

Cunninghame House,  
Irvine.

14 January 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, Ground Floor, Cunninghame House, Irvine on **MONDAY 19 JANUARY 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 Meeting held on 17 November 2014.

**2. Public Health Reports**

Submit report to the Licensing Board to update Members on the current position of the CRESH and MESAS Public Health reports.

**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. Records Management Plan**

Submit report to the Licensing Board to update Members on requirements under the Public Records (Scotland) Act 2011.

**5. Annual Joint Meeting with Local Licensing Forum**

Submit report to the Licensing Board to update Members on the current position of the Local Licensing Forum as required by Section 10(3) of Licensing (Scotland) Act 2005.



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## Licensing Board

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

Chair:

Attending:

Apologies:

Meeting Ended:



Report to North Ayrshire Licensing Board

by

Solicitor (Licensing)

<b>Subject</b>	<b>Public Health</b>
<b>Purpose</b>	<b>To update Members on the current position</b>
<b>Recommendation</b>	<b>That Members note the position</b>

1. All Boards are obliged by Section 6(1) to adopt a Licensing Policy Statement every 3 years (e.g. by 30 November 2013). North Ayrshire Licensing Board adopted their "Licensing Policy Statement 2013-16 on 19 November 2013.
2. As well as that obligation, under Section 6(2) a Board is entitled, but not obliged, to publish a "Supplementary Licensing Policy Statement" with respect to the exercise of their functions during the remainder of that 3-year period.
3. If the Board wishes to proceed with this, the same consultation process is required as with the obligatory 3-yearly 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.
4. Since the current LPS was prepared, there have been two further 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")

These are summarised below, but the full Reports will be made available if Members wish them. The Clerk has highlighted passages which appear significant.

**CRESH Report**

5. Alcohol Focus Scotland commissioned CRESH to investigate whether alcohol-related illnesses and deaths across Scotland were related to the local availability of alcohol outlets. The research showed that across Scotland, alcohol-related hospitalisations and deaths were higher in areas with higher alcohol outlet availability. The full Report is 18 pages. The "Key Messages" and "Interpretation" parts are set out below.
6. AFS has also published three local authority factsheets, for Edinburgh, Glasgow and North Ayrshire (the rest of Scotland will be covered later). These noted:
  - (a) In Edinburgh, a significant positive relationship was found between outlet density (both on and off-sales premises) and alcohol-related deaths and hospitalisations;
  - (b) In Glasgow, a significant positive relationship was found between outlet density (both on and off-sales premises) and alcohol-related deaths. There was also a

significant positive relationship between on-sales and total sales outlet density and hospitalisations;

(c) In North Ayrshire, a significant positive relationship was found between outlet density (on-sales premises) and alcohol-related deaths and hospitalisations.

7. The North Ayrshire factsheet includes:

*"Alcohol-related harm*

*In North Ayrshire as a whole there is:*

*- An annual average of 35 alcohol-related deaths (26 deaths per 100,000 adults). This is similar to the Scottish average of 25 deaths per 100,000.*

*- An average alcohol-related hospitalisation rate ratio of 148. This is 48% higher than the Scottish average of 100."*

8. The factsheet has this caveat:

*"This study shows a relationship between alcohol outlet density and alcohol-related health harms, but does not definitively conclude that there is a causal relationship. Proving something is "causal" with population level data is difficult because of the ethical and financial constraints in conducting the studies needed to prove a causal relationship. Often it is necessary to use the best possible population level evidence we have to determine what is likely, probable or reasonable in the absence of the studies that would provide "causal" evidence."*

### **MESAS 4 Report**

9. One of the documents which the Board considered in the preparation of the Licensing Policy Statement 2013-16 (adopted on 19 November 2013) was the Annual Report by NHS Health Scotland entitled "Monitoring and Evaluating Scotland's Alcohol Strategy" (MESAS) published in December 2012.

10. A further report was published in December 2014 ("MESAS 4"). The purpose of the present Report to the Board is to give Members a summary of the MESAS 4 Report. The whole Report is 49 pages in length but includes an "Executive Summary", which is reproduced at the end of this Board Report.

### **Conclusion**

11. The Board are invited:

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

### **Extracts from the CRESH Report**

#### **"KEY MESSAGES**

- There are large variations in numbers of alcohol outlets within neighbourhoods across Scotland.
- Across the whole of Scotland, neighbourhoods with higher numbers of alcohol outlets had significantly higher alcohol-related death rates. Alcohol-related death rates in neighbourhoods with the most alcohol outlets were more than double the rates in those with the fewest outlets. There were 34 alcohol-related deaths per 100,000 people in neighbourhoods with the most off-sales outlets, compared with 13 per 100,000 in neighbourhoods with the fewest.
- Across the whole of Scotland, alcohol-related hospitalisation rates were significantly higher in neighbourhoods with the most alcohol outlets.

### INTERPRETATION

The relationships between alcohol outlet availability and health outcomes were clearer and stronger for deaths than hospitalisations. It is likely that alcohol-related deaths represent a more sensitive response to the local alcohol environment for a number of reasons.

First, alcohol related deaths are usually attributable to chronic health problems (e.g., cirrhosis) resulting from long-term sustained drinking at harmful levels, while alcohol-related hospitalisations will include a higher proportion of cases due to short-term excessive drinking episodes. Compared with short-term episodes, long-term excessive drinking may be more sensitive to the local convenience and affordability of alcohol.

Second, a range of other factors may influence whether a serious alcohol-related condition results in hospitalisation, including proximity to a hospital, or attitudes towards seeking medical help.

Third, recording of alcohol misuse on hospitalisation records may vary from hospital to hospital, and where alcohol misuse is suspected but not confirmed it may not be recorded as a contributing factor. Hence, it is understandable that we found a clearer link between the alcohol retail environment and deaths than with hospitalisations.

***The alcohol-related hospitalisation results suggest the existence of outlet availability thresholds – over 6 off-sales, 9 on-sales, or 14 total outlets within 800 m – below which hospitalisation rates did not differ, but above which rates increased significantly.*** Such a threshold was not found for alcohol-related deaths – each increase in outlet availability was associated with a higher death rate. Locations with high concentrations of on-sales outlets may encourage harmful drinking episodes through the coming together of drinkers and competitive drinks markets. High concentrations of off-sales outlets also create more competitive markets, with alcohol promotion tactics such as loss-leading and discounting used to compete with other stores. Competitive pressures on smaller convenience stores can also result in alcohol being sold to street drinkers, or sold as single cans. Hence above certain outlet availability thresholds the drinks market may become competitive enough to encourage significantly more harmful drinking episodes that result in hospitalisation.

Comparing our results for on-sales and off-sales outlets should be done with caution, but we suggest that the relationships found were stronger for off-sales outlets. This supports claims that off-sales outlets have the greatest potential for alcohol-related harm, due to their cheaper product, large volumes obtainable, accessibility for under-age drinkers, and the absence of control over the final recipient (Forsyth AJ, Davidson N. 2010: "Community off-

sales provision and the presence of alcohol-related detritus in residential neighbourhoods" Health & Place 16:349-358.)

A limitation of our work is that the broad on- and off-sales categories grouped together outlets likely to have widely differing levels of influence on alcohol consumption – grouping restaurants with nightclubs, and convenience stores with supermarkets, for example. Hence, our outlet availability measures were a relatively crude way of measuring the actual availability of alcohol in a neighbourhood.

Finally, we should caution that our study was cross-sectional – it looked at a single point in time – hence ***while it suggested significant associations between outlet availability and alcohol-related harm we cannot conclude that the relationship is causal.*** Further analyses over time will be required to establish whether the links are causal, but currently alcohol outlet data for Scotland are only available for a single point in time. Better quality time-series licensing statistics, disaggregated into finer categories than simply on- or off-sales, would allow for research into longitudinal relationships between availability and harm."

### Extract from the MESAS 4 Report ("Executive Summary")

#### "Background

This 2014 report is the fourth annual report that provides an update on the monitoring and evaluation of Scotland's alcohol strategy. The report describes the legislation underpinning the alcohol strategy and the evaluation plan with its various studies. It includes the main findings from two studies published in 2014, one to assess the impact of increased investment in alcohol treatment and care services and the other to assess changes in knowledge and attitudes related to alcohol. The report also provides an overview of results from the studies to assess the implementation of Alcohol Brief Interventions and the Licensing Act, and to determine the potential contribution of the external economic context, detailed in previous reports. Furthermore, it updates the findings from the on-going studies on trends in affordability, consumption and alcohol-related harms. It differs from previous years' reports in that it is presented in a concise format accompanied by a series of appendices which include data, charts and key points linked to these.

#### Introduction

After a period of rising alcohol-related harm, the Scottish Government published a new alcohol strategy in 2009. This aimed to reduce population alcohol consumption and related harm through interventions such as routine Alcohol Brief Interventions (ABIs), increased investment in treatment and care services, banning multi-buy discounts in the off-trade, and introducing minimum unit pricing (MUP). Changes to alcohol licensing were also implemented in 2009. The 'Monitoring and Evaluating Scotland's Alcohol Strategy' (MESAS) evaluation programme aims to determine the strategy's impact.

#### Methods

The report draws together findings from a portfolio of studies evaluating Scotland's alcohol strategy. The evaluation adopts a theory-based approach. An expected 'theory of change' is compared with observed changes assessed through the studies, using England & Wales as comparison where possible. The existing and proposed studies are a mix of cross-sectional and time-series analyses, where possible including a comparison population. External factors which may be contributing to current trends in consumption and related harm are considered.



## Results

***In Scotland, alcohol-related death rates have fallen by 35% since 2003 but remain 1.4 times higher than in 1981. Similarly, the alcohol-related new patient (hospitalisation) rate fell by 25% since 2007/8, however, the rate was still 1.3 times higher in 2013/14 than in 1991/92.*** Alcoholic liver disease hospitalisations followed a similar pattern to all alcohol-related hospitalisations; there has been an upward trend in new patients presenting to hospital up to 2005/6, and then a decline until last year. By contrast, the new patient rate for alcohol psychosis, accounting for 17% of alcohol admissions (driven by alcohol 'withdrawal'), continued to rise until 2007/8, and has plateaued but not declined since then.

The adopted theory suggested that declines in alcohol-related harms would be prompted by a decline in the mean quantity of alcohol consumed in the population. Per adult alcohol sales have continued to fall recently in Scotland, declining by 9% since the peak in 2009. It was also postulated that increases in alcohol service provision would contribute to a reduction in harms. In 2012, an estimated one in four adults with possible alcohol dependence (based on an AUDIT score of 16+) actually accessed alcohol services (the prevalence-service utilisation ratio). It was perceived among providers and users that the increased investment in specialist treatment and care services had improved the quality and accessibility of services. Last, it had been hypothesised that greater population understanding of the problems alcohol causes in Scotland would contribute to a decrease in harms through a variety of mechanisms. However, with the exception of increased awareness of the harm caused by alcohol, there was little notable change in population knowledge and attitudes related to alcohol in the period from 2004 till 2013.

Previous MESAS reports have demonstrated alcohol-related mortality rates in Scotland to be almost twice those in England & Wales but that these rates peaked five years earlier in Scotland and declined more sharply. Previous analysis also suggested that it was unlikely that changes to alcohol licensing were impacting on alcohol outcomes but that the ban on quantity discounts in the off-trade and the increased delivery of ABIs may have made a contribution to the declines in alcohol consumption and harms respectively. In addition, it suggested that the decline in alcohol-related mortality in Scotland from the peak in 2003 may be at least partly explained by the declines in disposable income for the lowest income groups which predated the recession.

## Conclusions

Alcohol-related mortality and morbidity, and inequalities in these harms, are continuing to decline in Scotland, and on some measures are improving more quickly than in England & Wales. Alcohol sales are falling in both Scotland and England & Wales and it is likely that declining affordability of alcohol due to the economic downturn and associated policy context across Great Britain in recent years is responsible for a substantial proportion of these improvements. However, the ban on quantity discounting of alcohol and the increased number of ABIs delivered are likely to be contributing to the improvements seen in Scotland. Changing knowledge and attitudes around alcohol are unlikely to be responsible for the recent declines. Further work is required to understand the potential contribution of the increased investment in treatment and care services to improving outcomes, and to understand the impact of a range of policy and non-policy factors (both contemporary and historical) on outcome trends, in particular the differences in the scale and timing of impact seen in Scotland and England & Wales."



## APPENDIX A

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

Case No.	Licence No.	Applicant/Licence Holder	Premises	Comments
1.	0461	Swinton LIC Limited 116 Blythswood Street Glasgow G2 4EG	Scott's Corner 35-47 Main Road Springside Irvine KA11 3AX	Application for Grant of Provisional Premises Licence - Section 45 Continued from 17/11/2014
2.	0336	P/Ship of Steven & Audrey Quinn 14 The Glebe Dreghorn Irvine KA11 4DA	J & A Quinn 34B Main Road Springside Irvine KA11 3AW	Application for Variation of Premises Licence - Section 29
3.	0260	IP Partnership Limited Hamilton House 70 Hamilton Drive Glasgow G12 8DR	Coach & Horses 102 Dickson Drive Irvine KA12 9HD	Premises Licence Review Application - Section 37
4.	0141	May Lok 7 Moor Park Place Prestwick KA9 2NH	Royal Blossom Cantonese Restaurant 44/46 Townhead Irvine KA12 0BE	Premises Licence Review Proposal - Section 37
5.	0198	Kylie McBlane 18 Alexander Avenue Stevenston KA20 4BE	Glencairn Bar 42 New Street Stevenston KA20 3HF	Premises Licence Review Proposal - Section 37
6.	0370	Gary MacCulloch 1 Branklyn Grove Anniesland Glasgow G13 1GF	The Keys at Irvine Harbour 142 Harbour Street Irvine KA12 0PZ	Premises Licence Review Proposal - Section 37
7.	NA1822	Arrin Andrew Guthrie 56 Lawson Drive Ardrossan KA22 7JL		Application for Grant of Personal Licence - Section 74

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|-----|-----------------|---|--|---|
| 8.  | 0122            | Walcal Property<br>Development Ltd<br>51A Townfoot<br>Dreghorn<br>Irvine<br>KA11 4EH  | The Crown Inn<br>38/40 Main Street<br>Dreghorn<br>Irvine<br>KA11 4AH | Application for<br>Variation of Premises<br>Licence - Section 29<br>Continued from<br>17/11/2014  |
| 9.  | NA0135          | Pawitar Singh<br>81A Main Street<br>Dreghorn<br>Irvine<br>KA11 4AQ                    |  | Personal Licence<br>Review Hearing -<br>Section 83(7)   |
| 10. | NAFEC/<br>GMP/8 | Iveagh Leisure Limited<br>18-22 Scarva Street<br>Banbridge<br>County Down<br>BT32 3DA | The Forum Centre<br>Bridgegate<br>Irvine<br>KA12 8BQ                 | Application for Grant<br>of Family<br>Entertainment Centre<br>Gaming Machine<br>Permit - Gambling<br>Act 2005, Section<br>247 and Schedule 10 |

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## Agenda Item 3

19 January 2015

### North Ayrshire Licensing Board

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

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

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

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#### 1. Introduction

- 1.1 The Licensing Board is responsible for determining applications made under the Licensing (Scotland) Act 2005 and 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*



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

Applicant	Swinton LIC Ltd.
Premises	"Scott's Corner", 35-47 Main Road, Springside, KA11 3AX
Ref.	461

**CONTINUED FROM 17 NOVEMBER 2014****Preliminary**

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

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

*This Report was prepared provisionally before the end of the Site Notice display period, which ends on 7 November 2014.*

*To date there have been no objections received. If there are any, these will be copied to the Applicant, and all letters will be handed to Members at the Meeting.*

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

**1. Summary of Proposal**

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

The Premises were previously licensed as "The Croft" Public House, but have been converted to four commercial units. The current proposal is for a shop with off-sales facility in one of these.

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

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

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

**2. Detailed proposal**

(a) Licensed Hours

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

(b) Capacity

Off-Sales (sq. mtr.s)	17.1
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**3. Issues**

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

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

There appear to be two potential reasons for refusal:

- (a) The Application is inconsistent with the L.O.: 'protecting & improving public health';
- (b) Overprovision may result if the Application is granted.

**(a) Licensing Objective**

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

The L.O. expressly states 'improving'. The creation of a new facility to sell alcohol cannot be said to improve public health. Opinions may differ as to whether:

- (i) it damages public health, or
- (ii) makes no difference (e.g. it might be said that adding a facility here does not increase the overall amount of alcohol consumed in society, but all that will happen is that the free market will operate so as to take business away from existing outlets);

but it is unlikely to improve it.

**(b) Overprovision may result if the Application is granted**

There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2016, Annex E). It is



not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

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

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

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

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

This report to the Board supplies the following information:

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

(a) the Locality of the Premises

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

The Subject Premises are in Locality 4 : Irvine and Area (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torranyard)

(b) the Function Type of the Premises

The Board's Overprovision Policy distinguishes Premises by 'Function Types'. The Subject Premises are in: Function Type 1 (Off-sales).

(c) Additional Factors

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

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

(d) other similar premises in the Locality

A statement will be produced and intimated to the Applicant.

#### **4. Observations**

The mandatory condition as to display (Schedule 3, paragraph 13) permits only one 'accessible to public' area for the display of alcohol. The Layout Plan shows the position of shelves, wall-mounted and free-standing. Shelves 1 to 4 (as numbered on the LP) might be considered by the Board to be a single area, in which case free-standing Shelving Unit 5 would be inconsistent with that condition.

#### **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	J. & A. Quinn
Premises	34B Main Road, Springside, KA11 3AW
Ref.	336

#### Preliminary

*This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 9 January 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 6.00 sq.m. to 6.75 sq.m. (12.5%)
2	Alter Layout Plan
3	Increase Licensed Hours to 10.00 - 22.00, 7 days

#### 2. Issues

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

<b>Variation 1 : Increase off-sales capacity from 6.00 sq.m. to 6.75 sq.m. (12.5%)</b>
Discretionary refusal
The Board has a discretion to grant or refuse the Application. The Board should consider all the potential Grounds of Refusal set out below. If any apply, the Board must refuse. If none apply, the Board must grant: Section 30(4).
There appear to be two potential reasons for refusal:
<ol style="list-style-type: none"> <li>(a) The Application is inconsistent with the L.O.: 'protecting &amp; improving public health';</li> <li>(b) Overprovision may result if the Application is granted.</li> </ol>
<b><u>(a) Licensing Objective</u></b>

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

The L.O. expressly states 'improving'. The extension of a facility to sell alcohol cannot be said to improve public health. Opinions may differ as to whether:

- (i) it damages public health, or
- (ii) makes no difference (e.g. it might be said that adding a facility here does not increase the overall amount of alcohol consumed in society, but all that will happen is that the free market will operate so as to take business away from existing outlets);

but it is unlikely to improve it.

**(b) Overprovision may result if the Application is granted**

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

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

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

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

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

This report to the Board supplies the following information:

- (a) the Locality of the Premises
- (b) the Function Type of the Premises
- (c) any Additional Factors

(d) other similar premises in the Locality

(a) the Locality of the Premises

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

The Subject Premises are in Locality 4 : Irvine and Area (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torranyard)

(b) the Function Type of the Premises

The Board's Overprovision Policy distinguishes Premises by 'Function Types'. The Subject Premises are in: Function Type 1 (Off-sales).

(c) Additional Factors

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

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

(d) other similar premises in the Locality

A statement will be produced and intimated to the Applicant.

#### **Variation 2 : Alter Layout Plan**

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

Notes:

The Licence-Holder wishes to rearrange the shop. There are no issues, apart from the question of increased capacity. If the Board refuses the requested capacity, the Applicant will require to lodge an amended Plan showing where the approved displays are to be. This can be done by simply making a manual alteration to one copy of the Plan recently given to the Board with the Variation Application - the Plan does not need to be redrawn by a building professional.

#### **Variation 3 : Increase Licensed Hours to 10.00 - 22.00, 7 days**

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

Notes:

The current and proposed hours are shown below.

The request is for the maximum entitlement, both under statute and under Board Policy. Overprovision is not relevant to Licensed Hours, and the Board has not previously restricted off-sales hours by reference to the Public Health Licensing Objective.

	<b><i>Current</i></b>	<b><i>Proposed</i></b>
Monday	10.00 - 18.00	
Tuesday	10.00 - 18.00	10.00 - 22.00
Wednesday	10.00 - 19.30	on all days
Thursday	10.00 - 18.00	
Friday	10.00 - 18.00	
Saturday	10.00 - 19.30	
Sunday	12.30 - 16.00	

### **3. Licence Conditions**

The Licence was granted subject to Edition 4 of the Board's Standard Conditions - before the most recent revision. The existing Conditions should be replaced by the current Edition 5. The Premises are currently subject to Parts A and B of the Conditions and there is no difference between the two Editions as far as those Parts are concerned.

**Premises Licence Review Application  
Section 37 (second stage)**

Premises	"Coach and Horses", 102 Dickson Drive, Irvine, KA12 9HD
Premises Licence Holder	IP Partnership Ltd.
Ref.	260

**1. Background**

The Hearing on 19 January 2015 is the second stage of Section 37 Review Proposal procedure. At the Board Meeting on 17 November 2014 the Board held a Hearing on a Review Application made by the Chief Constable under Section 36.

The Board decided:

- (a) to uphold the Review Application;
- (b) to vary the Premises Licence so that the Terminal Hour should be 23.00 on all seven days, for a period of 28 days, starting on 17 November 2014;
- (c) to make a Review Proposal under Section 37, the Grounds for Review being the same as those cited in the Police' Review Application.

**2. Grounds for Review**

The Chief Constable submitted that there were two grounds:

- (a) alleged breach of NALB Standard Condition A.2(1)(a). This Condition is one of the Mandatory Licence Conditions in 2005 Act, Schedule 3, Paragraph 4(1)(a).

The Condition is:

*"A.2.1 Alcohol is not to be sold on the Premises at any time when—*

- (a) *there is no Premises Manager in respect of the Premises, ..."*
- (b) alleged conduct relevant to the "Preventing Crime and Disorder" Licensing Objective.

**3. Documents**

Members will be given copies of three documents:

- (a) the Chief Constable's Review Application;

(b) the Statement of Reasons issued by the Board after the earlier Board Meeting;

(c) a Template letter prepared by the PLH after that Meeting, to advise Premises Managers when they have been appointed.

#### **4. Licensed Hours**

The operating hours prior to the Variation, and which have now resumed, are:

On-sales:

Mon	11.00	24.00
Tue	11.00	24.00
Wed	11.00	24.00
Thur	11.00	24.00
Fri	11.00	1.00
Sat	11.00	1.00
Sun	12.30	24.00

Off-Sales:

Mon	11.00	22.00
Tue	11.00	22.00
Wed	11.00	22.00
Thur	11.00	22.00
Fri	11.00	22.00
Sat	11.00	22.00
Sun	12.30	22.00

#### **5. Procedure**

The Board must hear the PLH.

The Board is entitled by Section 38(5) to

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

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

#### **6. Options**

The Board is not obliged to finally determine the Review on 19 January 2015. The earlier Variation was imposed as the Board considered it appropriate for the



purposes of the "preventing crime and disorder" Licensing Objective. The Board might consider that given:

- the PLH's acceptance that there had been shortcomings in the management and supervision of the Premises, and
- its desire to rectify matters,

it might be appropriate to continue consideration of the Review for a period, with the Chief Constable being asked to report to a future Meeting, it being made clear to the PLH that this was a form of 'probation'.

## **7. Issues**

If the Board wishes to conclude the Review, they should decide the following questions:

### ***Question (a): "is a Ground for Review established?"***

If 'no', the case ends.

If 'yes', the Board must consider the other questions.

The Steps available are:

#### **(A) Written Warning:**

#### **(B) Variation**

The Variation can be either indefinite or for a specific time, and can 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) Suspension**

The Suspension must be for a specific time. While the Licence is suspended, Annual Fees continue to be charged.

#### **(D) Revocation.**

***Question (b): "are any (one or more) of the Steps A to D necessary or appropriate for the purposes of any of the Licensing Objectives?"***

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

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

***Question (c): if 'yes', what Licensing Objectives are relevant?"***

***Question (d): "if the Licence is Varied, Suspended or Revoked: when should the order take effect?"***

A Variation (Step B) may have immediate effect.

A Suspension or Revocation (Steps C and D) should not have immediate effect unless the Board consider this is necessary in the public interest. Usually these Steps should be postponed to give the PLH the opportunity to appeal to the Sheriff Court:

- unless the Board postpones the Order, it takes effect immediately and is not postponed by an appeal (unlike the 1976 Act), but
- the PLH can ask the Sheriff to recall a Suspension or Revocation pending appeal (this does not apply to a Variation).

The length of the postponement is in the Board's discretion, but 7 days would be a reasonable period.

***Question (e): "if the Licence is Varied, Suspended or Revoked: how long should the order last?"***

***Question (f): "should any review action be taken in relation to any Personal Licence (for example, of a Premises Manager or a member of staff)?"***

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

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

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

Otherwise, the Board should either:

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

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

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

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



**Report to North Ayrshire Licensing  
Board**

by

**Solicitor (Licensing)**

<b>Subject</b>	<b>Premises Licence Review Proposal (Second Stage) - Section 37 (Unpaid Annual Fees)</b>
<b>Purpose</b>	<b>To update Members on the current position.</b>
<b>Recommendation</b>	<b>That in relation to each of the cases described in the attached Schedules the Board hold a Review Hearing to determine the Review Proposals, and answer the questions raised in this Report.</b>

## **1. Background**

1.1. It is a condition of all Premises Licences that the Holder ("PLH") should pay an Annual Fee in early October (1st October each year or, where that date falls on a Saturday or Sunday, on the immediately following Monday).

1.2. In relation to the Premises described in the attached Schedules, this remains unpaid, despite three communications (the Schedules list the dates):

- (a) The PLH was given advance notice of the Annual Fee due in 2014;
- (b) When the due date passed without payment, a reminder was sent;
- (c) As many Premises had not paid, they were referred to the Board. At its Meeting on 17 November 2014 the Board:
  - (i) determined to make a Review Proposal in respect of each Licence under Section 37 ("Review of Premises Licence on Licensing Board's initiative"), but directed that:
  - (ii) if a PLH paid the fee in full by close of business on Friday 28 November 2014, that case should be withdrawn from the Agenda for the future meeting to consider the Second Stage Review.

All fee defaulters were written to, advising of both of these. Those which paid by the extended date do not appear on the current Agenda. The PLH did not pay by the extended date.

1.3. The Board Meeting will be updated on whether or not the Fee has been paid since.

1.4. The Schedules also inform the Board if there has been any previous default history.

## **2. Ground for Review**

The 'Ground for Review' is that the following Licence Condition has been breached:

*"Any annual or other recurring fee must be paid if required by the regulations."*

(NALB Standard Condition A.7, which repeats one of the Mandatory Conditions: 2005 Act, Schedule 3, Paragraph 10).

## **3. Procedure**

The Board must hear the PLH, and decide the following questions:

***Question (a): "is a Ground for Review established?"***

If 'no', the case ends.

If 'yes', the Board must consider the other questions.

The Steps available are:

**(A) Written Warning;**

**(B) Variation**

The Variation can be either indefinite or for a specific time, and can 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) Suspension**

The Suspension must be for a specific time. While the Licence is suspended, Annual Fees continue to be charged.

**(D) Revocation.**

***Question (b): "are any (one or more) of the Steps A to D necessary or appropriate for the purposes of any of the Licensing Objectives?"***

The Board may take those Steps either on the basis of the original Review Procedure, or on the basis of information obtained in the course of the Review Procedure. The Board may take into account any previous default in the obligation to pay the Annual Fee or to comply with any other requirement of a Licence.

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

***Question (c): "if 'yes', what Licensing Objectives are relevant?"***

The Board might consider that:

- (i) the PLH's action in continuing to breach a Mandatory Licence Condition makes one or more Steps appropriate for the purposes of the "preventing crime and disorder" Licensing Objective;
- (ii) the Fee is an essential part of the Licensing system as only if Boards are properly-funded can they maintain the system of regulation required to ensure that all of the Licensing Objectives are observed.

***Question (d): "if the Licence is Varied, Suspended or Revoked: when should the order take effect?"***

A Variation (Step B) may have immediate effect.

A Suspension or Revocation (Steps C and D) should not have immediate effect unless the Board consider this is necessary in the public interest. Usually these Steps should be postponed to give the PLH the opportunity to appeal to the Sheriff Court:

- unless the Board postpones the Order, it takes effect immediately and is not postponed by an appeal (unlike the 1976 Act), but
- the PLH can ask the Sheriff to recall a Suspension or Revocation pending appeal (this does not apply to a Variation).

The length of the postponement is in the Board's discretion, but 7 days would be a reasonable period.

***Question (e): "if the Licence is Varied, Suspended or Revoked: how long should the order last?"***

***Question (f): "Should the Board delegate to the Clerk the power to revoke any Variation or Suspension (Steps B and C) imposed now or previously if the arrears of Annual Fee are paid in full (whenever those arrears arose, before or after the Board's decision)"***

The Board can revoke a decision to Vary or Suspend if:

- (a) the Holder requests this, and
- (b) the Board is satisfied that, by reason of a change of circumstances, the Variation or Suspension is no longer necessary.

A decision to issue a Written Warning or to Revoke a Licence (Steps A and D) cannot later be revoked.

If revocation is not delegated, the Application for Revocation would have to call at a future Board Meeting and the Variation or Suspension would remain in force meantime, whereas if it is delegated the Variation or Suspension could be lifted as soon as the arrears were paid.



**Premises Licence Review Proposal (Second Stage) - Section 37  
Schedule**

Premises	"Royal Blossom", 44/48 Townhead, Irvine KA12 0BE
Premises Licence Holder	May Lok
Ref.	141

Fee	£280
Due on	1 October 2014
Letter (a)	29 August 2014
Letter (b)	30 October 2014
Letter (c)	21 November 2014

The PLH has not previously breached this condition.



**Premises Licence Review Proposal (Second Stage) - Section 37  
Schedule**

Premises	Glencairn Bar, 42 New St., Stevenston, KA20 3HF
Premises Licence Holder	Kylie McBlane
Ref.	198

Fee	£220
Due on	1 October 2014
Letter (a)	29 August 2014
Letter (b)	30 October 2014
Letter (c)	21 November 2014

The PLH has previously breached the Fee condition, by not paying the Annual Fee due on 1 October 2013 until 2 December.



**Premises Licence Review Proposal (Second Stage) - Section 37  
Schedule**

Premises	"The Keys at Irvine Harbour", 142 Harbour St., Irvine, KA12 8PZ
Premises Licence Holder	Gary MacCulloch
Ref.	370

Fee	£280
Due on	1 October 2014
Letter (a)	29 August 2014
Letter (b)	30 October 2014
Letter (c)	21 November 2014

The PLH has previously breached the Fee condition, by not paying the Annual Fee due on 1 October 2013 until 30 October.



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

Applicant	Arrin Andrew Guthrie, 56 Lawson Drive, Ardrossan KA22 7JL (DOB 30.9.78)
Ref.	NA 1822

#### **1. Summary**

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

A copy of the letter will be given to Members.

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

The information was not supplied by the Applicant, who wrote 'none' in response to the inquiry on the form.

#### **2. Police Recommendation**

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

#### **3. Procedure**

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

At the Hearing, the Board must have regard to

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

#### **4. Board's Powers**

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

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

#### **5. Subsequently**

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

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

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

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

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



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

Applicant	Walcal Property Development Ltd
Premises	The Crown Inn, 38/40 Main Street, Dreghorn, Irvine, KA11 4AH
Ref.	0122

**CONTINUED FROM 17/11/2014****Preliminary**

*This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 7th November 2014*

- 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)**

<b>No.</b>	<b>Variation</b>
1	<i>Sunday hours to change from 12.30 pm to 11.00am (on- and off-sales)</i>
2	<i>Extend under-18 access from Restaurant/Function Room ("Lounge") only to include Public Bar</i>

**2. Changes****Variation of Access terms for Under-18s**

	<b>Current</b>	<b>Proposed</b>
Terms (OP 6(b))	5-17 year olds allowed access at a private function when accompanied by parents	5-17 year olds allowed access when accompanied by an adult.
Times (OP 6(d))	Core times	No change
Parts (OP 6(e))	Restaurant/Function Room ("Lounge") only	Public Bar and lounge area

**3. Issues**

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

<b>Variation 1: Sunday hours to change from 12.30 pm to 11.00am (on- and off-sales)</b>
Grant (no statutory reason to refuse, and no breach of Board policy)

**Variation 2: Extend under-18 access from Restaurant/Function Room ("Lounge") only to include Public Bar**

**Discretionary Refusal**

**Notes:**

The Board would need to be satisfied that the proposal was not inconsistent with the Licensing Objective:

L.O. (e): 'protecting Children from harm'

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

The Board is entitled to view the Premises before making a decision.

There are two issues:

(1) the Applicant proposes to extend access to both "Children" and "Young Persons" (aged 5 - 17). As far as "Children" are concerned, the L.O. applies, and the Board must ask themselves "is the Public Bar a suitable place for under-16s?"

(2) The Public Bar consists of two areas, a seated area and an area with a pool table and darts boards.

The Licence is subject to NALB Standard Conditions, including C.10.3 (d) and (e), which prohibit the playing of darts, pool, snooker or any other game in areas of the Premises to which Children are admitted, and prohibit dartboards, pool tables etc. there. As with any non-mandatory condition, it is always open to the Board to vary or remove it if the change is not inconsistent with a L.O..

Either the Applicant should undertake to exclude under-16s from the pool/darts area, or the Board should decide whether or not those Conditions can be waived.

In addition, Applicant should state an exclusion area around bar: a common example is 'not within one metre of the bar'.

The Layout Plan will be suitably noted to reflect any exclusion area(s).

**4. Licence Conditions**

The Licence was granted subject to Edition 4 of the Board's Standard Conditions - before the most recent revision. The existing Conditions should be replaced by the current Edition 5.

If Variation 2 is granted, the Conditions should be varied as directed by the Board.

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

Licence Holder	Pawitar Singh
Ref.	NA0135

**1. Background**

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

The information was also supplied by the Holder within one month after the date of the conviction.

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

**2. Relevance of conviction**

The Board should consider whether or not the conviction indicates conduct inconsistent with any of the Licensing Objectives:

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting children from harm ('Children' means persons aged under 16, and not 'Young People' aged 16 or 17).

If so:

- (a) the Board should determine which Licensing Objective(s) are relevant,
- (b) Annex C to the Personal Licence should be Endorsed accordingly.

The Board are entitled to Endorse whether or not the offence is a 'Relevant or Foreign Offence' (in terms of The Licensing (Relevant Offences) (Scotland) Regulations 2007 No. 513).

In any case, if the conviction is for such an offence, Annex B to the Personal Licence will be updated in terms of Section 89(4).

**3. Previous history of Licence**

The Licence was granted on 23 December 2008 and has not previously been either Suspended or Endorsed.

#### **4. Procedure**

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

At the Hearing, the Board must have regard to

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

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

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

- (a) Revoke the Personal Licence,
- (b) Suspend the Personal Licence for up to 6 months,
- (c) Endorse the Personal Licence.

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

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

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

Applicant	Iveagh Leisure Ltd., 18-22 Scarva St., Banbridge, County Down
Premises	The Forum Centre, Bridgegate, Irvine
Ref.	NAFECGMP 8

**1. The Law**

1.1. Gaming Machines are categorised in 4 Categories, from A to D, and there are different levels of stakes and prizes for each (set by the Categories of Gaming Machine Regulations 2007, No. 2158, as amended by S.I. 2009 No. 1502).

The limits on stakes and prizes range from Category A (highest) to Category D (lowest). Only Category D machines can be used by under-18s.

For Category D machines, the limits on charges for use and prizes depend on the type of Machine:

	<i>Machine</i>	<i>Maximum stake</i>	<i>Maximum prize</i>
1	<i>Money-prize Machine</i>	<i>10p</i>	<i>£5</i>
2	<i>Crane Grab machine</i>	<i>£1</i>	<i>£50</i>
3	<i>Other Non-Money Prize machine</i>	<i>30p</i>	<i>£8</i>
4	<i>Coin Pusher or Penny Fall machine</i>	<i>20p</i>	<i>£20 (of which no more than £10.00 may be a money prize)</i>
5	<i>Any other machine</i>	<i>10p</i>	<i>£8 (of which no more than £5.00 may be a money prize)</i>

1.2. 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.

1.3. However, if Premises are to use only Category D machine, then 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, or if the Board notify the Permit Holder that the premises are not being used as a "Family Entertainment Centre").

1.4. The Board has no power to revoke or suspend the Permit, and the Permit is not subject to Conditions. The Permit does not limit the number of machines on the Premises. The only 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.

## 2. The Present Application: Preliminary issue of competency

2.1. Section 238 defines "family entertainment centre":

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

Accordingly Gaming Machines may not be installed in places such as taxi offices, chip shops and late night refreshment outlets where the primary business operation is not gambling.

2.2. The Forum Centre is a shopping centre consisting of a large building with many individual businesses in accommodation units, accessed from aisles.

2.3. The Application does not require to contain a Layout Plan but the Clerk has pointed out the competency issue to the Applicant and has asked for a plan, under 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"*

2.4. If the proposal is to place Gaming Machines in the public spaces of the shopping centre, as opposed to use the whole of the Premises for that purpose, then the Premises fail to satisfy the requirement that of being "wholly or mainly used for making gaming machines available for use", and the Application should be refused as incompetent.

2.5. Even if the Applicant is competent, the Board has a discretion to grant or refuse it, and is entitled to know how many machines are to be used, of what types, and where they will be. The Board might, for example, be prepared to grant a Permit for a demarcated area of the building, on the understanding that only a fixed number of machines would be used there, but if the Applicant has given little information about the proposal then the Board cannot make an informed exercise of that discretion.

## 3. Under-18s

3.1. 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, and*

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

3.2. On (a), the Licensing Objective which appears relevant is (c):

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

3.3. As defined by Section 45(1) "child" means an individual who is less than 16 years old, and not to older 'Young People'. However, the Board has previously decided that the category 'vulnerable persons' includes 'Young Persons' (aged 16 or 17).

The Board's Statement of Principles 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)."*

#### **4. The Board's Policy**

4.1. The Board has stated its policy in relation to:

(a) gambling generally, and

(b) on UFEC Permits in particular.

#### **General Approach to Gambling**

4.2. The Board's Statement of Principles includes:

*"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."*

#### The Board's Approach to UFEC Permits

4.3. 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."*

## **5. Gambling Commission views**

The Board should have regard to the letter from the Gambling Commission dated 29 October 2014, which was copied to the Applicant on 2 December 2014. Members will be given copies.

This letter makes general observations about the type of operation (wherever in the UK it happens to be), as opposed to comments about the Applicant's proposal in particular, so it should not be treated by the Board as a Representation. The Board should still regard this as relevant guidance.

## **6. Issues**

6.1. If the Application is to be granted, the Applicant should:

- (a) identify the permitted area by reference to a Layout Plan;
- (b) specify how many Gaming Machines may be used;
- (c) specify the types of Machines to be used - the money involved in certain Category D Machines is higher than for others:
  - Crane Grab machine (maximum stake £1, maximum prize £50)
  - Coin Pusher or Penny Fall machine (maximum stake 20p, maximum prize £20);
- (d) specify how that permitted area should be separated and demarcated from the remainder of the building;

6.2. The Applicant should demonstrate to the Board how the proposed operation will include adequate protection for under-18s. Possible questions are:

- (a) will Machines be continuously supervised to ensure that under-18s do not spend more than a specified amount of time or money using Machines?
- (b) what amounts of time and money are proposed?
- (c) who will do monitor this?
- (d) who will the day-to-day manager be? The Applicant should identify him/her, giving:

his/her full name

date of birth

place of birth

all addresses in the past 5 years

details of experience in operating such Premises.

(unlike other types of Licensing, a Permit does not require the prior designation of a Premises Manager, or require that he/she should hold a Personal Licence, so unless the Applicant specifies who will manage the Premises, and undertakes that the Board will be given such details for whoever is the manager at any time, there is no way of the Board being satisfied that it is likely that the Premises will operate continuously consistently with the Licensing Objectives).

- (e) What policies will the Applicant issue to staff?
- (f) What arrangements does the Applicant have for staff training, to ensure as far as practicable that any guidance is implemented?

6.3. Concerning the issues raised by the Commission:

- (a) who will supply the Premises' machines?
- (b) has the Applicant checked that the suppliers are on the Commission's list?
- (c) What steps will the Applicant itself take to establish that any machines to be used are within Category D (not simply accepting the representation of the supplier)
- (d) on the Skills-with-Prizes issue (point 6 in their letter), what types of machines is the Applicant proposing?

**7. Conclusion**

If the Application is to be granted, the Board may wish:

- (a) to identify the permitted area by reference to a Layout Plan;
- (b) to specify how many Gaming Machines may be used;
- (c) to specify what types of Machines may be used;
- (d) to specify how that permitted area should be separated and demarcated from the remainder of the building.

**Report to North Ayrshire Licensing Board**

**by**

**Solicitor (Licensing)**

<b>Subject</b>	<b>Public Records (Scotland) Act 2011</b>
<b>Purpose</b>	<b>To update Members on the current position</b>
<b>Recommendation</b>	<b>That Members delegate authority to the Clerk to prepare, submit and implement a Records Management Plan</b>

1. The Public Records (Scotland) Act 2011 lists Authorities (including Licensing Boards and Local Authorities) which require to:

- (a) prepare a "Records Management Plan" setting out proper arrangements for the management of the Authority's Public Records,
- (b) submit the plan to the Keeper of the Records of Scotland for agreement, and
- (c) ensure that its Public Records are managed in accordance with the plan as agreed with the Keeper.

2. The Plan for NAC and NALB have to be submitted by 31 March 2015. NAC's Plan will be submitted by the Chief Executive. It is likely that the Keeper will accept a combined Plan from both NAC and NALB, making appropriate references to the different legal positions of each. The Board is invited to delegate to the Clerk authority to do whatever is required in relation to the preparation, submission and implementation of a Plan (whether it is a combined Plan covering both NAC and NALB or a stand-alone Plan prepared for NALB).

3. Alternatively, the draft Plan could be placed before the Board at its meeting on 2 March 2015.



## Report to North Ayrshire Licensing Board

by

Solicitor (Licensing)

<b>Subject</b>	<b>Annual Meeting with Local Licensing Forum</b>
<b>Purpose</b>	<b>To update Members on the current position</b>
<b>Recommendation</b>	<b>That Members note the position</b>

**CONTINUED FROM 17/11/2014**

1. Licensing (Scotland) Act 2005, Section 10(3) is:

*"Each Licensing Board must hold, at least once in each calendar year, a joint meeting with the Local Licensing Forum for the Board's area."*

2. The general functions of Local Licensing Forums are stated in Section 11:

(a) keeping under review—

(i) the operation of the 2005 Act in the Forum's area, and,

(ii) in particular, the exercise by the Board of their functions, and

(b) giving such advice and making such recommendations to the Board in relation to those matters as the Forum considers appropriate.

3. The Licensing Board must, in exercising any function, have regard to any advice given, or recommendation made, to them in relation to the function by a Local Licensing Forum (Section 12(1)(a)). If the Board decide not to follow that advice or recommendation, they must give the Forum reasons (Section 12(1)(b)).

4. There has not been an occasion for the Board to give reasons to the Forum, since the Forum cannot comment on particular cases, but there is a possibility:

The Forum can advise the Board on general Policy matters. The Law permits a Board to have a Policy, but requires the Board to allow for the possibility of exceptions. Therefore each particular case is assessed on its merits. If the Board regularly made exceptions, it might be thought that the Policy itself was undermined. The Forum might then request a Statement of Reasons. The Forum's request would be considered by the Board, so that the Board could state its reasons.

5. The Forum is an advisory body. It can comment on general Policy, e.g. it is included in the Consultations leading to the Board's adoption of their Licensing Policy Statement. However, the Forum is prohibited from commenting on the Board's functions in relation to a particular case, e.g. an Application for a new Licence or the variation of an existing Licence is intimated to the Police, Health Board, Community Council etc., but not to the Forum.

6. The Forum will have its usual meeting at 9.00 a.m. on Monday 17 November 2014. After the Board's usual meeting starting at 10.00 a.m. that day, members of both Board and Forum will meet together whenever the Board's other business is finished, as required by Section 10(3). The joint meeting will be in public (Schedule 1, Paragraph 12(2) and Schedule 2, Paragraph 5(3)).

#### Overprovision and Occasional Licences

7. The Forum is raising this issue. The Board cannot take Overprovision into account when determining an OL Application.

OLs are excluded from consideration when the Board is assessing Overprovision for the purpose of their Licensing Policy Statement. Section 7 of the 2005 Act ("Duty to assess Overprovision") includes:

*"7(5) In this section, references to "Licensed Premises" do not include references to any Premises in respect of which an Occasional Licence has effect."*

For OLs, the "Grounds for Refusal" are stated in Section 59(6), and are (briefly):

- (a) The Premises are "Excluded Premises" (generally, motorway service stations, or garages)
- (b) There is a Mandatory refusal ground (24-hour Licences and off-sales outside 10 a.m. - 10 p.m. are prohibited)
- (c) The Application is inconsistent with any of the Licensing Objectives,
- (d) The Premises are unsuitable.

These grounds are similar to the grounds for refusing a "Premises Licence", except that there is no over-provision ground for OLs.

The Alcohol (Scotland) Act 2010, Section 13(3)(b) added breach of the 'Occasional Licence Limit' as a further Mandatory refusal ground. That provision was commenced in October 2011 but the Regulations setting the limit have never been made.

Applications for OLs are intimated to the Police and LSO but not (unlike Premises Licences) the Health Board. The Health Board is in the same position as any member of the public: all OL Applications are advertised on the Board's website, and anyone can make objections or representations within 7 days (unlike Premises Licences, where the period is 21 days).

In the absence of an adverse Report from the LSO or an Objection or Representation, the Board has no alternative but to grant. The Board's views about Overprovision in their LPS would not be relevant, given Section 7(5), and the Board would not be entitled to take account of any advice or recommendation from the Forum.

If an Objector objected to a particular Application, contending that it was inconsistent with a Licensing Objective (e.g. "preventing the Crime and Disorder" or "protecting and improving Public Health"), the case would be determined by:

- (a) a Board Meeting or

(b) the Convenor, Vice-Convenor or another Board Member under the special arrangements for urgent cases.

Since OLs are typically applied for only a few weeks before the proposed event, and the Board themselves meet only 6 times a year, it is likely that the 'urgent cases' procedure would be needed.

