premises**?

A.17. Normally, the limit should be nil. OLs should be for 'occasions', and not for the regular operation of Premises. There could be a prohibition on an OL taking effect for the same Premises within, say, 96 hours of another OL for those Premises expiring, without an express direction from the Board. It can happen that when a Provisional Premises Licence is granted, the Applicant might seek OLs prior to Confirmation. If the Board has previously been asked to direct that OLs might be granted to permit the Premises to open under a series of OLs, this might be an exception.

18. Are there any other comments you wish to make that relate to the occasional licence?

A.18. No

5. Consultations

No Consultations are needed. The usual 'Implications' part of the standard Report template is not included here as it is inappropriate.

Craig Hatton
Chief Executive

Reference: WOB/GEN56

For further information please contact Aileen Craig, Clerk to the Board, on 01294-324322.

Background Papers: none