

Cunninghame House  
Irvine  
KA12 8EE

10 September 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 16 September 2019 at 10.00 A.M.** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

- 1. 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)
- 2. Consideration of NALB Policy for Festive Period 2019-2020**  
Submit report to the Licensing Board regarding Occasional Extensions and Occasional Licences during the Festive Period 2019-2020. (copy enclosed)
- 3. Public Health Report**  
Submit Report to inform the Licensing Board of the most recent MESAS Report ("Monitoring and Evaluating Scotland's Alcohol Strategy): Monitoring Report 2019. (copy enclosed)

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**Licensing Board**

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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:

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## **Agenda Item 1**

**16 September 2019**

### **North Ayrshire Licensing Board**

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<b>Title:</b>	<b>Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005.</b>
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<b>Purpose:</b>	To advise the Board of the Law and the factual background.
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<b>Recommendation:</b>	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

<b>Financial:</b>	There are possible financial implications in relation to any Licensing decision.
<b>Human Resources:</b>	None.
<b>Legal:</b>	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.
<b>Equality/Socio-economic Duty:</b>	<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"><li>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];</li><li>(b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;</li><li>(c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it."</li></ul> <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>

<b>Children and Young People:</b>	None.
<b>Environmental &amp; Sustainability:</b>	None.
<b>Key Priorities:</b>	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".
<b>Community Benefits:</b>	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**

<b>Case No.</b>	<b>Licence No.</b>	<b>Applicant/Licence Holder</b>	<b>Premises</b>	<b>Comments</b>
1.	0505	Cita Tapas Ltd	Cita Tapas Ltd 1 Cubrieshaw Street West Kilbride KA23 9AY	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 Continued from 3/6/19
3.	0189	Iceland Foods Limited	Iceland Foods Limited 90/106 High Street Irvine KA12 0AX	Application for Variation of Premises Licence – Section 29
4.	0312	Lodge St John (Kilwinning) Largs No. 173 Social Club	Lodge St John (Kilwinning) Largs No. 173 Social Club 46 Frazer Street Largs KA30 9HP	Application for Variation of Premises Licence – Section 29
5.	0017	Balwant Singh Narwal	Keir Hardie Store Unit 1, Keir Hardie Road Stevenston KA20 4HD	Application for Variation of Premises Licence – Section 29
6.	0279	Ardrossan Academicals Rugby Football Club	Ardrossan Academicals Rugby Football Club Memorial Field Sorbie Road Ardrossan KA22 8AP	Application for Variation of Premises Licence – Section 29
7.	0211	Cecchini Limited	Cecchini Bar Bistro & Restaurant 5 Dock Road Ardrossan KA22 8DA	Application for Variation of Premises Licence – Section 29
8.	0418	The Douglas Hotel Arran Ltd	The Douglas Hotel Broddick Isle of Arran KA27 8AW	Application for Variation of Premises Licence – Section 29

9.	0029	Messrs Reid and Mochan	Cross Keys Bar 1 Fullerton Place Stevenston KA20 3EH	Application for Variation of Premises Licence – Section 29
10.	0375	Darwin (Dundonald) Limited	Dundonald Links Ayr Road Irvine KA12 8DJ	Application for Transfer of Premises Licence – Section 34 Application for Variation of Premises Licence – Section 29
11.	NA2596	Mandy Walker		Application for Grant of Personal Licence – Section 74
12.	0051	Partnership of M & S Burnham	Elms Bar 21 Raise Street Saltcoats KA21 5JX	Premises Licence Review Application – Section 36
13.	NA2505	Elaine McGinn		Personal Licence Review Hearing – Section 84A

# CASE 1

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

Applicant	Cita Tapas Ltd.
Premises	"Cita Tapas", 1 Cubrieshaw Street, West Kilbride, KA23 9AY
Ref.	505

### **Preliminary**

1	<i>This Report was prepared provisionally before the end of the Site Notice display period, which ends on 30 August 2019.</i>  <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>
2	<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>

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

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL). 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 proposal is for a Spanish-style tapas bar and restaurant seating 44 customers in the former station building at West Kilbride Railway Station. The building previously traded as "Chu Chu's" (NALB ref. 106) but the building in 2012 and the Premises Licence lapsed.

The building has a single storey. The station carpark is to the east, the railway platform to the west, and residential housing borders the land. The station building is separated from the housing by a wooden fence.

The Premises propose to provide tea, coffee and soft drinks outside with breakfast from 9.00 a.m..

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 will then have to give the Board both a "Building Control Certificate" and a "Food Hygiene Certificate". A "Food Hygiene Certificate" is needed because there will be a "Food Business" within the Food Safety Act 1990. This Certificate is needed for a shop which sells tinned or packaged food, as well as for a restaurant or any Premises serving prepared food. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

### **2. Detailed proposal**

The Premises have both on-sales & off-sales. Summary of Operating Plan:



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- (a) Licensed Hours
- (b) Capacity
- (c) Activities other than the sale of alcohol
- (d) Access for Under-18s

## **(a) Licensed Hours**

	<b><i>Proposal</i></b>	<b><i>Policy</i></b>
<b>On-Sales</b>		
Monday	11.00 - 24.00	
Tuesday	"	Within Policy
Wednesday	"	on 6 days
Thursday	11.00 - 1.00	Not Sunday, where
Friday	"	Policy is 11.00 - 24.00
Saturday	"	
Sunday	"	
<b>Off-Sales</b>		
The proposal is for 11.00 - 22.00, 7 days a week. This is within NALB Policy.		

## **(b) Capacity**

<b>On-Sales (persons)</b>	44
<b>Standing / Seated</b>	0 / 44 (0% / 100%)
<b>Off-Sales (sq. mtr.s)</b>	<p>Not stated: Premises have a servery bar.</p> <p>Applicant has failed to include this in the mandatory Operating Plan and <u>must</u> advise the Board of the correct figure either in writing or by attending the Board Meeting. Regulations require locations and dimensions of all Off-sales display areas. Dimensions required are length and height. The capacity figure will be added to O.P. 7 if the Licence is granted.</p>

## **(c) Activities other than the sale of alcohol**

	<b><i>Proposal</i></b>
Accommodation	
Conference facilities	
Restaurant facilities	x
Bar meals	x
Receptions (weddings, funerals, birthdays, retirements, etc.)	x
Club or other group meetings	
Recorded music	x
Live performances	x
Dance facilities	
Theatre	

# CASE 1

Films	
Gaming	
Indoor/Outdoor sports	
Televised sport	
Outdoor Drinking	x
Adult entertainment	
<b><i>Other activities</i></b>	
Quiz nights	

## **(d) Access for Under-18s**

Children (aged 0-15) and Young People (16-17) allowed 9.00 a.m. - 22.00 p.m. if with adult who is taking a meal.

## **3. Issues**

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 of the potential Ground(s) for Refusal set out below exist.

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 the Applicant proposes modifications to address the issue(s) raised below, the Board should consider those proposals.

If no Ground for Refusal applies, the Board must grant: Section 23(4)-(5).

The potential Ground(s) for Refusal which may exist are:

- (a) the Application may be inconsistent with the Licensing Objectives
- (b) Overprovision may result from the grant of the Licence

### **(a) the Application may be inconsistent with the Licensing Objectives**

Any decision at the time of grant may be later reviewed if the Board is satisfied that the operation of the Premises is not consistent with any of the Licensing Objectives (Sections 36 - 39). The Board may then take such steps as it considers necessary or appropriate for the purposes of any of the Licensing Objectives. The available actions are:

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

(d) to Revoke the Licence.

## L.O. (a): 'preventing crime and disorder'

The Policy was adopted many years ago and takes into account representations from the Police. It operates throughout North Ayrshire. In general, only nightclubs open after midnight (Sunday to Wednesday) or after 1.00 a.m. (Thursday to Friday). If the Board was to depart from its Policy here, there might be similar requests from all over North Ayrshire.

Any proposal to depart from the Policy on hours requires a consideration of Licensing Objective (c): 'preventing public nuisance' (see below).

The Subject Premises are near a residential area.

## L.O. (c): 'preventing public nuisance'

1. The Applicant seeks an 'Outdoor Drinking Area'.
2. The Board is obliged to take account of two Licensing Objectives:
  - (c): 'preventing public nuisance'
  - (d): 'protecting & improving public health'
3. 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.
4. 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.
5. If the Board is satisfied that any activities on the Premises are likely to cause nuisance, the Board is entitled to ask the Applicant to vary the proposal, e.g. to alter the times or locations of activities which might lead to noise or other nuisance.

6. Unless the Board prohibits the use of land outside the building entirely, the Applicant is free to use it for smoking. If the Board wishes to prohibit all use of the Area (e.g. even for smoking), it may amend the Layout Plan (whether or not it attaches Condition X.4).

7. The Board may take the view that as the Premises are not currently operating it would be premature to speculate that undue nuisance would be likely. If there is later an alleged nuisance, it will be open to anyone (e.g. neighbours):

- to refer the matter to NAC Protective Services under the Environmental Protection Act 1990, Section 80
- to make a Review Application to the Board under 2005 Act, Section 36.

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

*"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 NAC under the Roads (Scotland) Act 1984.

9. In relation to the request for an Outdoor Drinking Area, 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 that the phrase "alcoholic or not" is used 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.

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."

Even if the Board permits the Outdoor Drinking Area initially, and/or alters either Licence Condition, it may review that decision later if satisfied that the operation of that Area is not consistent with that L.O..

## **(b) Overprovision may result from the grant of the Licence**

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.

Paragraph 3.5(d) of the Licensing Policy Statement 2018-2022 is:

*"Where the Premises are in Function Type 4 (On-Sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment), the Board may regard the grant of a new Licence (or Variation of an existing one) as not calling for refusal, on the view that such Premises may not be a significant contributor to overall disorder.*

*However, since the Board:*

- accepts that the consumption of alcohol in any circumstances has the potential to injure health, and*
- endorses the view that "alcohol is not an ordinary commodity",*

*it may refuse the Application here also. 'Meal' means a substantial meal eaten at a table, counter or other structure which serves the purpose of a table, and is available at all times until 45 minutes before the terminal licensed hour."*

Accordingly, while the Board is entitled to refuse the Application due to Overprovision, it is not bound to do so, so the present Report omits the usual details about the Policy. If the Board considers that this is an issue which should be investigated, the case could be continued.

## **4. Observations**

Exclusion area around bar: The Applicant should confirm that these words can be added to the Operating Plan (OP 6(e)):

*"No person under 18 will be permitted to remain within 1 metre of any bar."*

Reason: the Licensing Objectives "preventing crime and disorder" and "protecting children and young persons from harm".

## **5. Summary of issues for Board**

The Board should consider whether or not

- (a) the Premises Licence should be granted.

- (b) the Licensed Hours outside Policy should be granted.
- (c) the Outdoor Drinking Area can be used at all;
- (d) if so, whether or not, the Outdoor Drinking Area can be used before 11.00 a.m., and if so, from what time and for what purposes.

## **6. Licence Conditions**

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

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

If the Board agreed to vary or remove any of the conditions, the Premises Licence will reflect this.

Extract from Standard Conditions:

### **"C.4 Noise and other nuisances"**

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

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

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

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

# CASE 1

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

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

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

C.4.5 *[deleted]*

C.4.6 *There shall be no disposal of bottles or other waste from the Premises, or the filling of waste receptacles, between the hours of 22.00 on one night and 07.00 the next morning.*

## **C.5 Outdoor Drinking Areas**

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."*

## **7. Notes to Applicant**

The Board's decision is not:

(a) permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Food Safety 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.

(b) a Licence granted by "PRS for Music" (formerly the "Performing Rights Society"). If Live or Recorded music is ever played on Premises for customers or staff (by radio, TV, CD, MP3 or computer speakers) this is a 'public performance' and may need a Licence from the copyright holder.

# CASE 2

## 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. Background**

The Board granted a Provisional Premises Licence under the Licensing (Scotland) Act 2005 on 30 October 2017, and that was confirmed on 6 December 2018.

This Variation Application was first considered by the Board on Monday 3 June 2019. At that time an issue arose under the Planning legislation, and accordingly the Board deferred further consideration while this was resolved. The Council as Planning Authority has now determined that issue, and the Board is now in a position to determine the Application.

### **2. The Applicant's Proposal**

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. Existing 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."*



## CASE 2

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 other soft drinks may be taken into or consumed in the 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 objections or representations, and consider any written comments.

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.

There are two possible "Grounds for Refusal", 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 a 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 (for example, to alter the times or locations of activities which might lead to noise or other nuisance). The Board may also apply Conditions to the Licence (possible Conditions are set out below (see "Possible Licence Conditions").

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

## CASE 2

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:

*"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 restriction that the Premises become uneconomic.

### **8. Other legislation**

Even if the Board grants the variation requested, this would only apply as far as the position under the Licensing (Scotland) Act 2005 was concerned not entitle the Applicant to disregard the requirements of other legislation and the Board's decision would 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).

For example, with an Outdoor Drinking Area the Board applies a condition requiring drinking to stop by 10.00 p.m., but there might be a condition of Planning Permission requiring that the area not be used after 8.00 p.m. or 9.00 p.m.. In that case, the use of the area would have to stop at the earlier time. If the Licence-Holder was then prosecuted for breaching the Planning Permission, it would be no defence to say that the Board could have permitted the use till 10.00 p.m..

## **9. Planning Permission**

### **(a) Original 2017 decision**

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 "designated area" on 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 divided into three areas marked on the proposed Layout Plan and marks the south area as "Area 1", "Area 2" and "Area 3".

### **(b) 2019 Variation Decision**

On 28 August 2019 North Ayrshire Council varied condition 6 of the 2017 Planning Permission by decision N/19/00518/PP. The plan referred to is similar to the proposed Layout Plan, and the variation is as follows:

*"That the additional areas for outdoor smoking, drinking or dining as illustrated on site plan L(01)010 are hereby permitted to operate between the following hours:*

*Area 1 - (for dining and drinking only): 0900 to 2000 hours or sunset, whichever is the sooner;*

*Area 2 - (for dining and drinking to west of footpath adjacent to holly tree, with incidental smoking): 0900 to 2000 hours or sunset, whichever is the sooner;*

*Area 3 - (for dining, drinking and smoking): 0900 to 2100 hours or sunset, whichever is the sooner.*

*For the purposes of this condition, 'sunset' shall be taken to mean the published daily sunset time for Beith, North Ayrshire, as defined by the Met Office.*

*Prior to Area 3 coming into use, a timber fence as per the approved drawings L(01)010 and (01)012 shall be erected and retained thereafter to the satisfaction of North Ayrshire Council as Planning Authority.*

*For the avoidance of doubt, Areas 1, 2 and 3 shall not be used for outdoor smoking, drinking or dining purposes during hours of darkness and shall not be illuminated (other than for the purposes of safety of persons entering and leaving the premises)."*

## **10. Possible Licence Conditions**

## CASE 2

The Board is entitled to vary the conditions (Section 30(6)), no variation of the Condition C.5.1 (loudspeakers etc.) is necessary.

In relation to Condition C.5.2 (times of drinking), the condition could be replaced by:

*"C.5.2 These conditions apply to the use of the four Outdoor Drinking Areas shown on Layout Plan (01)005 Revision D.*

(a) *Definitions:*

*"The North Area" - the small area immediately adjacent to the north side of the building;*

*"Area 1", "Area 2", "Area 3" - areas to the south of the site and so marked on the Layout Plan ("the South Areas");*

*"Incidental Smoking" - smoking by persons passing through from one outdoor area to another, or persons entering/leaving the premises.*

*"Designated Smoking Area" - an area where persons staying there for dining and/or drinking may smoke.*

*"Sunset" - the published daily sunset time for Beith, North Ayrshire, as defined by the Met Office.*

*"Premises" includes any of the four Outdoor Drinking Areas.*

(b) *In all four areas: no drinks (alcoholic or not) shall be taken into or consumed in these areas earlier than 11.00 a.m. and later than 10.00 pm., **except** that teas, coffees and other non-alcoholic drinks may be taken into or consumed in any of those four areas from 09.00 a.m.*

(c) *In the South Areas:*

*Area 1 may only be used for dining and/or drinking (but not smoking) between 09.00 to 20.00 hours or Sunset, whichever is the sooner;*

*Area 2 may only be used for dining and/or drinking and/or Incidental Smoking between 09.00 to 20.00 hours or Sunset, whichever is the sooner;*

*Area 3 may only be used for dining and/or drinking and/or as a "Designated Smoking Area" between 09.00 to 21.00 hours or Sunset, whichever is the sooner. Area 3 shall not be used without a timber fence erected and retained to the satisfaction of North Ayrshire Council as Planning Authority.*

(d) *the South Areas shall not be used at all after Sunset other than for the purposes of entering and leaving the Premises;*

(e) *the South Areas shall not be illuminated after Sunset other than for the purposes of safety of persons entering and leaving the Premises.*

## CASE 2

(f) *No Fireworks may be used on the Premises.*"

### **11. Further action**

Even if the Board permits the Outdoor Drinking Areas in the South Areas initially, it may review that decision later if satisfied that the operation of that Area is not consistent with the L.O. on Review Application by any resident under Section 36.

# CASE 3

## Application for Variation of Premises Licence - Section 29

Applicant	Iceland Foods Limited
Premises	Iceland Foods, 90/106 High Street, Irvine, KA12 0AX
Ref.	0189

### 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	Increase terminal hour for off-sales to 22.00 (all week).
2	Allow recorded music both inside and outside Core Hours
3	Amend activity description in OP5
4	Amend activity description in OP5(f)

## 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: Increase terminal hour for off-sales to 22.00 (all week)***

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.

The Premises are licensed for off-sales only. The current Licensed Hours are 10.00 - 21.00 all week. The proposal is to increase to 22.00, which is within Board Policy, which permits the maximum off-sales hours allowed by Section 65 (10.00 a.m. to 10.00 p.m.).

### ***Variation 2: Allow recorded music both inside and outside 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 3: Amend activity description in OP5***

## CASE 3

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.

The proposed addition is:

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

### ***Variation 4: Amend activity description in OP5(f)***

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.

The proposal is to replace the existing wording with:

*"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 ecommerce systems, subject to compliance with sections 118 and 120 of the Licensing (Scotland) Act 2005. The Premises will also, on occasion, be used to launch new products and have product sampling and food-tasting events and host friends and family membership evenings."*

The existing wording is:

*"Sale of groceries including fresh and frozen foods. The sale of alcohol by retail for consumption off the premises as ancillary to the sale of groceries. The above shall include deliveries made using our home delivery and ecommerce systems."*

The Sections referred to are:

- 118 - Prohibition of unauthorised sale of Alcohol on Moving Vehicles
- 120 - Prohibition of late-night deliveries of Alcohol

On 5 September 2016 the Board granted 3 variations:

1. allow Sunday off-sales from 10 am
2. increase terminal hour to 21.00 (all week)
3. add home delivery

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

No variation of the Conditions is appropriate.

# CASE 4

## Application for Variation of Premises Licence - Section 29

Applicant	Lodge St. John (Kilwinning) Largs No. 173
Premises	Social Club, 46 Frazer Street, Largs, KA30 9HP
Ref.	312

### **Preliminary**

*This Report was prepared provisionally before the end of the Site Notice display period, which ends on 30 August 2019. The Applicant must lodge the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.*

*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.*

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

No.	Variation
1	<i>Vary opening hours for on-sales to 11.00 a.m. all 7 days</i>

The Premises are licensed for on-sales only. The current and proposed Licensed Hours are:

	<b>Current</b>	<b>Proposed</b>
Monday	11.30 - 24.00	11.00 - 24.00
Tuesday	11.30 - 1.00	11.00 - 1.00
Wednesday	11.30 - 24.00	11.00 - 24.00
Thursday	11.30 - 24.00	11.00 - 24.00
Friday	11.30 - 1.00	11.00 - 1.00
Saturday	11.30 - 1.00	11.00 - 1.00
Sunday	12.30 - 24.00	11.00 - 24.00

The proposal is within Board Policy on opening times. The Policy is 11.00 a.m. each day.

The Application form includes:

*"This would be to allow our members to view sporting events. The club has recently invested significantly in several sports channels and a number of these foreign and domestic sports have an earlier start time than our current licensed hours."*

### **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,



## CASE 4

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 opening hours for on-sales to 11.00 a.m. all 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.

### **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 of the statutory mandatory conditions (this will be noted on any Premises Licence and Summary issued later).

### **4. Notes to Applicant**

The Board's decision is not:

(a) 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 Licensing Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(b) a Licence granted by the copyright holder of video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers) this is a 'public performance' and may need a Licence from "PRS for Music" (formerly the "Performing Rights Society") or the maker of the programme or recording. The Licensing Board does not deal with this.

# CASE 5

## Application for Variation of Premises Licence - Section 29

Applicant	Balwant Singh Narwal
Premises	"Keir Hardie Store", Unit 1, Keir Hardie Road, Stevenston, KA20 4HD
Ref.	017

### **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)**

<b>No.</b>	<b>Variation</b>
1	<i>Increase off-sales hours from 9.00 p.m. to 10.00 p.m. (all week)</i>

The Premises are licensed for off-sales only. The current and proposed Licensed Hours are:

	<b>Current</b>	<b>Proposed</b>
Monday	10.00 - 21.00	10.00 - 22.00
Tuesday	"	on all 7 days
Wednesday	"	
Thursday	"	
Friday	"	
Saturday	"	
Sunday	"	

The proposal is within Board Policy, which permits the maximum off-sales hours allowed by Section 65 (10.00 a.m. to 10.00 p.m.).

## **2. Issues**

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

***Variation 1: Increase off-sales hours from 9.00 p.m. to 10.00 p.m. (all week)***

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.

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

No variation of the Conditions is appropriate.

### **4. Notes to Applicant**

The Board's decision is not:

(a) 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 Licensing Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(b) a Licence granted by the copyright holder of video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers) this is a 'public performance' and may need a Licence from "PRS for Music" (formerly the "Performing Rights Society") or the maker of the programme or recording. The Licensing Board does not deal with this.

# CASE 6

## Application for Variation of Premises Licence - Section 29

Applicant	Ardrossan Academicals Rugby Football Club
Premises	Clubhouse, Memorial Field, Sorbie Road, Ardrossan, KA22 8AP
Ref.	279

### **Preliminary**

*This Report was prepared provisionally before the end of the Site Notice display period, which ends on 30 August 2019. The Applicant must lodge the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.*

*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.*

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

<b>No.</b>	<b>Variation</b>
1	<i>Extend under-18 access</i>
2	<i>Add Outdoor Drinking Area</i>
3	<i>Sunday opening to be 11.00 a.m. (see V6)</i>
4	<i>Increase Closing Hours on Sunday - Wednesday to Policy of 24.00 midnight</i>
5	<i>Allow ODA to be used before 11.00 for tea, coffee and soft drinks</i>
6	<i>Allow early-opening from 8.00 a.m. on Sat &amp; Sun for certain fixtures.</i>

### **2. Issues**

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

#### ***Variation 1: Extend under-18 access***

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.

The proposal is to allow Children (aged 0-15 years) and Young People (16-17) access to all areas of the Clubhouse during Core Hours when supervised by parents.

#### ***Variation 2: Add outdoor drinking area***

## CASE 6

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 granted an Outdoor Drinking Area on 8 February 2011 which was immediately to the east of the Premises (on the playing fields side), bounded:

on the west: by the Function Suite and Lounge;  
on the south: 12 metres;  
on the east: 27.5 metres;  
on the north: 14.9 metres.

The Board attached an additional condition:

*"All alcohol shall be decanted into plastic containers prior to being taken outside for consumption within the Outdoor Drinking Area."*

The 2019 proposal relates to a terrace extending from the Lounge over part of the 2011 Outdoor Drinking Area. The terrace can only be accessed from the Lounge, and the Applicant requests that the 'plastic containers' condition should no longer apply on the new terrace.

It is not clear from the Application whether

[1] this terrace is to replace the 2011 ODA altogether, or

[2] the 2011 area is to be divided into

- the terrace, and
- the remaining part of the 2011 area, so far as not built on.

The Applicant should confirm which. If [1], the condition can simply be deleted. If [2], the condition can be amended to:

*"Except where alcohol is to be consumed on the terrace licensed by the Board on [Meeting date in 2019], all alcohol shall be decanted into plastic containers prior to being taken outside for consumption within the Outdoor Drinking Area."*

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

The Board 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.

## CASE 6

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.

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

### ***Variation 3: Sunday opening to be 11.00 a.m. (see V6)***

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.

The Licence currently permits the Premises to open at 11.00 a.m. six days a week but 12.30 p.m. on Sundays.

This may be a historical consequence of the 2009 Transition from the old Licensing legislation, which made the same distinction in setting "Permitted Hours", which for Sundays were 12.30 - 14.30 and 18.30 - 23.00 (Licensing (Scotland) Act 1976, Section 53). Premises could only get 'grandfather rights' if they applied, under the new Licensing legislation, for hours within their existing entitlement. Most Premises in North Ayrshire have since applied for hours according to the Board's Policy, which does not continue the same distinction between Sundays and other days.

The Application Form gives the reason for the request "for events like Christenings etc." but the variation would apply every Sunday, regardless of whether there was an event happening, unless the Board considers that a restriction is needed.

### ***Variation 4: Increase Closing Hours on Sunday - Wednesday to Policy of 24.00 midnight***

## CASE 6

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.

The Licence currently permits the Premises to open until 11.00 p.m. on 4 days, Wednesday to Sunday. The proposal is to increase the hours to those allowed by Board Policy, 24.00 midnight.

There is no proposal to change the terminal hours on the other days, which remain:

Thursday: midnight

Friday & Saturday: 1.00 a.m.

### ***Variation 5: Allow ODA to be used before 11.00 for tea, coffee and soft drinks***

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.

The Board should not grant this Variation unless satisfied that no nuisance will be caused to neighbouring occupiers.

The Board's Standard Conditions relating to Outdoor Drinking Areas include:

*"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.

It is common for the Board to agree, on a case-by-case basis and after consideration of the particular proposal to vary the Condition to permit early use of such areas, 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. a.m."*

### ***Variation 6: Allow early-opening from 8.00 a.m. on Sat & Sun for certain fixtures.***

Advice: The Board should refuse this proposal, not because it is objectionable in principle, but rather because the legislation prescribes a procedure for 'occasional extensions' and so the Licence Variation procedure cannot be used.

## CASE 6

The proposal is to open on Saturdays and Sundays only during Rugby World Cups and/or British Lions Tours when the tournament is outwith Europe and the kickoff is before 11.00 a.m..

The procedure the Applicant should use is regulated by Section 68 of the Licensing (Scotland) Act 2005. This allows the holder of a Premises Licence to apply to the Board for a grant of Extended Hours as and when these are needed. The Licence Holder should apply to the Board at least 28 days in advance of the event. The fee is set by the Scottish Government, and is currently £10 per Application. The Application is sent to the Police and the Board's Licensing Standards Officer, and assuming there is no objection then the Extended Hours are granted under Delegated Powers. It is rare for these Applications to require a Hearing at the Board.

The Board's website contains information on Extended Hours and an Application Form:

<https://www.north-ayrshire.gov.uk/business/licences-and-permits/food-alcohol-gambling/licences/extension-of-hours.aspx>

### **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 of the statutory mandatory conditions (this will be noted on any Premises Licence and Summary issued later).

If the Board allows opening of the ODA before 11.00 a.m., Condition C.5.2 should be varied as agreed.

### **4. Notes to Applicant**

The Board's decision is not:

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

(b) a Licence granted by the copyright holder of video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers) this is a 'public performance' and may need a Licence from "PRS for Music" (formerly the "Performing Rights Society") or the maker of the programme or recording. The Licensing Board does not deal with this.



# CASE 7

## Application for Variation of Premises Licence - Section 29

Applicant	Cecchini Ltd.
Premises	"Cecchini Bar Bistro & Restaurant", 5 Dock Road, Ardrossan, KA22 8DA
Ref.	211

### Preliminary

*This Report was prepared provisionally before the end of the Site Notice display period, which ends on 30 August 2019. The Applicant must lodge the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.*

*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.*

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

No.	Variation
1	Allow ODA to be used from 9.00 a.m. for tea, coffee and soft drinks
2	Disapply Board conditions requiring capacity & toilet checks
3	Add 'club & other group meetings' to Operating Plan

### 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: Allow ODA to be used from 9.00 a.m. for tea, coffee and soft drinks***

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.

The Board should not grant this Variation unless satisfied that no nuisance will be caused to neighbouring occupiers.

The Board's Standard Conditions relating to Outdoor Drinking Areas include:

*"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.

## CASE 7

It is common for the Board to agree, on a case-by-case basis and after consideration of the particular proposal to vary the Condition to permit early use of such areas, adding to C.5.2 words such as:

*"except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 9.00. a.m."*

### ***Variation 2: Disapply Board conditions requiring capacity & toilet checks***

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.

The Board should be satisfied that granting the Variation will not be inconsistent with any of the Licensing Objectives.

The Conditions are:

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

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

and:

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

*C.12.3 A written record of such inspections should be kept and displayed in the toilets (Condition A.16.1 (Records) shall not apply);*

### ***Variation 3: Add 'club & other group meetings' to Operating Plan***

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.

## **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 of the statutory mandatory conditions (this will be noted on any Premises Licence and Summary issued later).

If the Board allows opening of the ODA before 11.00 a.m., Condition C.5.2 should be varied as agreed.

### **4. Notes to Applicant**

The Board's decision is not:

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

(b) a Licence granted by the copyright holder of video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers) this is a 'public performance' and may need a Licence from "PRS for Music" (formerly the "Performing Rights Society") or the maker of the programme or recording. The Licensing Board does not deal with this.

# CASE 8

## Application for Variation of Premises Licence - Section 29

Applicant	The Douglas Hotel Arran Ltd.
Premises	The Douglas Hotel, Shore Road, Brodick, Isle of Arran KA27 8AW
Ref.	418

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

<b>No.</b>	<b>Variation</b>
1	<i>Add further outdoor drinking area to those already licensed</i>

### **2. Issues**

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

#### ***Variation 1: Add further outdoor drinking area to those already licensed***

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 Applicant lodged a copy of the Layout Plan with the variation application on 26 July 2019. Copies will be given to Members.

The Premises already have several outdoor drinking areas, coloured green on that Layout Plan. The proposal is to add a further area, coloured blue. This area adjoins one of the Premises' areas already licensed.

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

No variation of the Conditions is appropriate.

# CASE 9

## Application for Variation of Premises Licence - Section 29

Applicant	Messrs. Reid and Mochan
Premises	"Cross Keys Bar", 1 Fullerton Place, Stevenston, KA20 3EH
Ref.	029

### **Preliminary**

*This Report was prepared provisionally before the end of the Site Notice display period, which ends on 30 August 2019. The Applicant must lodge the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.*

*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.*

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

<b>No.</b>	<b>Variation</b>
1	On-Sales to start at 10.00 a.m. on Sunday
2	Add sale of hot food in on-sales

### **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: On-Sales to start at 10.00 a.m. on Sunday***

The Premises already open at 10.00 a.m. 6 days a week, but at 12.30 p.m. on Sundays. Following an earlier Variation granted in June 2019, the Premises exclude under-18s.

Advice: the Board should not make a decision to grant or refuse without a Report from the Chief Constable. If a Report is not available in time for the Board Meeting, the Application should be continued to a later date.

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**

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

### Considerations:

The Board has to consider any proposal in relation to the Licensing Objectives. The L.O.s relevant here is are:

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance.

The Board is expressly instructed to consider the Licensing Objectives. Section 30(4) is:

*"In any Variation Application, the Board must consider whether any of the Grounds for Refusal applies and—*

*(a) if none of them applies, the Board must grant the Application,*

*(b) if any of them applies, the Board must refuse the Application."*

One of the "Grounds for Refusal" is:

*"that the Licensing Board considers that the granting of the Application would be inconsistent with one or more of the Licensing Objectives"*

So the Board should not make a decision one way or the other without having enough information to allow it to be satisfied that the proposal is, or is not, inconsistent with one or more of the Licensing Objectives.

The Policy on Licensed Hours was adopted many years ago and takes into account representations from the Police. It operates throughout North Ayrshire. In general, on-sales do not open before 11.00 a.m. unless the Board has specifically allowed this, and only nightclubs open after midnight (Sunday-Wednesday) or 1.00 a.m. (Thursday-Friday). If the Board was to depart from its Policy here, there might be similar requests from all over North Ayrshire.

The Subject Premises are a public house in a mixed residential/commercial area.

Any proposal to depart from the Policy on Licensed Hours requires a consideration of Licensing Objective (c): 'preventing public 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.

### ***Variation 2: Add sale of hot food in on-sales***

Advice: the Board should not make a decision to grant or refuse without a Report from the Council's Environmental Health officers. If a Report is not available in time for the Board Meeting, the Application should be continued to a later date.

The Board has a discretion to grant or refuse this request and should make a decision after hearing the Applicant and any objectors, and taking into account the considerations set out below.

#### Considerations:

The Board has to consider any proposal in relation to the Licensing Objectives. The L.O. relevant here is (d) : 'protecting & improving Public Health'.

If this proposal had been part of the original Application to Grant the Premises Licence, the Applicant would have had to obtain a "Food Hygiene Certificate" from the Council's Environmental Health officers, and the Board could not have granted the Licence without one.

This requirement for a Certificate does not arise at the Variation stage, after grant, but the purpose of requiring a Certificate remains: protecting public health. While the Board is prohibited from applying Licence conditions which relate to a matter (such as planning, building control or food hygiene) which is regulated under another enactment (Section 27(7)(c)), this does not mean that it should ignore the possible effects on Public Health. The Food Safety legislation regulates the supply, storage and preparation of food, and the Board cannot impose conditions to cover these things, but there is a necessary overlap since the Board is expressly instructed to consider the Licensing Objectives. Section 30(4) is:

*"In any Variation Application, the Board must consider whether any of the Grounds for Refusal applies and—*

*(a) if none of them applies, the Board must grant the Application,*

*(b) if any of them applies, the Board must refuse the Application."*

One of the "Grounds for Refusal" is:

*"that the Licensing Board considers that the granting of the Application would be inconsistent with one or more of the Licensing Objectives"*

So the Board should not make a decision one way or the other without having enough information to allow it to be satisfied that the proposal is, or is not, inconsistent with one or more of the Licensing Objectives.

### **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 of the statutory mandatory conditions (this will be noted on any Premises Licence and Summary issued later).

### **4. Notes to Applicant**

The Board's decision is not:

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

(b) a Licence granted by the copyright holder of video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers) this is a 'public performance' and may need a Licence from "PRS for Music" (formerly the "Performing Rights Society") or the maker of the programme or recording. The Licensing Board does not deal with this.



# CASE 10

## Application for Transfer of Premises Licence - Section 34 Application for Variation of Premises Licence - Section 29

Applicant	Darwin (Dundonald) Ltd.
Premises	Dundonald Links Golf Club, Ayr Road, Irvine, KA12 8DJ
Ref.	375

### **Preliminary**

*This Report was prepared provisionally before the end of the Site Notice display period, which ends on 6 September 2019. The Applicant must lodge the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.*

*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.*

## **1. Background**

The Premises have been sold by Loch Lomond Golf Club Ltd., and the new owner wants to make alterations to the Premises.

The holder of the Licence has requested two things of the Board

- (a) Transfer, whether or not the Board agrees to the proposed Variation.
- (b) Variation of the Licence.

Since the Applicant has stated that the Transfer Application is not contingent on the grant of the Variation Application, the Board must determine the Transfer Application before determining the Variation Application. If the Board refuses the Transfer Application, the Variation Application automatically falls (Section 35(5)).

### **(a) Transfer**

a.1. The Application has been intimated to the Chief Constable, who is obliged to respond to the Board with a Notice stating either that:

- (a) neither the Transferee nor any Connected Person has been convicted of any Relevant Offence or Foreign Offence, or
- (b) that there are such convictions.

In either case, the Chief Constable may recommend that the Board should refuse the Transfer Application, if he considers that it is necessary for the purposes of any of the Licensing Objectives (Sections 33(7) - (9) as substituted by Criminal Justice and Licensing (Scotland) Act 2010).

There is no other consultation, and no display of a Site Notice, for the Transfer part of the Application. For the Variation part, there is the same consultation, Site Notice and scope for objections and representations as applies in other cases involving a Major Variation or the grant of a Premises Licence.

a.2. The Chief Constable:

has advised that there are no relevant convictions and

has not recommended refusal

so the Board is obliged to grant the Transfer Application.

## **(b) Variation**

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

<b>No.</b>	<b>Variation</b>
1	<i>Amend description of premises, removing reference to Members' Club</i>
2	<i>Delete Standard Conditions associated with Members' Clubs</i>
3	<i>Remove Special Provisions under Section 125 for Members' Clubs</i>
4	<i>Appoint a Premises Manager</i>
5	<i>Amend opening for on- &amp; off-sales on Sunday from 12.30 p.m. to 11.00 a.m.</i>
6	<i>Add 'Outdoor Drinking'</i>
7	<i>Vary access arrangements for under-18s</i>
8	<i>Increase occupant capacity from 84 to 120 persons</i>

### **b.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.

#### ***Variations 1,2 & 3:***

***1. Amend description of premises, removing reference to Members' Club***

***2. Delete Standard Conditions associated with Members' Clubs***

### **3. Remove Special Provisions under Section 125 for Members' Clubs**

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

Notes:

Variations 1, 2 and 3: Under the previous owner, the Premises operated as a Members' Club, and accordingly the conditions of the Premises Licence included conditions associated with the statutory provisions giving Special Status to Members' Clubs under Section 125 (Part I of the Board's Standard Conditions).

The present owner does not qualify for the Special Status, so these conditions will be deleted and the Premises will trade with the same conditions which apply to commercial premises:

The following parts of the NALB Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions):

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

### ***Variation 4: Appoint a Premises Manager***

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

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

The PM is to be Ian Thomas Ferguson, who has Personal Licence SC1464 (Stirling Licensing Board).

### ***Variation 5: Amend opening for on- & off-sales on Sunday 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.

The Licence currently permits the Premises to open  
on-sales: 10.00 - 23.00 six days a week, but 12.30 - 23.00 on Sundays.  
off-sales: 10.00 - 22.00 six days a week, but 12.30 - 22.00 on Sundays.

The proposed variation is:  
on-sales: 10.00 - 23.00 six days a week, but 11.00 - 22.00 on Sundays.

off-sales: 10.00 - 22.00 six days a week, but 11.00 - 22.00 on Sundays.

The proposal reduces the on-sales terminal hour on Sundays, from 23.00 to 22.00.

The current on-sales arrangement, requiring the Premises not to open before 12.30 on Sundays, may be a historical consequence of the 2009 Transition from the old Licensing legislation, which made the same distinction between Sunday and the rest of the week. The "Permitted Hours" for Sundays were 12.30 - 14.30 and 18.30 - 23.00 (Licensing (Scotland) Act 1976, Section 53). When Premises transferred to the Licensing (Scotland) Act 2005, they could only get 'grandfather rights' if they applied for hours within their existing entitlement. Most Premises in North Ayrshire have since applied for hours according to the Board's Policy, which does not continue the same distinction between Sundays and other days.

## ***Variation 6: Add outdoor drinking***

Advice:

***The Board should consider Variation 8 (increase capacity) first.***

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 proposal relates to the patio immediately outside the clubhouse. The premises do not currently have 'outdoor drinking' in the Operating Plan.

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'.

## ***Variation 7: Vary access arrangements for under-18s***

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 proposal partly increases limits on under-18 access, and partly reduces them.

At present Junior Members may be on the Premises until 22.00, unaccompanied by an adult, provided they are accompanied by another Junior Member. They can stay after 22.00 if accompanied by an adult for the duration of a meal or pre-booked function.

The proposal is to extend access to 23.00 but to require in all cases that the under-18 is accompanied by an adult.

The Board would have to be satisfied that the proposals were not inconsistent with any of the Licensing Objectives, and in particular L.O. (e): 'protecting Children and Young Persons from harm.'

**Note:**

***Given that the on-sales hours are to be reduced to 22.00 on Sundays (see V5), the new Operating Plan 6(d) will be amended by adding after "23.00" the words (or, on Sunday, 22.00)".***

### ***Variation 8: Increase occupant capacity from 84 to 120 persons***

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, except in one respect.

**Notes:**

This proposal arises from the addition of the patio.

The Policy issue

Any increase in capacity might be regarded as a breach of the Board's Overprovision Policy. Since the Premises are to lose their status as a 'Special Status' Members' Club, the Policy applies. There is a presumption of refusal (the Board's Licensing Policy Statement 2018-22, Annex D), but on a case-by-case basis the Board can treat a proposal as an exception.

If the Board thinks that the Policy might be an issue, the Board could continue consideration of Variations 6 and 8 to the meeting on 18 November 2019, for the Clerk to prepare a suitable additional Report (while determining the Transfer and the other Variations).

Apart from the Policy issue

The Council's Building Control Officer has no objection to the proposal.

Capacity is assessed according to the "Occupancy Load Factors" under the Building Regulations, and commonly the Council's Building Control Officer will comment on a proposal to increase capacity by reference to the adequacy of toilet provision. However, the Regulations concentrate on inside Premises, not outdoors.

If there was a proposal to increase the internal capacity then the Board might be concerned that the proposal might not be consistent with the Licensing Objectives "securing public safety" and "protecting and improving public health", and might render the Premises unsuitable for the sale of alcohol. Since it is likely that patrons on the patio might go inside during bad weather, it is reasonable for the Board to consider that the proposal did increase the internal capacity.

## **b.3. Effect on Licence Conditions (Section 30(6))**

The Licence was granted on 18 August 2009 subject to an earlier Edition of the Board's Standard Conditions - before the most recent revision was made on 1 September 2009 (Edition 5). The existing Conditions should be replaced by the current Edition and these will apply, as read with later amendments of the statutory mandatory conditions (this will be noted on any Premises Licence and Summary issued later).

If Variations 2 and 3 are granted, the Conditions for 'Section 125 Clubs' (Part I) should be deleted.

## **b.4. Notes to Applicant**

The Board's decision is not:

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

(b) a Licence granted by the copyright holder of video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers) this is a 'public performance' and may need a Licence from "PRS for Music" (formerly the "Performing Rights Society") or the maker of the programme or recording. The Licensing Board does not deal with this.

# CASE 11

## Application for Grant of Personal Licence - Licensing (Scotland) Act 2005, Section 74

Applicant	Mandy Walker
Ref.	NA-2596

***Preliminary: Applicant has not signed the Application and should do so.***

### **1. Summary**

The Applicant has applied for the grant of a new Personal Licence. The Application is not advertised and the only consultation involves:

- (a) the Chief Constable - He must give the Board a Notice confirming whether or not the Applicant has been convicted of "relevant or foreign offences". The Chief Constable may also recommend refusal and/or give the Board any information he considers may be relevant (Sections 73(3) to 73(5));
- (b) Licensing Standards Officer - the LSO may provide the Board with any information that she considers may be relevant (Section 73A(2)).

### **2. Reason for Hearing**

If there is a Notice confirming a "relevant or foreign offence", and/or an Information Report, the Board must hold a Hearing.

### **3. Chief Constable's Notice**

The Chief Constable has reported that the Applicant has been convicted of one or more such offences. The information was also supplied by the Applicant.

### **4. Police Recommendation**

The Chief Constable has made a recommendation under Section 73(4) that it is necessary for the purposes of a Licensing Objective that the Application should be refused.

## **5. Information from Licensing Standards Officer**

The LSO has no information that she considers may be relevant to this Application.

## **6. Procedure**

Copies of the Police Notice, any LSO Information Report, and this Report have been sent to the Applicant, together with Intimation of the Board Hearing. The Members will have copies.

At the Hearing, the Board must have regard to

- (a) the Police Notice
- (b) the Refusal Recommendation made by the Chief Constable
- (c) any Information Reports
- (d) any comments made by the Applicant.

The Police Recommendation is not binding on the Board.

## **7. Board's Powers**

If the Board is satisfied:

- (a) that having regard to the Licensing Objectives, the Applicant is not a fit and proper person to be the holder of a Personal Licence; and/or
- (b) that it is otherwise necessary to refuse the Application for the purposes of any of the Licensing Objectives,

the Board must refuse the Application.

Otherwise, it must grant the Application if the Applicant holds an appropriate Licensing Qualification.

## **8. Licensing Qualification**

The Applicant holds an appropriate "Licensing Qualification".



## **9. After the Board's decision**

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 Holder is convicted of an offence, or
- (b) the Board, while dealing with a Premises Licence Review, makes a finding that the Personal Licence Holder has acted in a manner which was inconsistent with any of the Licensing Objectives, or
- (c) the Chief Constable or the LSO 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 three Endorsements are imposed within a 5-year period, the Board may Suspend or Revoke the Licence.

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.

The Holder must obtain a "Refresher" Licensing Qualification every 5 years, failing which the Licence is automatically revoked, without a Hearing at the Board or the possibility of Appeal to the Sheriff (Section 87).

# CASE 12

## Premises Licence Review Application - Section 36

Premises	Elms Bar, 21/23 Raise Street, Saltcoats KA21 5JS
Premises Licence Holder	Partnership of M & S Burnham
Ref.	51

### **1. Background**

By letter of 28 August 2019 the Chief Constable made a Review Application under Section 36 informing the Board of certain circumstances relating to these Premises. Copies of the letter will be distributed to Members at the Meeting.

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

The Chief Constable submits that there are Grounds for Review relevant to the following Licensing Objectives:

- preventing crime and disorder
- securing public safety
- preventing public nuisance
- protecting children from harm.

The information that the Chief Constable reports relates to an unproved allegation. The Board has a choice:

- (i) it could still decide to proceed with the Review, and (if the Review is upheld) impose a sanction, or
- (ii) it might defer the Review to await the outcome of the criminal proceedings, or
- (iii) it might take no further action on the Review, on the view that if and when the Holder is convicted the case can be brought back to the Board.

If the Holder admits the allegation to the Board, there is no reason why the Board should defer, but if the Holder denies the allegation and states that he/she will plead 'not guilty', this does not oblige the Board to defer the Hearing to await the outcome of a Court case:

- (i) The Board is conducting 'civil proceedings' in terms of the Civil Evidence (Scotland) Act 1988;
- (ii) The Board's proceedings comply with the European Convention on Human Rights 1950. This guarantees a fair trial in both civil and criminal proceedings (Article 6(1)), but the legal basis of the "right to silence" is based on the "presumption of innocence", which only applies in criminal proceedings (Article 6(2));

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(iii) the existence of the "presumption of innocence" in criminal proceedings does not prevent the Board from concluding that the information supplied in Review proceedings under the Licensing (Scotland) Act 2005 is sufficient material to permit the Board to make a decision under that Act (see the decision of the Court of Session in Ferguson v Dundee City Council [2006] CSIH 51);

(iv) A Licensing Authority is entitled to expect a party to provide information, explanations, or evidence in exculpation or mitigation of any alleged conduct or event which might suggest that he/she is not a fit and proper person. In this respect, there is a practical onus on the party (see the decisions of the Court of Session in McAllister v East Dunbartonshire Licensing Board 1998 SC 748, at Page 757G-H; Chief Constable of Strathclyde v North Lanarkshire Licensing Board 2004 SC 304 at Paragraph [23]; Calderwood v Renfrewshire Council 2004 SC 691 at Paragraph 18); Glasgow City Council v Bimendi, [2016] CSIH 41, at Paragraph 28);

(v) a Licence-Holder who chooses to remain silent when at the Board, to avoid disclosing a defence to the criminal proceedings, fails to take the opportunity to state his/her case and risks the Board making a decision without taking account of his/her position.

When the Board is considering whether or not to defer, it might consider a number of matters:

(i) the apparent gravity of the allegation - does the allegation suggest that there is a substantial danger that the Licensing Objectives would be compromised if the Board failed to act?

(ii) the status quo: does the case before the Board involve an existing Licence Holder facing a Review of an existing Licence, as opposed to a person seeking the Grant of a new Licence?

(iii) the length of delay: criminal proceedings may take many months. The Board might ask about the stage in the Court process that the proceedings have reached (such as the date of any Trial or other Diet).

## **3. Licensed Hours**

The operating hours are:

On-sales:

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

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Off-Sales:

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

## 4. Capacity etc.

### (a) Capacity

The Premises are Licensed for both on-sales and off-sales, and have a capacity of 175 customers, and an off-sales display capacity of 18.0 square metres.

### (b) Activities other than the sale of alcohol

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

<b>Other activities permitted</b>
Quiz nights, jukebox, karaoke, darts, dominoes

(c) Access by Children and Young Persons

The Premises do not allow persons under 18.
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## **5. Additional Powers of inquiry**

The Board are entitled by Section 38(5) to

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

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

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

The Board must proceed in three stages.

### **Stage 1**

The Board must hear the Review Applicant and the PLH, and consider the question:

*"Has the Review been established?"*

If 'yes', proceed to Stage 2.

If 'no', there is no further action, and the Review is ended.

### **Stage 2**

The Board must consider whether or not the PLH's conduct has been 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' or 'Young People' from harm (any persons aged under 18),

and answer this question:

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*"Is the Licence Holder not a fit and proper person to be the holder of a Premises Licence, having regard to the Licensing Objectives?"*

If 'yes':

- (a) the Board should decide which Licensing Objective(s) are relevant,
- (b) the Board must revoke the Premises (Mandatory Revocation) - the Licence is revoked altogether 28 days after the Board, rather than simply being suspended for a time (Section 39(2A), as added by Air Weapons and Licensing (Scotland) Act 2015, and S.S.I. 2017/119).

If 'no', proceed to Stage 3.

## Effect of 'fit and proper' Mandatory Revocation

The procedure is in Sections 39(2B) and 39B: The Revocation takes effect 28 days after the Board's decision, but if within that time the PLH applies for either a Transfer or a Variation (a "Relevant Application") then the Revocation may be postponed pending the Board's decision on the "Relevant Application". If the Board refuses that, the Revocation takes effect and the Licence ends.

## **Stage 3**

If the Board does not consider that the Holder is 'not a fit and proper person', the Board has a discretion.

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

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

The Board should decide when the order takes effect. Suspensions should be postponed to give the PLH the opportunity to appeal to the Sheriff Court,

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and should not have immediate effect unless the Board considers this necessary in the public interest. The postponement is in the Board's discretion, but 7 days would be reasonable. The order's effect is not postponed by an appeal, but if appealing the PLH can ask the Sheriff to recall the Suspension pending determination of the appeal (Sections 132(7) and (8)).

(d) Revoke the Licence (Discretionary Revocation).

The rules about Discretionary Revocation are different from those for Mandatory Revocation (see "Effect of 'fit and proper' Mandatory Revocation").

The Board should decide when the order takes effect. The considerations for postponing and recalling pending appeal are similar to those with Suspension.

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

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

The PLH may be able to appeal to the Sheriff against any decision taken at a Hearing.

## Personal Licence Review Hearing - Section 84A

Licence Holder	Elaine McGinn
Ref.	NA2505

### **1. Background**

(a) The Personal Licence Holder works at "The Elms Bar", 21 Raise Street, Saltcoats KA21 5JX (NALB Premise Licence 51) but is not the Premises Manager.

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

By letter of 28 August 2019 the Chief Constable reported certain circumstances relating to the Personal Licence Holder. Copies of the letter will be distributed to Members at the Meeting.

The information that the Chief Constable reports relates to an unproved allegation. The Board has a choice:

- (i) it could still decide to proceed with the Review, and (if the Review is upheld) impose a sanction, or
- (ii) it might defer the Review to await the outcome of the criminal proceedings, or
- (iii) it might take no further action on the Review, on the view that if and when the Holder is convicted the case can be brought back to the Board.

If the Holder admits the allegation to the Board, there is no reason why the Board should defer, but if the Holder denies the allegation and states that he/she will plead 'not guilty', this does not oblige the Board to defer the Hearing to await the outcome of a Court case:

- (i) The Board is conducting 'civil proceedings' in terms of the Civil Evidence (Scotland) Act 1988;
- (ii) The Board's proceedings comply with the European Convention on Human Rights 1950. This guarantees a fair trial in both civil and criminal proceedings (Article 6(1)), but the legal basis of the "right to silence" is based on the "presumption of innocence", which only applies in criminal proceedings (Article 6(2));
- (iii) the existence of the "presumption of innocence" in criminal proceedings does not prevent the Board from concluding that the information supplied in Review proceedings under the Licensing (Scotland) Act 2005 is sufficient



# CASE 13

material to permit the Board to make a decision under that Act (see the decision of the Court of Session in Ferguson v Dundee City Council [2006] CSIH 51);

(iv) A Licensing Authority is entitled to expect a party to provide information, explanations, or evidence in exculpation or mitigation of any alleged conduct or event which might suggest that he/she is not a fit and proper person. In this respect, there is a practical onus on the party (McAllister v East Dunbartonshire Licensing Board 1998 SC 748 at page 757G-H; Chief Constable of Strathclyde v North Lanarkshire Licensing Board 2004 SC 304 at paragraph [23]; Calderwood v Renfrewshire Council 2004 SC 691 at paragraph 18); Glasgow City Council v Bimendi, [2016] CSIH 41, Paragraph 28);

(v) a Licence-Holder who chooses to remain silent when at the Board, to avoid disclosing a defence to the criminal proceedings, fails to take the opportunity to state his/her case and risks the Board making a decision without taking account of his/her position.

When the Board is considering whether or not to defer, it might consider a number of matters:

(i) the apparent gravity of the allegation - does the allegation suggest that there is a substantial danger that the Licensing Objectives would be compromised if the Board failed to act?

(ii) the status quo: does the case before the Board involve an existing Licence Holder facing a Review of an existing Licence, as opposed to a person seeking the Grant of a new Licence?

(iii) the length of delay: criminal proceedings may take many months. The Board might ask about the stage in the Court process that the proceedings have reached (such as the date of any Trial or other Diet).

(c) The Licence has not previously been either Suspended or Endorsed.

## **2. Hearing Procedure**

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

At the Hearing, the Board must have regard to

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

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

The Board must proceed in three stages.

### **Stage 1**

The Board should consider the question "Has the Review been established?"

If 'yes', proceed to Stage 2.

If 'no', there is no further action, and the Review is ended.

### **Stage 2**

The Board must consider whether or not the Personal Licence Holder's conduct has been 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' or 'Young People' from harm (any persons aged under 18),

and answer this question:

*"Is the Licence Holder not a fit and proper person to be the holder of a Personal Licence, having regard to the Licensing Objectives?"*

If 'yes':

- (a) the Board should decide which Licensing Objective(s) are relevant,
- (b) the Board must revoke the Personal Licence - the Licence is revoked altogether, rather than simply being suspended for a time (Section 84(7A), as added by Air Weapons and Licensing (Scotland) Act 2015, and S.S.I. 2017/119).

If 'no', proceed to Stage 3.

### **Stage 3**

## CASE 13

If the Board does not consider that the Holder is 'not a fit and proper person', the Board has a discretion.

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

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

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

An Endorsement will be noted in Annex C to the Personal Licence. In addition, if there was a conviction for a 'Relevant or Foreign Offence' (as defined by The Licensing (Relevant Offences) (Scotland) Regulations 2007 No. 513) then Annex B will be updated: Section 89(4).

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

The Personal Licence Holder can appeal to the Sheriff against any decision taken at a Hearing.

# AGENDA ITEM 2

Report

to

North Ayrshire Licensing Board

by

Solicitor (Licensing)

Subject:	Occasional Extensions and Occasional Licences for on-sales – Festive Period 2019-20
Purpose:	To advise the Board about previous and current Policy and procedure
Recommendation:	That the Board determine Policy

## **1. Background**

1.1. The Board is entitled to grant:

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

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

1.2. In previous years, the Board has determined Policy for the Festive Period, and has:

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

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

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

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

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

(d) qualified the Policy where Christmas Eve and Hogmanay fell on any of the days Sunday to Wednesday (these days would otherwise have earlier closing hours): for the sole purpose of determining the application of Policy, an Application by individual Premises for Extended Hours under Section 68 for those nights would be treated as an Application for a Saturday (e.g. the

## AGENDA ITEM 2

maximum terminal hour which a public house could seek for those days would be 2.00 a.m. during the Festive Period);

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

1.3. The Board is not legally required to consult the Police on the Policy. The Police are always consulted when either type of Application is made. However the Board may wish to seek the views of the Police, as the Policy will have an effect on Police resources.

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

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

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

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

1.8. The Board has not used its powers under Section 67 ("Power for Licensing Board to grant general extensions of Licensed Hours"). This means that Premises Licence Holders in North Ayrshire have the option to apply for later hours, but do not automatically have them. Under the Policy in North Ayrshire, individual Applications are treated on their merits, with the Police and Licensing Standards Officer being asked to comment on each proposal.

1.9. The Board's Licensing Policy Statement 2018-22 includes:

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

As with Applications throughout the year, the Board has a Policy requiring Applications to be made at least 28 days in advance of the date requested (detailed in the Board's Licensing Policy Statement 2018-22, Annex C).

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

### **2. Policy suggestion**

2.1. Premises have Core Hours stated in their Operating Plans. The Board's Policy on Terminal Core Hours is:

- (a) Public Houses and Restaurants: Sunday to Wednesday: 24.00; Thursday to Saturday: 1.00 a.m..
- (b) Nightclubs: Sunday to Wednesday: 1.00 a.m.; Thursday to Saturday: 2.30 a.m..
- (c) Members' Clubs: 7 days - 1.00 a.m..

2.2. The Board has a discretion as to what the Policy should be. It might decide, for example, that there is no advantage in dividing the period into two, with the division around 15 December, on the view that it is up to individual licensees to choose what dates they want to apply for.

2.3. Assuming that the Board continues to divide the period in two, it is suggested that the Festive Policy might be:

- (a) the first period should be Sunday 1 December 2019 to Sunday 15 December 2019 (both dates inclusive);
- (b) in the first period, each Premises could apply for a maximum of 4 periods of Extended Hours;
- (c) the second period should be Monday 16 December 2019 to Wednesday 1 January 2020 (both dates inclusive);
- (d) in the second period, each Premises could apply for a maximum of 7 periods of Extended Hours;
- (e) as Christmas Eve & Hogmanay both fall on Tuesdays in 2019, these nights will be treated as if they were Saturdays;
- (f) the maximum extension should be for the period from:
  - (1) the end of the particular Premises' Core Hours for that day, until
  - (2) one hour after the Policy hour normally applicable for the particular type of Licensed Premises during the year,

except that:

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- (1) for Christmas Eve and Hogmanay the permitted extension for on-sales shall be until 2 hours after the Policy hour normally applicable to that day for the particular type of Licensed Premises during the year,
- (2) the extension for nightclubs in the period Thursday to Saturday will be only 30", from 2.30 to 3.00 a.m.;
- (g) the maximum Terminal Hour for Occasional Licences should be 2.00 a.m. (on all 7 days);
- (h) a 00.30 a.m. curfew should apply to all Licences (whether Premises Licences or Occasional Licences).

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

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

- (a) If the Extension Policy was linked to actual Core Hours, it could only seek an extension to 22.00 p.m. on all days, but
- (b) If the Extension Policy was linked to the 'Policy Hours' that the Premises could have applied for for normal trading, then that restaurant could seek a festive extension to:
  - 2.00 a.m. (Thursday-Friday: one hour beyond 'normal hours')
  - 2.00 a.m. (Christmas Eve & Hogmanay) - treating these days as 'Saturdays', so the 'normal hours' are 1.00 a.m. and the Festive Policy is one hour more)
  - 1.00 a.m. (one hour beyond 'normal hours') for Sunday to Wednesday (if not Christmas Eve & Hogmanay)

# AGENDA ITEM 3

Meeting Date: 16 September 2019

Report to North Ayrshire Licensing Board

by

Solicitor (Licensing)

Title	Licensing (Scotland) Act 2005 - Public Health
Purpose	To inform the Board of the most recent MESAS Report ("Monitoring and Evaluating Scotland's Alcohol Strategy): Monitoring Report 2019
Recommendation	That the Board note the position

## **1. Executive Summary**

When the Board has regard to its Licensing Policy Statement ("LPS") in determining a particular Application for the Grant or Major Variation of Premises Licence, it needs to be satisfied that that LPS continues to be a reliable guideline. The Board will be assisted if it is told when new information relevant to its Policies is published.

## **2. Background**

2.1. The current LPS was adopted by the Board in November 2018. The next formal review of the LPS will conclude in November 2022. In preparing the current LPS and during the currency of previous LPSs the Board has frequently considered Health data and Health reports.

2.3. The NHS has now published a further MESAS report: "Monitoring Report 2019". The Key points of this and the related surveys are:

- In 2018, 9.9 litres (L) of pure alcohol were sold per adult in Scotland, equivalent to 19.0 units per adult per week. This is the lowest level seen in Scotland since 1994.
- 2018 saw the total volume of pure alcohol sold per adult in Scotland fall to its lowest level since we began recording in 1994; 9.9 litres of pure alcohol per adult or an average of 19 units per adult per week. The volume of pure alcohol sold in Scotland was 9% higher than in England and Wales, which represents the smallest difference since 2003.
- Since 2010 the volume of pure alcohol sold per adult through supermarkets and off-licences has fallen by 9% in Scotland while it has risen by 3% in England & Wales overall.



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- In 2018, the average price of alcohol sold in the off-trade in Scotland was 59 pence per unit ("PPU"), an increase from 55 PPU in 2017; in England & Wales the average off-trade price was 56 PPU (55 PPU in 2017). The average on-trade price in Scotland was £1.87, an increase from £1.80 in 2017; in England & Wales the average on-trade price was £1.84 (£1.78 in 2017).
- The Alcohol (Minimum Price per Unit) (Scotland) Order 2018 No. 135 came into force on 1st May 2018. The Unit Price was set at 50 PPU. Less alcohol was sold below that price in Scotland than in England and Wales, the first time this has occurred within the available data. The percentage of alcohol sold at below 50p per unit in Scottish supermarkets and off-licences in 2018 was less than half that sold in 2017.
- In Scotland in 2018 just under a quarter of all off-trade alcohol (23%) was sold at below 50 PPU; this fell from 47% in 2017. In England & Wales 42% of all off-trade alcohol was sold at below 50 PPU (45% in 2017).
- In 2018, alcohol sold in the UK was 64% more affordable than it was in 1987. In recent years the increase in the affordability of alcohol has been driven by increases in disposable income and a slight fall in the real price of alcohol in the UK.
- Alcohol continues to be a leading cause of illness and early death. Self-reported alcohol consumption data show that 24% of adults in Scotland in 2017 exceeded the revised low-risk weekly drinking guideline for both men and women, a decline from 34% in 2003. Of those exceeding the guideline, mean weekly consumption was highest among those in the lowest income groups.
- In 2017, 1,120 people died in Scotland due to a cause wholly attributable to alcohol (alcohol-specific), an average of 22 people per week. After reaching a peak in 2003, alcohol-specific deaths declined to 2012. Since 2012 the rate of death from alcohol-specific causes has risen overall for both men and women.
- Alcohol-specific death rates are consistently higher in Scotland than in England & Wales. In 2017, rates were twice as high in men and 55% higher in women.
- 23,494 people in Scotland were admitted to a general acute hospital with an alcohol-related diagnosis in 2017/18, with a total of 35,499 alcohol-related inpatient stays. Despite a downward trend since 2007/08, rates of alcohol-related hospital stays remain four times higher than in the early 1980s.
- The most recent data show that rates of alcohol-specific death and alcohol-related hospital stays were more than twice as high in men as in women and were highest in the 55–64 year age group. Inequalities by area deprivation were stark: in the most deprived areas of Scotland, rates of alcohol-specific death were more than seven times higher and alcohol-related hospital stay more than eight times higher when compared with the least deprived areas.

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- While rates of driving under the influence of alcohol have fallen over time, the trend has been relatively flat in recent years. Rates of 'drunkenness and other disorderly conduct' offences have not shown a consistent trend but have fallen since 2013/14. In 2017, 39% of prisoners reported being under the influence of alcohol at the time of their arrest.

### **3. Proposals**

The Board is asked to note this new information. No action is appropriate at present, although such information will be considered when the Board reviews the LPS.

### **4. Implications**

Financial	There are no financial, legal or Equality/Socio-economic Duty implications, as the present Report is only 'for noting' and the Board is not, at this stage, being asked to make any decision. Such implications may arise at a later stage, when the Board makes a decision on forming Policy or determines a particular Licence Application, and at that stage the Board will be advised of any implications.
Human Resources	None
Legal	See 'Financial' implications.  There may be legal implications from any Licensing decision. Depending on the legislation, there may be a right of appeal to the Sheriff.  Any appeal against a decision based on the Board's views on Health issues may depend on the quality of evidence which the Board has considered.
Equality/Socio-economic Duty	The Board is a "Relevant Authority" for the purposes of Section 149(1) of the Equality Act 2010 ("Public sector equality duty") so:  "must, in the exercise of its functions, have due regard to the need to—

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	<p>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];</p> <p>(b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;</p> <p>(c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it."</p> <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 does not consider that there are any specific impacts.</p> <p>See 'Financial' implications.</p>
Children and Young People	See 'Equality/Socio-economic Duty'
Environmental & sustainability	None
Key Priorities	<p>An effective licensing system, for example monitoring the 'fit and proper' status of licence-holders and the suitability of premises, helps progress towards:</p> <p>(a) one of the Priority Outcomes of the North Ayrshire Council Plan 2019-2024: "People and communities are safe", and</p> <p>(b) one of the Strategic Themes: "Aspiring Communities – A society where everyone has the same life chances to grow, prosper and have fulfilling and healthy lives."</p>
Community Benefits	Not applicable, as the Report does

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	not relate to tendering or procurement exercises.
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### **5. Consultations**

There have been no consultations and none are appropriate at present. Later, when the Board is reviewing the LPS, there is a consultation with the public and other agencies, such as the Health Board and Police Scotland.

Craig Hatton  
Chief Executive

Reference: WOB/GEN18

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

Background Papers [none]