

Cunninghame House  
Irvine  
KA12 8EE

30 January 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 4 February 2019 at 10.00 A.M.** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

- 1. Minutes**  
Submit Minutes of the Board Meetings held on 19 November and 10 December 2018.
- 2. Licences and Applications under the Licensing (Scotland) Act 2005**  
Submit report by the Clerk to the Licensing Board on applications under the Licensing (Scotland) Act 2005. (copy enclosed)
- 3. Consideration of the Board's Draft Statement of Principles 2019-2022 – Gambling Action 2005 (Section 349)**  
Submit report to the Licensing Board for Consideration of Board's draft Statement of Principles 2019-2022. (report 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 2

4 February 2019

### North Ayrshire Licensing Board

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**Title:** Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005 and Gambling Act 2005.

**Purpose:** To advise the Board of the Law and the factual background.

**Recommendation:** That the Board determines whether or not to grant the Applications listed.

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#### 1. Executive Summary

- 1.1 The Licensing Board is responsible for determining Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005 (such as Review Hearings involving holders of Premises Licences and Personal Licences) and the Gambling Act 2005.
- 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

<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:</b>	The Clerk has considered the "Public Sector Equality Duty" in preparing this Report and the appendices. There are no significant equalities impacts to be considered.
<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 compliance with the statutory Licensing Objectives in Section 4 of the 2005 Act) helps achieve Priority 4 of the North Ayrshire Council Plan 2015-2020, ("Supporting all of our people to stay safe, healthy and active").
<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**

See attached list

## APPENDIX A

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

Case No.	Licence No.	Applicant/Licence Holder	Premises	Comments
1.	0501	Irvine Rangers Supporters Club	Irvine Rangers Supporters Club 135 Rear High Street Irvine KA12 8AA	Application for Grant of Provisional Premises Licence – Section 45
2.	0500	Iceland Foods Limited	Iceland Foods Limited Unit 3 Riverway Retail Park Irvine KA12 8AY	Application for Grant of Provisional Premises Licence – Section 45
3.	0502	Keren McClure	Café Guzzi 68 Gallowgate Street Largs KA30 8LZ	Application for Grant of Provisional Premises Licence – Section 45
4.	0484	Colin Malcher	The Niche 106 Montgomery Street Irvine KA12 8PW	Application for Variation of Premises Licence – Section 29

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

Applicant	Irvine Rangers Supporters Club
Premises	135 Rear High Street, Irvine, KA12 8AA *
Ref.	501

\* *The Application describes the Premises as "135 Rear High Street, Irvine, KA12 8AA" but*

*(a) the accompanying plans are titled "CONVERSION OF EXISTING WORKSHOP AND STORE AT THE REAR OF 131-137 HIGH STREET, IRVINE TO LICENSED SOCIAL CLUB";*

*(b) the Building Warrant (valid from 30/08/2018) is for "Outbuilding To Rear Of, 131 - 137 High Street, Irvine, Ayrshire" (18/00613/BW);*

*(c) the Planning Permission decision (16/01061/PP) described the Premises as "Outbuilding to rear of 131-137 High Street Irvine Ayrshire".*

*The building does not have a frontage on High Street and is accessed from West Road. If granted, the Premises Licence should refer to "Clubhouse to rear of 131-137 High Street, Irvine, KA12 8AA."*

**Preliminary**

<b>1</b>	<p><i>The Board is entitled, but not obliged, to request a report from the Chief Constable detailing all cases of Antisocial Behaviour, and all complaints or other representations made to Police, which have taken place on, or in the vicinity of, the Premises, in the previous year. (The Board's power is under Section 24A, as added by the Criminal Justice and Licensing (Scotland) Act 2010, Section 183(2) and S.S.I. 2010-413).</i></p> <p><i>Before proceeding to determine the Application itself, the Board should decide whether or not to request a Report. If it does, it must defer further consideration until the Report is produced.</i></p>
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Contents of Report

1. Summary of Proposal
2. Differences
3. Objections and Representations
4. Detailed proposal
5. Procedure
6. Issues
7. Observations
8. Licence Conditions

**1. Summary of Proposal**

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

The proposal is for a non-profit making Club in a free-standing building, which was formerly used as a workshop and store. As well as supporting Rangers F.C. the Club will also raise funds for local charities and good causes.

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

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

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

The building has both:

- (a) Planning Permission for "Change of use and alterations of workshop to form social club" (16/01061/PP)
- (b) Building Warrant for "ALTERATIONS TO WORKSHOP AND STORE TO SOCIAL CLUB" (18/00613/BW)

The Applicant does not yet need to lodge a Building Standards Certificate (at the PPL stage) but will need to lodge one when later seeking Confirmation.

The Applicant applied for a PPL for the same Premises (NALB 489) and the Board refused this on 20 February 2017 on the basis that the Premises were unsuitable for the proposed use. The present Application is not made incompetent by the "one-year bar" rule (Section 25). It is similar in many respects to that refused in 2017, and the main differences between the 2017 Application and the 2019 Application are set out in Section 2 below.

## **2. Differences**

The main differences between the 2017 Application and the 2019 Application are:

2017	2019
Area between building and perimeter wall at south-west corner to be a smoking area	Wall at south-west corner to be lowered, and replaced by a glass 'wall'; total height from ground to top edge 1,100 mm.
Internal Layout: 4 tables, each 8 seats	Internal Layout: 6 tables, each 6 seats
Licensed Hours 11.00 a.m. to 24.00 midnight, except on Saturday when open till 1.00 a.m.	Same Licensed Hours, except that proposal is to open on both Friday and Saturday to 1.00 a.m.
"televised sport" would be provided outside Licensed Hours.	"televised sport" would <u>not</u> be provided outside Licensed Hours.
The Premises will not allow people under 18.	The Premises will allow "children" aged 5-17 years if accompanied by an Adult

	and attending a birthday, wedding or other private event.
Capacity 100 (20 seated, 80 standing)	Capacity 120 (48 seated, 72 standing)

### **3. Objections and Representations**

<b>Police</b>	No objection
<b>Community Council</b>	No response received during the period for objection or representation at date of preparation of Report
<b>Fire</b>	No objection
<b>Health Board</b>	No response received during the period for objection or representation at date of preparation of Report
<b>Others</b>	Members will be given 5 letters of objections or representations. All have been lodged with the Board in the prescribed period.

Last Date for Objections or Representations
<b>18 January 2019</b>

### **4. Detailed proposal**

The Premises have on-sales only. Summary of Operating Plan:

- (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>
Monday	11.00 - 24.00	
Tuesday	"	
Wednesday	"	Within Policy
Thursday	"	on all 7 days
Friday	11.00 - 1.00	
Saturday	"	
Sunday	11.00 - 24.00	

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

<b>On-Sales (persons)</b>	120
<b>Standing / Seated</b>	48 / 72 (40% / 60%)

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

	<i>Proposal</i>
Accommodation	
Conference facilities	
Restaurant facilities	
Bar meals	
Receptions (weddings, funerals, birthdays, retirements, etc.)	x*
Club or other group meetings	x*
Recorded music	x
Live performances	x
Dance facilities	
Theatre	
Films	
Gaming	x
Indoor/Outdoor sports	
Televised sport	x
Outdoor Drinking	
Adult entertainment	
<b><i>Other activities</i></b>	
<p>The Premises may open prior to 11.00 a.m.</p> <ul style="list-style-type: none"> <li>- for provision of tea, coffee and soft drinks on match days, and</li> <li>- for funeral purvey functions or any other members' meetings as may be required.</li> </ul> <p>Alcohol shall not be sold outwith Core Licensing Hours.</p>	

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

The Premises will allow "children" aged 5-17 years if accompanied by an Adult and attending a birthday, wedding or other private event.

**5. Procedure**

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

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

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

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

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

2005 Act, Section 22(4) is:

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

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

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

If part of a comment is relevant, but part is not, then the Board should ignore the irrelevant part and proceed with the second question (what weight should be put on the comment?)

For example, if the third party raises Overprovision in an Application relating to a Club, this part of the objection is legally irrelevant and should be dismissed. But if the third party also raises the issue of nuisance or suitability, these are relevant, so the Board should consider them.

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

If the Board chooses not to reject the comment, it should take it into account in deciding on the Application, but it is not obliged to follow the comment (for example, it does not have to refuse the Application).

It may

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

**6. 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:

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

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

### **(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. (c): 'preventing public nuisance'

The Applicant does not seek an 'Outdoor Drinking Area'.

As the Premises are not currently operating the Board might consider that it would be premature to speculate that undue nuisance would be likely.

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.

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).

The Board is obliged to take account of two Licensing Objectives:

- (c): 'preventing public nuisance'
- (d): 'protecting & improving public health'

but may take the view that as there is no current objection from NAC Protective Services it is not appropriate to pursue these at present.

If there is later a substantial noise problem, 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.

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 the NAC Roads Dept. under the Roads (Scotland) Act 1984.

### L.O. (d): 'protecting & improving public health'

This L.O. is usually seen against the same background as Overprovision.

Overprovision is legally not relevant here, but the Board is obliged to consider this L.O..

There are no representations from the Health Board. As the Premises are not currently operating the Board might consider that it would be premature to speculate that harm to public health would be likely.

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

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

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

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

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

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

The times of "Children" access are in OP 6(d):

*"Duration of Core Hours / to terminal hour of function"*

Elsewhere the OP indicates that the Premises will open before 11.00 a.m. to sell tea, coffee and soft drinks, but not alcohol.

Is it proposed that a function could last after the Licensed Hours end (midnight or 1.00 a.m.) ?

Is it proposed that "Children" would be on the Premises after then?

The Board may consider that the proposal to allow under-18s on the Premises after 22.00 is not consistent with the L.O.. The Board may choose to suggest a variation of the O.P..

The Premises are on-sales and propose to admit under-18s although the Premises do not have kitchen facilities to provide meals (it is not sufficient that Premises only offer snacks such as crisps or nuts). The Board may consider that this proposal is not consistent with the L.O..

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

The Applicant is a Club which is entitled to the 'special treatment' under Section 125. This means that the Club is not counted for Overprovision purposes and Overprovision is not a possible ground of refusal.

**(c) the Premises may be Unsuitable**

Section 23(5) is:

*"The Grounds for Refusal are— ...*

*(d) that, having regard to—*

*(i) the nature of the activities 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"*

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. 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 the NAC Roads Dept. under the Roads (Scotland) Act 1984.

## **7. Observations**

### **(a) Gaming**

The Operating Plan includes "Gaming". The provisions of the Gambling Act 2005:

- allowing "Equal Chance Gaming" (such as Poker) without a Permit
- allowing the use of Gaming Machines without a Permit (called "the Automatic Entitlement")
- allowing the playing of Bingo without a Licence
- Licensed Premises Gaming Machine Permits

only allow Gambling during the Core Licensed Hours.

If the Premises are open outside these hours then there must be no gaming and any Gaming Machines should be switched off.

The Applicant should discuss with the Licensing Standards Officer or other Licensing staff what permits will be needed, e.g. the "Authorised Entitlement" does not take effect until the Board is notified.

To be exempt from regulation under the Gambling Act 2005, any fundraising proposal would require to satisfy the exemption rules for 'non-commercial lotteries'.

### **(b) Does "Children" mean "Persons under 18"?**

Ask Applicant to confirm that in the Operating Plan, Question OP 6(b) where it says "Children would be allowed ..." this should be amend to "Persons under 18 would be allowed ..." (this is because the legislation distinguishes between "Children" (aged 0-15 years) and "Young Persons" (16-17).

(c) Exclusion area around bar

Having regard to the Licensing Objectives "preventing crime and disorder" and "protecting children from harm", 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."*

(d) Operating Plan is incomplete - does Applicant wish to amend?

Not stated that activities would happen outside Licensed Hours (OP5, Column 4). If Applicant confirms that the Premises would be closed outside Licensed Hours, the Operating Plan will be amended to say 'No' to any activities outside Licensed Hours. This applies to all activities, except "receptions" and "club meetings"; the response for "televised sport" is already "no", so "televised sport" will not be licensed outside Licensed Hours.

(e) Club ("3 Guests Rule")

The Applicant Club's Constitution does not meet Standard Condition I.2(g) of the NALB Premises Licence conditions, so the Applicant would have to persuade the Board to grant a dispensation.

The condition is:

*"The Club shall have, and while the Premises Licence has effect, shall maintain, a written constitution making the following provisions: ...*

*(g) That a maximum of 3 visitors per member shall be permitted in the Club premises provided they are signed into the Club by that member into a book kept for that purpose by the Club.*

*Where the Board determines that either*

*(i) the primary object of the Club is participation in golf, football, bowling or another sport, or*

*(ii) that the special circumstances of the Club's operation merit a departure from the 'three visitors' requirement,*

*and that the supply of alcohol would be merely ancillary to the primary object or special circumstances,*

*the Board may, on the written Application of the Club, dispense with the limitation to three visitors, but it shall remain the case that all visitors must be signed-in by a Member in a book kept for the purpose. From time to time, on one or more occasions, the Board may reconsider the question of dispensation and may withdraw or vary it."*

The purpose of the condition is to ensure that Clubs maintain the character of "Members' Clubs" - that their facilities should be primarily for their own Members, and that non-Members should not regularly be allowed. A single Member should not be able to sign-in numerous 'guests'. If the Applicant wishes a waiver of the 'three

visitors' condition, the Applicant should satisfy the Board that a departure from the condition would not undermine the character of the Club:

- how often would the Premises admit people who were not truly guests of members?

- why would they do this?

## **8. 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)
- C (On-sale Premises)
- F (Entertainment)
- I (Clubs qualifying for special status under Section 125)

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

Applicant	Iceland Foods Ltd.
Premises	Unit 3, Riverway Retail Park, Irvine KA12 8AY
Ref.	500

**1. Summary of Proposal**

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

The proposal is for retail supermarket type premises providing customers with a wide range of foodstuffs, goods and other services including the sale of alcoholic products for consumption off the premises. The Premises are to offer a home delivery service, with appropriate statutory checks, including 'Challenge 25'.

The alcohol hours requested are 10.00 - 22.00, 7 days a week. This is the maximum permitted by the legislation and is within NALB Policy. The proposed display capacity is 30.8 square metres.

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

The Premises cannot sell alcohol until the PPL is Confirmed. The Licence-Holder will apply to the Board for Confirmation once the construction or conversion is complete, and 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.

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

**2. Objections and Representations**

<b>Police</b>	No objection
<b>Community Council</b>	No response received during the period for objection or representation
<b>Fire</b>	No objection
<b>Health Board</b>	Letter will be given to Members
<b>Others</b>	None

**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:

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

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

### **(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. (d): 'protecting & improving public health'**

The factors relevant to this L.O. overlap with the issue of 'Overprovision' (see below). The Board's views on this L.O. are set out in Paragraph 2.13 of the Licensing Policy Statement 2018-2022. Members will have a representation from the Health Board on Overprovision.

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

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

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

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

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

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

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

*"(5) The Grounds for Refusal are— ...*

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

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

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

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

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

(b) the 'Function Type' of the Premises (there are 6):

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

Special Treatment (the Board calls these 'Part K Clubs').

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

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

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

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

7. Applying the Policy to the present case:

- (a) The Subject Premises are in the "Irvine and Area" Locality (Irvine, Bourtnehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torranyard) (Locality 4);
- (b) 'Additional Factor' (Locality): The Premises are in a Locality where Applications are especially unlikely to be granted (regardless of the Function Type);
- (c) The Subject Premises are in Function Type 1 (Off-sales);
- (d) 'Additional Factor' (Function Type): any Application for Premises in FT 1 (Off-sales) is especially unlikely to be granted (regardless of the Locality).

8. Since both 'Additional Factors' are present here, the presumption of refusal is especially strong.

9. The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted. The Board will expect Applicants who are seeking the grant of a new Licence (or the increase in capacity in an existing Licence) to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives.

10. The Licensing Policy Statement includes:

*"The Board will expect Applicants who are seeking the grant of a new Premises Licence or a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application." LPS 2018-22, Annex D, Paragraph 3.6.*

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

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

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

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

The colour system is:

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

Over each of the 6 Localities in North Ayrshire:

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

(The Localities have different numbers of Intermediate Zones)

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

#### **4. Observations**

The Licence would be subject to NALB Standard Conditions. The Applicant asks the Board to disapply paragraph (c) of condition B.4. That condition is:

*"B.4. Refusals*

*The Premises shall maintain a record of occasions when the sale of alcohol was refused, to include:*

- (a) the date and time of the attempted purchase,*
- (b) the staff-member involved,*
- (c) the name or description of the person attempting to purchase alcohol,  
and*
- (d) the reason for refusal."*

#### **5. Licence Conditions**

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

- A (All Premises)
- B (Off-Sales) (subject to the Board's instruction on condition B.4(c))

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

Applicant	Mrs. Keren McClure
Premises	"Cafe Guzzi", 68 Gallowgate St., Largs KA30 8LZ
Ref.	502

**Preliminary**

	<p><i>The Applicant should lodge the following documents. Until the Board has <u>all</u> of them, it cannot determine the Application:</i></p> <ol style="list-style-type: none"> <li>1. <i>Certificate confirming display of Site Notice</i></li> <li>2. <i>Provisional Planning Certificate *</i></li> </ol> <p><i>* The Applicant has lodged a "Building Control Certificate". This Certificate would be required later, but at the moment the Applicant only needs a "Provisional <u>Planning</u> Certificate". This is because at this point the Applicant is only seeking a "<u>Provisional</u> Premises Licence". Other Certificates will be needed later - see "<u>Summary of Proposal</u>" below.</i></p>
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**1. Summary of Proposal**

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

The proposal is for a cafe-bistro serving meals and snacks. All customers will be seated.

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

The Premises cannot sell alcohol until the PPL is Confirmed. The Licence-Holder will apply to the Board for Confirmation once the construction or conversion is complete, and 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.

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

**"Pavement Cafe"**

The Applicant proposes to put 7 tables, each with 4 seats, on the pavement. Even if the Licensing Board grants an alcohol Licence which includes an area of pavement, that area cannot be used at all - even for the consumption of teas, coffees and soft

drinks - unless and until the Roads Authority grants Consent under the Roads (Scotland) Act 1984, Section 59. It is a criminal offence to obstruct a public footway without this Consent. In the case of the A78 Trunk Road, the Roads Authority is not North Ayrshire Council.

The alcohol Licence will have conditions, including:

*"C.5.3 Where an Outdoor Drinking Area is situated on a public footway to which Section 59 of the Roads (Scotland) Act 1984 applies:*

- (a) the Licensee shall hold a Consent granted by the Roads Authority under that Section;*
- (b) the Licensee shall comply with the conditions attached to that Consent;*
- (c) the Outdoor Drinking Area shall be separated from the public footpath by a physical barrier so that the Area may be entered only by customers and staff of the Premises;*
- (d) alcohol shall be consumed only by persons seated in the Outdoor Drinking Area - no 'vertical drinking' shall take place on a public footway."*

The Applicant should apply to the Roads Authority for Consent, and if and when it is granted should give the Licensing Board a copy of that Consent.

## **2. Objections and Representations**

<b>Police</b>	No objection
<b>Community Council</b>	No response received during the period for objection or representation
<b>Fire</b>	No objection
<b>Health Board</b>	No response received during the period for objection or representation
<b>Others</b>	None

## **3. Detailed proposal**

The Premises have on-sales only. Summary of Operating Plan:

- (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>
Monday	11.00 - 24.00	
Tuesday	"	

### CASE 3

Wednesday	"	Within Policy
Thursday	11.00 - 1.00	on all 7 days
Friday	"	
Saturday	"	
Sunday	11.00 - 24.00	

### **(b) Capacity**

<b>On-Sales (persons)</b>	60
<b>Standing / Seated</b>	60 / 0 (100% / 0%)

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

	<i>Proposal</i>
Accommodation	
Conference facilities	
Restaurant facilities	x
Bar meals	x
Receptions (weddings, funerals, birthdays, retirements, etc.)	x*
Club or other group meetings	x*
Recorded music	x
Live performances	x
Dance facilities	
Theatre	
Films	
Gaming	
Indoor/Outdoor sports	
Televised sport	
Outdoor Drinking	x
Adult entertainment	
<b>Other activities</b>	
<i>Application states "Small number of authorised tables and chairs on pavement to the front of the Premises. Requesting Standard Condition C.5.2 to be disappled to allow the consumption of teas/coffees and soft drinks before 11 am. No alcohol to be consumed before 11.00."</i>	

Activities marked 'x\*' are proposed outside core licensed hours.

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

All under-18s allowed for meals. No need for adult.

Children (0-15 years) allowed 09.00 to 18.00 if not with adult. If with adult, for whole Licensed Hours.

Young People (16-17) allowed 09.00 to 21.00 if not with adult. If with adult, for whole Licensed Hours.

#### **4. 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:

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

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

#### **(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 Board may consider that the absence of adult supervision of under-18s may increase the risk of under-age drinking.

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

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.

The Board is obliged to take account of two Licensing Objectives:

(c): 'preventing public nuisance'

(d): 'protecting & improving public health'

but may take the view that as there is no current objection from NAC Protective Services it is not appropriate to pursue these at present.

If there is later a substantial noise problem, 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.

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 the NAC Roads Dept. under the Roads (Scotland) Act 1984.

The Application includes an Outdoor Drinking Area. This would be subject to a Standard Condition:

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

Outdoor Drinking Areas are usually also subject to Standard Condition C.5.2:

*"C.5.2 No drinks (alcoholic or not) shall be taken into or consumed in such areas earlier than 11.00 a.m. and later than 10.00 pm."*

The Applicant asks the Board to disapply C.5.2. The Board has allowed early use of such areas in other cases, adding to C.5.2 words such as "except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 10.00."

The reason 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.

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**

The Board has a discretion to grant or refuse the Application. Subject to the Board's views about Overprovision, it is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

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.

## **5. Observations**

### **(a) Times of activities**

The Operating Plan states that these activities will happen within Licensed Hours:

- Restaurant facilities
- Bar meals
- Recorded music
- Live performances

but that other activities may happen outside Licensed Hours:

- Receptions (weddings, funerals, birthdays, retirements, etc.)
- Club or other group meetings

The Premises will close at midnight or 1.00 a.m. depending on the day of the week. Are Receptions etc. not going to have "Recorded music" or "Live performances" after hours? If they are, how often and till when? The area around Gallowgate Street is partly residential, so because of the Licensing Objectives "preventing public nuisance" and "protecting and improving public health" the Board has to consider the possible effect on the locality.

If the Board agrees to these things after hours, the Operating Plan must be amended

(b) Possible amendment

Given that the Licensing Objective applies both to "Children" and "Young Persons" Applicant should confirm that Operating Plan (OP 6(b)) can be amended from

*"Children allowed for meals (no requirement for adult)"*

to

*"Children and "Young Persons" allowed for meals (no requirement for adult)"*

(c) Exclusion area around bar

Having regard to the Licensing Objectives "preventing crime and disorder" and "protecting children and young persons from harm", 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."*

(d) Baby-changing Facilities

Since the Premises are to admit children under 5, the Mandatory Condition requiring Baby-Changing Facilities accessible by both genders applies (Sch. 3, Para. 12). Since the condition is mandatory by statute, the Board has no power to vary it or dispense with compliance.

The Application does not indicate where these facilities would be.

Applicant should:

- (a) state where such facilities will be (e.g. in a 'disabled toilet', or in both the ladies' and gents' toilets), or
- (b) amend the Operating Plan to exclude children under 5; or
- (c) give Board an undertaking that the Premises will not open until necessary facilities are available to the public.

Without such facilities, or without children under 5 being excluded, the Board may consider that reasons to refuse exist:

- (a) inconsistency with L.O. (d) ("protecting and improving public health");

(b) inconsistency with L.O. (e) ("protecting children from harm");

(c) unsuitability for use for the sale of alcohol, given that their use will involve a breach of a mandatory licence condition.

## **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)
- C (On-sale Premises) (subject to any Board decision about C.5.2)
- F (Entertainment)

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

Applicant	Colin Malcher
Premises	"Niche", 106 Montgomery Street, Irvine KA12 8PW
Ref.	484

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

<b>No.</b>	<b>Variation</b>
1	<i>Disapply Condition C.5.1 (no loudspeakers outside)</i>
2	<i>Disapply Condition C.8 (monitoring of occupancy)</i>
3	<i>Disapply Condition C.12 (toilets to be inspected regularly)</i>

If the Board varies any of these Licence Conditions and is later satisfied that this is inconsistent with any Licensing Objective, it has the right to Vary the Licence so as to re-impose the Condition.

What the Board may choose to do here is to grant the three Variations without limit of time, leaving open the possibility of later review.

There are three ways that a case can be brought back to the Board:

1. any person, e.g. a neighbour, who complains that the operation of any Licensed Premises in North Ayrshire is inconsistent with any of the Licensing Objectives may make a Review Application to the Board under Section 36;
2. The Council's Specialist Environmental Health Officer (Noise) can do so;
3. Separately, under Section 37, the Board can itself commence Review proceedings by making a Review Proposal.

In any of these cases, if the Board upholds the Review it may take a number of steps, one of which is variation of the Licence, e.g. the Board can reverse an earlier variation.

What the Board might do here is:

1. grant all three variation requests;
2. delegate to the Convenor to consider after 12 months whether or not the Board should hold a "Preliminary Consideration" (see below) under Section 37 (2005 Act, Schedule 1, Paragraph 10(1)) - if no Section 36 Review Application has been made previously.

The Board does not often initiate Reviews itself and expects Reviews to be commenced by third parties.

**Section 37 procedure**

This has two stages:

1. Preliminary Consideration

The Clerk prepares an oral or written "Briefing Note" for preliminary consideration by the Board. At this stage there is no Review Hearing, so the proceedings are not in public, and they are not intimated to either the Licence Holder or to any interested party. The Board then decides whether or not to make a Review Proposal under Section 37. If it decides not to, the matter is at an end.

2. Review Hearing

If a Review Proposal is made, this is intimated to all parties and calls for a public hearing at a future meeting of the Board. The fact that a preliminary consideration has determined that there may be a Ground of Review should not be taken by the Board or any party as an indication that the Board has concluded that a Ground of Review is or should be established. The Board would have to decide on the information it receives during the Hearing whether or not the Review should be upheld.

**Note to Applicant**

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

**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: Disapply Condition C.5.1 (no loudspeakers outside)***

Advice: 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 proposal is to alter the use of the Outdoor Drinking Area already licensed:

This use is subject to the Board's Standard Conditions, which include:

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

*C.5.2 No alcoholic drinks shall be taken into or consumed in such areas earlier than 11.00 a.m. and later than 10.00 pm.."*

Condition C.5.2 was amended in relation to these particular Premises when the Licence was granted on 31 October 2016. Usually the Condition relates to all drinks, alcoholic or not.

The Applicant now asks the Board to disapply Condition C.5.1 but to keep Condition C.5.2.

The justification for the prohibition on loudspeakers outside is that the Board is obliged to consider the "preventing public nuisance" Licensing Objective.

Although Condition C.5.2 prohibits drinking in the area after 10.00 p.m., it does not prohibit use of the area after then. The Premises are licensed to 12.00 midnight, so it is possible that patrons might be outside after 10.00 p.m. (e.g. drinking non-alcoholic drinks or smoking).

The Board will have a representation from the Specialist Environmental Health Officer (Noise) dated 21 December 2018.

If the Board varies the Outdoor Drinking Area as requested, and is later satisfied that this is inconsistent with any L.O. or that any Licence condition has been breached, it can commence Review proceedings. This may lead to a variation of the Licence so as to limit or remove any permission.

## ***Variation 2: Disapply Condition C.8 (monitoring of occupancy)***

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 Condition is:

### **"C.8 Occupancy Capacity**

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

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

***Variation 3: Disapply Condition C.12 (toilets to be inspected regularly)***

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 Condition is:

**"C.12 Condition of Premises**

C.12.1 The Premises, both internally and externally, shall be maintained in a clean and tidy condition;

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

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

If Variations 1,2, or 3 are granted, the Conditions should be varied accordingly.

## AGENDA ITEM 3

Report

to

North Ayrshire Licensing Board

by

Solicitor (Licensing)

Subject:	Gambling Act 2005 - Statement of Principles
Recommendation:	That the Board should adopt a Statement for 2019-2022

1. The Board is the 'Licensing Authority' for the purposes of the Gambling Act 2005.

2. Licensing Authorities are required by Section 349 to publish a Statement of the Principles which they propose to apply when exercising their functions. The current Statement was effective from 1 February 2016. This Statement must be reviewed at least every three years.

3. The Gambling Statement of the Principles, unlike the comparable policy document in alcohol licensing ("Licensing Policy Statement") is not referred to often. In the past 10 years, there has been only one case before the Board where the Gambling Statement of the Principles has been referred to, whereas the Board considers the alcohol licensing "Licensing Policy Statement" at nearly every meeting.

4. A draft Statement was prepared by the Solicitor (Licensing) and published on the Board's website. The draft took into account

(a) revised guidance issued by the Gambling Commission, ("Guidance to Licensing Authorities" (5 ed., September 2015, updated September 2016) issued by the Commission;

(b) the Commission's "Licence Conditions and Codes of Practice"; and

(c) "Gambling Codes of Practice - Consolidated for all forms of gambling" (Updated October 2018).

5. Notices inviting representations were:

(a) displayed on the public TV at Council Headquarters;

## AGENDA ITEM 3

- (b) published on the Board's website;
- (c) sent to the "Responsible Authorities" listed in Annex 1 of the draft Statement, and
- (d) sent to the persons and bodies listed in Annex 2 ("Consultee List").

6. Regulations oblige the Board to:

- (a) publish the draft Statement its website; and
- (b) make the draft Statement publicly available,

for a period of at least four weeks immediately prior to the date on which the Statement will come into effect.

7. Ayrshire and Arran Health Board was the only respondent to the consultation. Members will have a copy of this representation. The draft published for consultation has been further updated to reflect some of the comments made by the Health Board, and it is this updated draft which Members will have.

Changes:

(a) In Paragraph B5 of the draft: Paragraph (e) has been added, referring to "Adults at Risk";

(b) In Paragraph B7 the Health Board make two observations:

(i) the list of locations which may have a bearing on a Board decision to grant a Premises Licence has been extended as suggested, and now includes "centres for individuals receiving treatment for their mental health and/or support individual with learning disabilities."

(ii) the Health Board's comments about the prevalence of gambling and the risk of poor health have not been reflected in the draft. The reason for this is that under Section 153 of the Act there is a presumption in favour of permitting Gambling. Unlike the alcohol legislation in Scotland, there is no 'public health licensing' objective or concept of 'overprovision' in the gambling Legislation. Unless the Board can be satisfied that a proposed Licence poses a specific risk to Children or Vulnerable People, it is unlikely to be able to refuse the Licence. The 'permissive' nature of Section 153 would not entitle the Board to refuse a Licence on wider social concerns.

(c) In Paragraph B7(d) the Health Board make observations about

### AGENDA ITEM 3

monitoring and the provision of advice. These have not been reflected in the draft. This is because there are significant and widely-held doubts on the question of whether or not any Licensing Standards Officer in Scotland has the same powers as a 'Local Authority' officer in England and Wales. The L.S.O. would monitor compliance with the conditions of an alcohol Premises Licence under the Licensing (Scotland) Act 2005, but as it is not clear whether the L.S.O. has enforcement powers under the gambling legislation. Licence Holders and their employees receive advice from the U.K. Gambling Commission, rather than from individual Boards.

8. The Board should consider the draft Statement and any representations, and then adopt a final Statement. This will then be published on the Board's website.

## Draft

### NORTH AYRSHIRE LICENSING BOARD GAMBLING ACT 2005, SECTION 349 STATEMENT OF PRINCIPLES 2019-2022

#### Contents:

- Part A – Introduction
- Part B - General Statement of Principles
- Part C - Casinos
- Part D - Statements of Principles for particular functions
- Part E - Particular Types of Premises
- Part F - Other Permits, Licences and entitlements

#### **Part A – Introduction**

##### A.1. References here:

- (a) to "the Act" mean the Gambling Act 2005;
- (b) to Sections or Schedules (for example 'Section 349') mean Sections of the Gambling Act 2005 or Schedules to that Act;
- (c) to Regulations (for example 'Regulation 4') mean the Gambling Act 2005 (Licensing Authority Policy Statement) (Scotland) Regulations 2006, No. 154;
- (d) to the "Commission" mean the Gambling Commission;
- (e) to Guidance mean the document "Guidance to Licensing Authorities" (5 ed., September 2015, updated September 2016) issued by the Commission (here referred to as 'GLA5'), (and where relevant the Commission's "Licence Conditions and Codes of Practice" and "Gambling Codes of Practice - Consolidated for all forms of gambling" (Updated October 2018) ("LCCP")),

unless otherwise specified.

A.2. North Ayrshire Licensing Board is the Licensing Board for North Ayrshire continued in existence by Section 5 of the Licensing (Scotland) Act 2005 (which regulates the sale of alcohol). It is therefore the 'Licensing Authority' for the purposes of the Gambling Act 2005 (Section 2(1)(c)).

A.3. Licensing Authorities are required every three years to prepare and publish a Statement of the Principles which they propose to apply when exercising their functions (Section 349).

The "first appointed day" was set as 31st January 2007 by Order S.I. 2006 No. 637), so the dates for future Statements are 31st January in 2010, 2013, 2016, 2019 and so on.

In preparing this Statement of Principles the Board:

- (a) has consulted with the Responsible Authorities listed in Annex 1;
- (b) has consulted with the persons and bodies listed in Annex 2 ('Consultee List'),
- (c) has published notices inviting representations.

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A.4. North Ayrshire is a Council area in the west of Scotland, part of the former Strathclyde region of Scotland. North Ayrshire covers an area of around 886 sq. km. (mainland 441 sq. km., islands 445 sq.km) and has a coastline of 225 km. (mainland 67 km., islands 158 km.). The main settlements are Irvine, Kilwinning, Ardrossan, Saltcoats, Stevenston, Beith, Dalry, Kilbirnie, Largs, Dreghorn, Springside, West Kilbride, Seamill, Fairlie, Skelmorlie, Brodick and Millport.

### Population

The Council area has a population of 135,790 ("Mid-2017 Population Estimates by Council Area in Scotland")

Source: "North Ayrshire Council Area Profile" (National Records of Scotland):

<https://www.nrscotland.gov.uk/files/statistics/council-area-data-sheets/north-ayrshire-council-profile.html>

### Labour Market

Data from the NOMIS website (Nomis is a service provided by the Office for National Statistics, ONS, to give official labour market statistics):

	<b>North Ayrshire</b>	<b>North Ayrshire %</b>	<b>Scotland %</b>	<b>G.B. %</b>
<b>Economically active</b>	62,700	74.7	77.8	78.4
<b>In employment</b>	58,700	69.8	74.5	75.0
<b>Employees</b>	51,000	61.1	66.0	64.2
<b>Self-employed</b>	7,300	8.2	8.2	10.6
<b>Unemployed</b>	3,700	5.9	4.1	4.2

Source:

<http://www.nomisweb.co.uk/reports/lmp/la/1946157425/report.aspx?town=north%20ayrshire>

### Deprivation

The Scottish Government published the latest version of the Scottish Index of Multiple Deprivation (SIMD) on 31 August 2016. The SIMD uses a range of socio-economic data to calculate deprivation across small areas known as Data Zones. There are 6,976 Data Zones across Scotland, each with an average population of around 800 people.

The Data Zones across Scotland are grouped in 20 slices each of 5% (called "quantiles", "ventiles" or "vigintiles") to show which areas are in the bottom slice out of 20 - the "most deprived" - then the next 5%, then the next 5%. Of the 186 Data Zones in North Ayrshire, 51 North Ayrshire Data Zones are in the bottom 15% of the figures across Scotland (the "most deprived 15% in Scotland"), an increase of 5 since the index was last published in 2012. Breakdowns for the North Ayrshire data zones in the 5%, 10% and 15% most deprived in Scotland are shown in the table below:

Number of North Ayrshire Data Zones in "most deprived" 5%, 10% and 15% (2004-2016):

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	2004	2006	2009	2012	2016
Most deprived 0-5%	6	9	10	12	12
Most deprived 6-10%	10	14	16	19	20
Most deprived 11-15%	17	10	17	15	19
<b>Most deprived 0-15% (overall)</b>	<b>33</b>	<b>33</b>	<b>43</b>	<b>46</b>	<b>51</b>

Source: Scottish Government 2016

Across North Ayrshire the 51 data zones in the "most deprived 15% in Scotland" are distributed over the 6 Community Planning Partnership Areas (the Localities used by the Licensing Board under the Licensing (Scotland) Act 2005):

	2004	2006	2009	2012	2016
Irvine	10	10	14	16	19
Kilwinning	6	4	6	5	6
Three Towns	15	16	19	19	18
Garnock Valley	2	3	4	6	7
North Coast	0	0	0	0	1
Arran	0	0	0	0	0
<b>North Ayrshire (overall)</b>	<b>33</b>	<b>33</b>	<b>43</b>	<b>46</b>	<b>51</b>

Source: Scottish Government 2016

A.5. Part 8 of the Act (Sections 150 - 213) deals with the Grant, Variation, Transfer and Review of Premises Licences, the Reinstatement of a lapsed Licence, and the issue of a Provisional Statement.

Boards also:

- (a) Regulate Members Clubs and Miners' Welfare Institutes who wish to undertake certain gaming activities via issuing 'Club Gaming Permits' (Sections 271 & 285) and/or 'Club Machine Permits' (Sections 273 & 285);
- (b) Issue 'Club Machine Permits' to Commercial Clubs;
- (c) Grant permits for the use of certain lower stake Gaming Machines at 'Unlicensed Family Entertainment Centres'.
- (d) For alcohol-licensed Premises:
  - (i) Receive "Automatic Entitlement" notifications for the use of one or two Gaming Machines (Section 282);
  - (ii) Grant 'Licensed Premises Gaming Machine Permits' for more than two machines to Premises licensed to sell or supply alcohol for consumption on the Licensed Premises (Sections 283 & 285);
- (e) Register 'Small Society Lotteries' below prescribed thresholds (Schedule 11, Part 4);
- (f) Issue 'Prize Gaming Permits' (Part 13 and Schedule 14);
- (g) Provide information to the Gambling Commission regarding details of Licences issued.

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A.6. The following Premises Licences are in force in the Board's area (showing also the equivalent figures in the 2016-2019 Statement):

Betting Premises = 28 (2016-2019: 30)

Adult Gaming Centre Premises = 5 (6)

Bingo Premises = 5 (5)

Family Entertainment Centre Premises = 4 (4)

### **Part B - General Statement of Principles**

B.1. With one exception, all decisions about Premises Licences involve the use of the Board's discretion. The exception is Section 166 - Casinos (see below - Part C).

B.2. In producing this Statement, the Board has had regard to:

- (a) the Licensing Objectives in Section 1:
  - (1) preventing Gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
  - (2) ensuring that Gambling is conducted in a fair and open way, and
  - (3) protecting Children (under 16) and other "Vulnerable Persons" (see B.5 below) from being harmed or exploited by Gambling.
- (b) the Gambling Commission Guidance;
- (c) any representations from those consulted on the Statement.

B.3. Section 153 directs the Board, in exercising functions under Part 8, to aim to permit the use of Premises for Gambling in so far as they think it is —

- (a) in accordance with any relevant Commission Code of Practice,
- (b) in accordance with any relevant Guidance issued by the Commission.
- (c) reasonably consistent with the Licensing Objectives, and
- (d) in accordance with this Statement of Principles.

B.4. Nothing in this Statement will override the right of any person:

- to make an Application (with one exception),
- to make representations about an Application, or
- to apply for a review of a Licence,

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as each will be considered on its own merits and according to the statutory requirements.

The exception is that, since the Board has decided not to permit Casinos in North Ayrshire, an Application for a Casino will not be entertained (see Part C).

B.5. The Board regards "Vulnerable Persons" as including people who:

- (a) gamble more than they want to;
- (b) gamble beyond their means;
- (c) may not be able to make informed or balanced decisions about Gambling due to mental health needs, learning disability or substance misuse relating to alcohol or drugs;
- (d) are 'Young Persons' (aged 16 or 17); or
- (e) are "Adults at Risk" as defined by Section 3(1) of the Adult Support and Protection (Scotland) Act 2007 (asp 10), being adults who
  - (i) are unable to safeguard their own well-being, property, rights or other interests,
  - (ii) are at risk of harm, and
  - (iii) because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.

B.6. Although the Board will have regard to the Licensing Objectives, enforcement of the Gambling Act 2005 is not solely a Board responsibility. For example, in relation to Licensing Objective 2 (ensuring that Gambling is conducted in a fair and open way), the Board notes the Guidance (GLA5, Para. 5.11):

*"Generally the Commission would not expect Licensing Authorities to find themselves dealing with issues of fairness and openness frequently. Fairness and openness is likely to be a matter for either the way specific Gambling products are provided and therefore subject to the Operating Licence, or will be in relation to the suitability and actions of an individual and therefore subject to the Personal Licence. However, if Licensing Authorities suspect that Gambling is not being conducted in a fair and open way this should be brought to the attention of the Commission so that it can consider the continuing suitability of the operator to hold an Operating Licence or of an individual to hold a Personal Licence."*

The Commission, not the Board, issues Operating Licences and Personal Licences.

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

- the location of the proposed Premises in relation to

schools;

residential areas where there may be a high concentration of families with children;

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hospitals;

centres for people addicted to alcohol, drugs or gambling; and

centres for individuals receiving treatment for their mental health and/or support individual with learning disabilities.

- the location of activities within Premises;

- the arrangements made to prevent or control access by children and other vulnerable persons to the Premises or certain parts.

Any such Policy must, however, come with the qualification that each case will be decided on its merits, and will depend to a large extent on the type of Gambling that it is proposed will be offered on the Premises. It is always open to the Applicant to seek to persuade the Board that any Licensing Objective concerns can be overcome, and that the particular Application could be treated as an exception to the Board's Policy.

### Layout

B.8. It is for the Licensing Board to decide whether different parts of a building can be properly regarded as being separate Premises. It is unlikely to consider that areas of a building that are artificially or temporarily separate can be properly regarded as different Premises.

The Board notes the Commission's Guidance (GLA5, para. 7.26):

*"Licensing authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular, they should be aware that entrances and exits from parts of a building covered by one or more licences should be separate and identifiable so that the separation of different Premises is not compromised and that people do not 'drift' into a gambling area. The plan of the Premises should clearly denote entrances and exits."*

The third Licensing Objective seeks to protect children and other vulnerable persons from being harmed or exploited by Gambling. In practice that means not only preventing them from taking part in Gambling, but also preventing them from being in close proximity to Gambling.

The Board notes the Guidance:

*"6.38 However, the Statement of Policy may comment on the location of Premises and the general principles it will apply in considering the location so far as it relates to the Licensing Objectives. For example, a Statement of Policy may set out that the Licensing Authority will carefully consider applications for Premises Licences and whether there is a need for condition(s) to mitigate risks, in respect of certain kinds of gambling located very close to a school or a centre for gambling addicts, in light of the third Licensing Objective. The Statement of Policy must be clear that each case will be decided on its merits and will depend to a large extent on the type of Gambling that is proposed for the Premises."*

Therefore Premises should be configured so that Children and other Vulnerable Persons

- are not invited to participate in,

- cannot have accidental access to, or

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- cannot observe Gambling,

where they are prohibited from participating.

Entrances to and exits from parts of a building covered by one or more Premises Licences should be separate and identifiable so that the separation of different Premises is not compromised and people do not 'drift' into a Gambling area where they are prohibited from participating.

It should be possible to access the Premises without going through another licensed Premises or Premises with a permit.

### Irrelevant considerations

#### (a) 'Demand' for gaming Premises

B.9. In determining whether to grant a Premises Licence, the Board is not entitled to have regard to the expected demand for the facilities which it is proposed the Premises will provide.

The Board notes the Guidance:

*"6.37 Previous legislation required that the grant of certain Gambling permissions should take account of whether there was unfulfilled demand for the facilities. This is no longer the case and each Application must be considered on its merits without regard to demand. The Statement of Policy should reflect the 'aim to permit' principle (s.153 of the Act) and should not comment on whether there is demand for Gambling Premises."*

#### (b) moral or ethical objections

B.10. The Guidance provides (Para. 5.34):

*"Licensing Authorities should be aware that other considerations such as moral or ethical objections to Gambling are not a valid reason to reject applications for Premises Licences. In deciding to reject an application, a Licensing Authority should rely on reasons that demonstrate that the Licensing Objectives are not being, or are unlikely to be, met, and such objections do not relate to the Licensing Objectives. An Authority's decision cannot be based on dislike of Gambling, or a general notion that it is undesirable to allow Gambling Premises in an area (with the exception of the Casino resolution powers)."*

Accordingly, when considering Applications for Premises Licences the Board will give no regard to such objections.

#### (c) Compliance with other legislation

B.11. Section 210(1) is:

*"In making a decision in respect of an Application under this Part a Licensing Authority shall not have regard to whether or not a proposal by the Applicant is likely to be permitted in accordance with the law relating to planning or building."*

This approach is extended to other regulatory legislation. GLA5, para. 7.65 includes:

*"Nor should fire or health and safety risks be taken into account."*

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Accordingly, when considering Applications for Premises Licences the Board will give no regard to such objections.

### Conditions

B.12. Premises Licences will be subject to the permissions and restrictions set out in the relevant legislation. The Board does not propose regularly to add to or to exclude the specific, mandatory and default conditions. It will consider such action where it appears appropriate.

B.13. The Board will where it considers appropriate and lawful attach conditions to Licences which are:

- (a) relevant to the need to make the proposed building suitable as a Gambling facility;
- (b) directly related to the Premises and the type of Licence applied for;
- (c) fairly and reasonably related to the scale and type of Premises; and
- (d) reasonable in all other respects.

Decisions upon individual conditions will be made on a case-by-case basis, although there will be a number of control measures which the Board will consider utilising should there be a perceived need, such as

- the use of door supervisors
- supervision of Adult Gaming Machines
- appropriate signage for adult-only areas.

The Board will also expect the Applicant to offer suggestions as to ways in which the Licensing Objectives can be met effectively.

### General

B.14. The Board will endeavour:

- to avoid duplication with other regulatory regimes so far as possible
- to act in accordance with the relevant legislation and Guidance from the Commission
- to adopt the principles of better regulation.

B.15. A Scheme of Delegations has been adopted by the Board under Section 155 to ensure effective management of the Board's functions under the Act. All functions under the Act, other than those expressly reserved to the Board by the legislation, are delegated to the Clerk and the Solicitor (Licensing).

### **Part C - Casinos**

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Under Section 166 a Licensing Authority may resolve not to issue Casino Premises Licences. The Board has not previously granted a Casino Premises Licence or a Provisional Statement for such Premises. Having regard to the economic and social circumstances of the Board's area, the Board does not regard the operation of a Casino as appropriate and accordingly makes a Resolution under Section 166. That Resolution will operate for the duration of this Statement. The Board made such a Resolution in its 2016-2019 Statement of Principles.

### **Part D - Statements of Principles for particular functions**

D.1. The Board is required by the Regulations to state the principles it will apply in exercising certain functions:

- (a) Designation of Child Protection Responsible Authority
- (b) Interested Parties
- (c) Exchange of Information
- (d) Inspection

#### **(a) Designation of Child Protection Responsible Authority**

D.2. Under Section 157(h) of the Act the Board is required to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles applied by the Board are:

- (i) The need for the body to be responsible for an area covering the whole of the Board's area;
- (ii) The need for the body to be answerable to democratically elected persons, rather than any particular vested interest group.

In accordance with the Guidance the Board designates North Ayrshire Health and Social Care Partnership for this purpose.

#### **(b) Interested Parties**

D.3. "Interested Parties" can make representations about Licence Applications, or apply for a review of an existing Licence. If a party is not a "Responsible Authority" (as defined, e.g. the Chief Constable) then he can only make a representation if he qualifies as an "Interested Party".

Guidance Para. 7.52 includes:

*"Representations from other parties are inadmissible."*

D.4. Section 158 is:

*"For the purposes of this Part a person is an Interested Party in relation to a Premises Licence or in relation to an Application for or in respect of a Premises Licence if, in the opinion of the Licensing Authority which issues the Licence or to which the Application is made, the person—*

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- (a) *lives sufficiently close to the Premises to be likely to be affected by the authorised activities,*
- (b) *has business interests that might be affected by the authorised activities, or*
- (c) *represents persons who satisfy paragraph (a) or (b)."*

D.5. The Board is required by Regulations to state the principles it will apply in exercising its powers to determine whether or not a person is an Interested Party. The Board will not apply a rigid rule to its decision-making, and each case will be decided on its merits, but the principles are:

### (i) Category (a) (residents)

D.6. The factors the Board may have regard to include:

- the size of the Premises
- the nature of the Premises
- the distance of the Premises from the residence of the person making the representation
- the potential impact of the Premises on the locality, such as the number of customers expected and the routes likely to be taken by those visiting the Premises
- the circumstances of the resident. This is not their personal characteristics, but their interests which may be relevant to the distance from the Premises.

The phrase 'lives sufficiently close' could have a different meaning for (a) a private resident, (b) a residential school for children with truanting problems and (c) a residential hostel for vulnerable adults.

### (ii) Category (b) (businesses)

D.7. The issue for the Board is whether or not the relevant business is likely to be affected. Simply because the relevant business already operates in the Board's area is unlikely to be enough. Factors that are likely to be relevant include:

- the size of the Application Premises
- the 'catchment' area of those Premises, that is, how far people travel to visit them
- whether the person making the representation has business interests in that 'catchment area' that might be affected. (it should be borne in mind that Gambling legislation has no concept like Overprovision in alcohol licensing)

### (iii) Category (c) (representatives)

D.8. The Board is likely to accept that persons who are democratically elected (e.g. Members of Parliament, Members of the Scottish Parliament, Councillors, and Community Councillors) 'represent' someone who satisfies (a) and/or (b); If members of the public wish to approach Councillors to ask them to represent their views, then care should be taken that those Councillors are not part of the Board dealing with the Application or Review. It is possible that a Councillor who

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is also a Member of the Board would have to declare an interest and be disqualified from participating in the Board's proceedings. The member of the public might be better to make a direct written representation.

D.9. The Board may (but is not obliged to) accept that other persons or bodies 'represent' a person who satisfies (a) and/or (b) if a letter from such a person is produced. Examples of such representatives are Residents', Tenants' or Trade Associations, or Trade Unions;

D.10. A person may be accepted as a 'representative' without a letter, depending on the interests said to be represented, e.g. a school head teacher or governor might act in representing the interests of pupils or parents; a community group might represent vulnerable people living near to the proposed Premises; the Chief Executive or other senior officers of the Council may also be accepted as 'representative'.

### (c) Exchange of Information

D.11. Each Licensing Authority is required to include in their Statement the principles to be applied in exercising the functions with respect to the exchange of information between:

- (i) the Authority and the Commission under Section 30;
- (ii) the Authority and the other persons listed in Schedule 6 to the Act under Section 350.

Section 350(1) provides that a person or body listed in Part 1 of Schedule 6 may provide information to any other person or body so listed for use in the exercise of a function under the Act.

The list in Part 1 is:

- A Constable or Police force
- An Enforcement Officer
- A Licensing Authority (including a Licensing Board)
- Her Majesty's Commissioners of Customs and Excise
- The First-tier Tribunal
- The Secretary of State
- The Scottish Ministers

The Board notes:

- (a) the qualifications in Part 4 of Schedule 6;
- (b) Section 352 ("Nothing in this Act authorises a disclosure which contravenes the Data Protection Act 1998 (c. 29).")

The principle that the Board applies is that it will act in accordance with the Data Protection Act 1998, having regard to any relevant enactments and Guidance issued by the Commission.

### (d) Inspection

D.12. Licensing Authorities are required by regulation under the Gambling Act 2005 to state the principles to be applied by the Authority in exercising the functions under Part 15 of the Act with respect to inspection of Premises.

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D.13. The Board's principles are that it will be guided by the Gambling Commission's guidance, and will adopt a risk-based inspection programme, targeting high-risk Premises which require greater attention, whilst operating a lighter touch in respect of low-risk Premises, so that resources are more effectively concentrated on problem Premises. The Board does not often require to use inspection powers under the Gambling Act 2005 since many Premises which have a status under that Act are also licensed for the sale of alcohol, and accordingly are inspected by the Licensing Standards Officer under the Licensing (Scotland) Act 2005, Sections 14 and 15.

D.14. The Board will determine the level of risk on a case-by-case basis, reviewing its approach as it sees fit on the basis of information about whether the operation of particular Premises:

- is consistent with the Licensing Objectives
- involves breach of the legislation or Licence conditions

D.15. The main enforcement role of the Board is to ensure compliance with the Premises Licences and other permissions which it authorises. The Gambling Commission will be the enforcement body for the Operating and Personal Licences, and concerns about manufacture, supply or repair of Gaming Machines will not be dealt with by the Board but will be notified to the Commission.

### **Part E - Particular Types of Premises**

#### **(a) Adult Gaming Centres**

Given Licensing Objective 3, and the need to protect Children and Vulnerable Persons from harm or being exploited by Gambling, the Board will expect the Applicant to satisfy the Board that there will be sufficient measures to ensure that under-18s do not have access to the Premises. Licence conditions may cover issues such as:

1. Proof-of-age schemes
2. CCTV
3. Door supervisors
4. Supervision of entrances and machine areas
5. Physical separation of areas
5. Location of entry to Premises
6. Notices and signage
7. Specific opening hours.

This list is not exhaustive.

#### **(b) (licensed) Family Entertainment Centres**

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The Board's approach will be similar to that for Adult Gaming Centres (see (a) above).

### (c) Bingo Premises

Section 177 attaches a condition to Bingo Premises Licences that prohibits the licensee from:

- giving credit in connection with the Gambling taking place on the Premises
- participating in, arranging, permitting or knowingly facilitating the giving of credit in connection with the Gambling on the Premises.

The Board notes the Guidance (GLA5, Para. 9.12):

*"However, s.177 does not prevent the licensee from contracting a third party to install cash dispensers (ATMs) on their Premises, which may accept both credit and debit cards. Such an arrangement is subject to requirements that the Premises Licence holder has no other commercial connection in relation to Gambling with the provider of the ATMs (aside from the agreement to site the machines), does not profit from the arrangement, and does not make any payment in connection with the machines. All Premises Licences also include a mandatory condition which requires that any ATM made available for use on the Premises must be located in a place that requires any customer who wishes to use it to cease Gambling in order to do so."*

### (d) Betting Premises

The Board notes the Guidance in relation to Self-Service Betting Terminals (SSBTs) (GLA5, Para. 19.9):

*"S.181 contains an express power for Licensing Authorities to restrict the number of SSBTs, their nature and the circumstances in which they are made available by attaching a licence condition to a Betting Premises Licence or to a Casino Premises Licence (where betting is permitted in the Casino). When considering whether to impose a condition to restrict the number of SSBTs in particular Premises, the Licensing Authority, amongst other things, should take into account the ability of employees to monitor the use of the machines by Children and Young Persons or by Vulnerable People."*

### (e) Travelling Fairs

Section 287 makes special provision for Gambling at 'Travelling Fairs', provided that the fair is not at the place for more than 27 days in the calendar year. Gambling is permitted without a Licence or Permit provided that:

- (a) any Gaming Machines are 'Category D' (low stakes and prizes); and
- (b) that 'Facilities for Gambling' (whether by way of Gaming Machine or otherwise) amount together to no more than an 'ancillary amusement' at the fair.

It will fall to the Licensing Board to decide whether:

- (i) the Applicant falls within the statutory definition of a 'travelling fair';
- (ii) the 'ancillary amusement' condition is met.

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### (f) Reviews

Requests for a Review of a Premises Licence can be made by Interested Parties or Responsible Authorities. It is for the Board to decide whether the Review is to be carried out. Under Section 198, the Board may reject a Review Application if they think that the grounds on which the Review is sought—

- (a) do not raise an issue relevant to the Principles to be applied in accordance with Section 153 (the general principles relevant to any exercise of the Board's powers);
- (b) are frivolous;
- (c) are vexatious;
- (d) will certainly not cause the authority to wish to take any of the actions it may take on upholding a Review (it may revoke the Licence, suspend it for up to 3 months; exclude a Default Condition or remove or amend an exclusion; or add, remove or amend a condition imposed or excluded by the Board);
- (e) are substantially the same as the grounds specified in an earlier Review Application;  
or
- (f) are substantially the same as representations made in relation to the Application for the Premises Licence.

In determining whether to exercise the power to reject a Review Application under (e) or (f), the Board shall consider the length of time that has elapsed since the earlier Application or representations. The Board may reject part of a Review Application but proceed with the remainder.

If the Board decides to proceed with a Review, there will be a Hearing to which the Licence Holder and the Applicant will be invited.

### **Part F - Other Permits, Licences and entitlements**

#### (a) (unlicensed) Family Entertainment Centre ("F.E.C.") - Gaming Machine Permits

F.1. Where Premises do not hold a Premises Licence but wish to provide Gaming Machines, they may apply to the Board for this Permit. Schedule 10 applies.

F.2. The Permit may only be granted if:

- (a) the Board is satisfied that the Premises will be used as an unlicensed FEC; and
- (b) the Chief Constable has been consulted on the Application.

F.3. Section 238 defines "Family Entertainment Centre":

*"Premises (other than an Adult Gaming Centre) wholly or mainly used for making Gaming Machines available for use"*

The words "wholly or mainly" are to be emphasised. A proposal to place Gaming Machines in the

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public spaces of a shopping centre is likely to be refused as incompetent.

F.4. Para. 5 includes:

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

Therefore, in order to satisfy the Board on the "wholly or mainly" issue, Applicants should provide a Layout Plan, e.g. showing a demarcated and enclosed area which will contain the machines.

F.5. Given

- that such Premises are likely to be frequented by children and vulnerable people, and
- that the Premises are not regulated by the Commission,

the Board will expect Applicants to demonstrate:

- (a) a full understanding of the maximum stakes and prizes of the Gambling that is permissible in unlicensed FECs
- (b) that the Applicant has no 'relevant' convictions (set out in Schedule 7 of the Act)
- (c) that employees are trained to have a full understanding of the maximum stakes and prizes
- (d) that there are policies and procedures in place to protect children and vulnerable people from harm. 'Harm' in this context is not limited to harm from Gambling but includes wider child protection considerations. The effectiveness of such policies and procedures will each be considered on their merits; they may include checks for staff, training covering how staff would deal with unsupervised under-18s being on the Premises, or under-18s causing perceived problems on/around the Premises.

F.6. Unlike other types of Licensing, a Permit does not require the prior designation of a Premises Manager, or require that he/she should hold a Personal Licence, so the Board will expect that the Applicant will

- (a) specify who will be the day-to-day manager; the Applicant should identify him/her, giving:
  - his/her full name
  - date of birth
  - place of birth
  - all addresses in the past 5 years
  - details of experience in operating such Premises.

and

- (b) undertake that, where another person is to take over the role of day-to-day manager,

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the Board will be given similar details for that other person by written notice at least 14 days before that person takes up the role.

Without this information there is no way of the Board being satisfied that it is likely that the Premises will operate continuously consistently with the Licensing Objectives.

Any Permit granted will be treated as being subject to a condition to the effect of (b).

The Board is unlikely to regard supervision by staff of the shopping centre or remote monitoring by CCTV to be adequate substitutes for a day-to-day manager who is continuously present.

F.7. Possible questions are:

- (a) will machines be continuously supervised to ensure that under-18s do not spend more than a specified amount of time or money using machines?
- (b) what amounts of time spent and money spent are proposed?

F.8. The Board may refuse an Application for renewal of a Permit only on the grounds:

- (a) that an authorised Local Authority Officer has been refused access to the Premises without reasonable excuse, or
- (b) that renewal would not be reasonably consistent with the Licensing Objectives.

(b) (Alcohol) Licensed Premises Gaming Machine Permits (Schedule 13, para 4(i))

F.9. Section 282 gives certain Premises an "Automatic Entitlement", which means they can have up to two Gaming Machines of Categories C and/or D without an express Permit under the Gambling Act 2005. The Premises which have the "Automatic Entitlement" are already licensed to sell alcohol for consumption on the Premises. The Premises merely need to notify the Licensing Board.

Under Section 284 the Board can remove the "Automatic Entitlement" in respect of any particular Premises if:

- (a) Provision of the machines is not reasonably consistent with the pursuit of the Licensing Objectives;
- (b) Gaming has taken place on the Premises that breaches a condition of Section 282;
- (c) The Premises are mainly used for gaming;
- (d) An offence under the Act has been committed on the Premises.

F.10. If Premises wish to have more than two machines, then they need to apply for a Permit. The Licensing Board must consider that Application based upon the Licensing Objectives, any guidance issued by the Gambling Commission, and "such matters as they think relevant".

F.11. The Board considers that "such matters" will be decided on a case-by-case basis, but generally it will have regard to the need to protect Children and Vulnerable Persons from harm or

## AGENDA ITEM 3

being exploited by Gambling. It will expect the Applicant to satisfy it that there will be sufficient measures to ensure that under-18s will not have access to adult-only Gaming Machines. Such measures might include the layout of the Premises being arranged so that adult-only machines:

- (a) are not in a place where under-18s are entitled to be; and
- (b) are in the sight of the staff behind the bar.

The staff would be expected to monitor to ensure that the machines are not being used by under-18s, and the Premises should display notices and signs informing customers where under-18s were not permitted.

F.12. If alcohol-licensed Premises seek a Premises Licence for non-alcohol licensed areas, they should apply for an Adult Entertainment Centre Premises Licence.

The Board can decide to grant the Application with a smaller number of machines and/or a different category of machines than that applied for. Conditions cannot be attached. The holder of a Permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

### (c) Temporary Use Notices ("T.U.N.s") (Part 9 of the Act and Part 14 of the Guidance)

F.13. T.U.N.s allow the use of Premises for Gambling where there is no Premises Licence but where a Gambling Operator (who already holds a relevant Operating Licence issued by the Commission) wishes to use the Premises temporarily for providing facilities for Gambling, e.g. in hotels, conference centres or sporting venues. The prescribed fee is £350 (The Gambling Act 2005 (Fees No. 4) (Scotland) Regulations 2007 No. 461).

F.14. The same set of Premises may not be the subject of a T.U.N. for more than 21 days in any 12-month period, but may be the subject of several T.U.N.s provided that the total does not exceed 21 days.

F.15. There are a number of statutory limits. It is for the Board to decide what constitutes a "set of Premises" where T.U.N.s are received relating to the same building or site. It will expect the person giving the T.U.N. to demonstrate that he/she is not entitled, and has not been entitled, to occupy other parts of the same building or site, and is not connected with any such occupier.

### (d) Occasional Use Notices ("O.U.N.s") (Section 39 of the Act and Part 15 of the Guidance)

F.16. Betting on a 'track' without a Premises Licence is permitted for up to 8 days in a calendar year (the period from 1 January, and not a rolling period of 12 months) if an O.U.N. is given. In this context, 'track' does not simply mean a racetrack for horses or dogs.

F.17. Each case will be considered on its merits, and the Board will consider whether or not the place is a 'track' and whether the Applicant is entitled to use O.U.N. procedure.

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### **Annex 1 - Responsible Authorities**

(As Section 157 is applied to the Board's area; email addresses shown **thus**)

1. Section 157(b): The Gambling Commission, Victoria Square House, Victoria Square, Birmingham, B2 4BP.

**[info@gamblingcommission.gov.uk](mailto:info@gamblingcommission.gov.uk)**

2. Section 157(c)(ii): The Chief Constable, Police Scotland, St. Marnock Street, Kilmarnock KA1 1TJ.

**[ayrshirelicensing@scotland.pnn.police.uk](mailto:ayrshirelicensing@scotland.pnn.police.uk)**

3. Section 157(d): Scottish Fire and Rescue Service, West HQ, 99 Bothwell Road, Hamilton, ML3 0EA.

**[comments@firescotland.gov.uk](mailto:comments@firescotland.gov.uk)**

4. Section 157(e)(ii) (Planning Authority), Section 157(f) (the Council), Section 157(g) (Environment and Human Health Authority): North Ayrshire Council, Cunninghame House, Friars Croft, Irvine, KA12 8EE (Craig Hatton, Chief Executive)

**[chief.executive@north-ayrshire.gov.uk](mailto:chief.executive@north-ayrshire.gov.uk)**

5. Section 157(h) (Child Protection Authority): North Ayrshire Health and Social Care Partnership and Chief Officer of North Ayrshire Integration Joint Board, 5th floor West Wing, Cunninghame House, Friars Croft, Irvine KA12 8EE. (Stephen Brown, Director)

**[sbrown@north-ayrshire.gcsx.gov.uk](mailto:sbrown@north-ayrshire.gcsx.gov.uk)**

6. Section 157(i): H.M. Revenue & Customs, National Registration Unit, Portcullis House, 21 India Street, Glasgow, G2 4PZ.

### **Annex 2 - Consultee List**

1. Lynne McNiven, Child Health Commissioner, Consultant in Public Health, NHS Ayrshire & Arran PO BOX 13, Boswell House, 10 Arthur Street, Ayr KA7 1QJ

**[lynne.mcniven@aapct.scot.nhs.uk](mailto:lynne.mcniven@aapct.scot.nhs.uk)**

2. The Scottish Licensed Trade Association, C B C House, 24 Canning St, Edinburgh EH3 8EG

**[TheSlta@aol.com](mailto:TheSlta@aol.com)**

3. Association of British Bookmakers Ltd, Ground Floor, Warwick House, 25 Buckingham Palace Road, London SW1W 0PP.

**[mail@abb.uk.com](mailto:mail@abb.uk.com)**

**Public Health Response: Gambling Act 2005  
North Ayrshire Licensing Board  
Licensing Authority Policy Statement of Principles 2019-2022**

### Introduction

The Gambling Act 2005 places a duty on Licensing Boards to publish a Statement of Principles which they propose to apply when exercising their functions in line with the three licensing objectives of:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
- Ensuring that Gambling is conducted in a fair and open way, and
- Protecting Children (under 16) and other “vulnerable persons” from being harmed or exploited by Gambling.

The Public Health Department in NHS Ayrshire & Arran has considered the draft statement of principles and provides the following comments.

### Section B.5

We welcome North Ayrshire Licensing Board’s description of “vulnerable persons” and agree that this should include: individuals who gamble more than they want to; gamble beyond their means; and those who may not be able to make informed or balanced decisions about gambling due to mental health needs, learning disability or substance misuse; and young persons aged 16 or 17 years old.

In the interests of clarity it may however be more helpful to use the definition of vulnerable persons set out in the Adult Support and Protection (Scotland) Act 2007:

*Section 3(1) defines "adults at risk" as adults who:*

- *are unable to safeguard their own well-being, property, rights or other interests;*
- *are at risk of harm; and*
- *because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.*

### Section B.7

We acknowledge and welcome the Board’s special attention to Licensing Objective 3 (protecting children and other vulnerable persons from being harmed or exploited by gambling) when considering applications for licences.

We agree that the location of the gambling activities within premises should be considered and the prevention or control of access to these areas would help to minimise potential harm.

In the Board’s description of “vulnerable people”, there is reference made to individuals with mental health or learning disability needs. We would suggest that in the following text the Board may wish to amend their list to include centres for individuals receiving treatment for their mental health and/or support individual with

learning disabilities.

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

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

Although we appreciate that the Board is unable to make decisions on whether a gambling license should be granted on the grounds of geographical location, we would encourage the Board to take cognisance of the potential impact of granting a license in an area experiencing multiple socioeconomic disadvantage.

There is evidence of a clear and persistent gradient in the risk of poor health by socio-economic status, with those living in the most deprived populations experiencing poorer health than those who live in the least deprived populations<sup>i</sup>. In neighbourhoods where people are already struggling due to unemployment and poverty and are experiencing higher levels of alcohol, drug and mental health problems we would ask the Board to consider whether there is a risk that granting a gambling license would further disadvantage these vulnerable communities.

**Section B.7 (a)**

We welcome the measures that the Board has proposed for applicants to consider and implement so that under 18s are protected from harm or being exploited by gambling in Adult Gaming Centres. We also welcome the statement that the list is not exhaustive meaning the Premises may be expected to put in place more measures to protect young people from harm.

**Section B.7 (d)**

It is encouraging to see the Licensing Board considering the impact that multiple Self-Service Betting Terminals (SSBT's) may have on children and young people of vulnerable individuals. It would be useful for the Board to set out how it will appropriately monitor the use of machines and how they would expect employees to implement this.

### **Section F.5 (d)**

We welcome the Board's considerations of wider child protection concerns. We would suggest that the Board may wish to draw applicant's attention to the HSCP as the Child Protection Authority for advice on policies and procedures. It may also be worthwhile offering applicant's examples of policies and procedures deemed as good practice. It would be prudent to include relevant legislation: Children and People Scotland Act 2014, United Nations Right of the Child and Getting it Right For Every Child (GIRFEC).

### **Section F.11**

We are in agreement with the Board's requirements to protect children and vulnerable persons from harm or being exploited by gambling.

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<sup>i</sup> Alcohol Research UK (2015) Understanding the alcohol harm paradox. Available at: <https://alcoholchange.org.uk/publication/understanding-the-alcohol-harm-paradox>

**Equality and Children’s Rights Integrated Screening Form**

The public sector equality duty requires that we demonstrate that we are making decisions in a fair, transparent and accountable way. The Council must show that it has considered the needs and rights of people with protected characteristics. In addition where decisions affect young people, we must consider the ‘Rights of the Child’, under the United Nations Convention on the Rights of the Child (UNCRC).

The duty requires that the Council assesses the ‘equality impact’ of proposals thoroughly before any decisions are taken. This should be proportionate to the decision that is being made. In addition we must also ensure we are not impacting negatively on Human Rights or socio-economic status under the Fairer Scotland Duty\*

This form should assist in assessing whether a more detailed Equality and Children’s Rights impact assessment is required.

<b>1. Proposal</b>		
Title	<i>Licensing Policy Statement (Gambling Licensing) (LPS)</i>	
Budget reference no. and heading if appropriate (or N/A).*	<i>n/a</i>	
Amount (£) of saving if appropriate (or N/A)	<i>n/a</i>	
Service	<i>Legal (Licensing)</i>	
Lead Officer	<i>Aileen Craig, Senior Manager, Legal Services</i>	
Others Involved	<i>William O'Brien, Solicitor (Licensing)</i>	
Date Completed	<i>31 January 2019</i>	
<b>2. What are the main aims of the proposal?</b>		
<i>Adoption of the LPS. It is a statutory obligation on the Licensing Board to adopt and review a LPS every 3 years. The LPS influences decisions by the Board in individual cases to ensure compliance with the Licensing Objectives.</i>		
<b>3. What data, research or other evidence was used for this screening?</b>		
<i>The review of the LPS involves consultation from the public and statutory consultees, and publication of the draft to invite public comment. It involves consideration of information from Board records about the numbers and types of Licence; SIMD data from the Scottish Government; guidance from the Gambling Commission (U.K.); and the consultation response from the Public Health Department in NHS Ayrshire &amp; Arran.</i>		
<b>4. Screening questions</b>		
	<b>Yes</b>	<b>No</b>
Does the proposal affect service users, employees or the wider community and specifically to services that are known to being important to particular protected groups?	Y	

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Does the proposal have any relevance for Human and/or Children's Rights? (please see guidance)		N
Is it a major proposal, significantly affecting how services are delivered or how other organisations operate?		N
Does it relate to an area where there are known inequalities or has significant potential for reducing inequalities or improving outcomes?		N

#### 5. What is the impact of the (budget) proposal on equality groups?

Protected Group	Positive Impact	Negative Impact	Neutral Impact	Comments
Age (young**/old people)			N	<p><i>The LPS is a statement of how the Board will approach the Licensing Objectives:</i></p> <p style="padding-left: 40px;"><i>(a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,</i></p> <p style="padding-left: 40px;"><i>(b) ensuring that gambling is conducted in a fair and open way, and</i></p> <p style="padding-left: 40px;"><i>(c) protecting children and other vulnerable persons from being harmed or exploited by gambling.</i></p> <p><i>(Gambling Act 2005, Section 1). "Children" means under-16s. In North Ayrshire, "vulnerable persons" includes people who:</i></p> <p style="padding-left: 40px;"><i>(a) gamble more than they want to;</i></p> <p style="padding-left: 40px;"><i>(b) gamble beyond their means;</i></p> <p style="padding-left: 40px;"><i>(c) may not be able to make informed or balanced decisions about Gambling due to mental</i></p>

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				<p><i>health needs, learning disability or substance misuse relating to alcohol or drugs;</i></p> <p><i>(d) are 'Young Persons' (aged 16 or 17); or</i></p> <p><i>(e) are "Adults at Risk" as defined by Section 3(1) of the Adult Support and Protection (Scotland) Act 2007 (asp 10), being adults who</i></p> <p><i>(i) are unable to safeguard their own well-being, property, rights or other interests,</i></p> <p><i>(ii) are at risk of harm, and</i></p> <p><i>(iii) because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.</i></p> <p><i>The Licensing Objectives are not the sole criteria for the Board in deciding whether to grant or refuse a Licence. Section 153 directs the Board to aim to <u>permit</u> the use of Premises for Gambling in so far as they think it is —</i></p> <p><i>(a) in accordance with any relevant Commission Code of Practice,</i></p> <p><i>(b) in accordance with any relevant</i></p>
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				<p><i>Guidance issued by the Commission.</i></p> <p><i>(c) reasonably consistent with the Licensing Objectives, and</i></p> <p><i>(d) in accordance with the LPS.</i></p> <p><i>Licences have conditions but most of these are prescribed throughout the U.K. by legislation. The Board has not considered it necessary to impose additional conditions.</i></p>
Disability (Physical & learning)			N	<p>See "Age" above.</p> <p><i>The LPS does not explicitly deal with this Relevant Protected Characteristic, but the inclusive definition of "vulnerable persons" in the North Ayrshire LPS demonstrates that the Board approaches its Public Sector Equality Duty to eliminate discrimination, harassment, victimisation and other prohibited conduct and advance equality of opportunity between persons who share Relevant Protected Characteristics and those who do not.</i></p>
Gender Re-assignment			N	See comments above.
Pregnancy & Maternity			N	See comments above.
Race & ethnic origin			N	See comments above.
Religion or belief			N	See comments above.
Sex			N	See comments above.
Sexual Orientation			N	See comments above.
Other (Poverty, homelessness, rural, carers, part-time workers, etc)			N	
Fairer Scotland Duty			N	
Human Rights			N	<i>The procedures prescribed by statute are consistent with the</i>

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				<i>Licensing Board's duties under ECHR Art. 6(1) and Protocol 1, Art. 1</i>
<b>6. The Fairer Scotland Duty – (reducing the socio-economic impact of our policies, strategies and budget decisions)</b>				
<b>Does the proposal have any negative (or potential) positive impacts that need to be explored in more detail? (please provide brief summary).</b>				
<i>No.</i>				
<b>7. Have any cross cutting impact been identified from other Council Services or Partner Agencies (multiple discrimination or accumulated effects of multiple proposals)?</b>				
<i>No.</i>				
<b>8. If a negative impact has been identified how will you modify it?</b>				
<i>N/A.</i>				
<b>9. Has there been any consultation on the (budget) proposal with any protected characteristic groups or other services or partner organisations?</b>				
<i>Not directly. The consultation process included the publication of the draft LPS on the Board's website with an invitation to comment. Specific consultation documents were issued to the "Responsible Authorities" prescribed by Section 157 (see Annex 1 to the LPS), including the Council's Chief Executive, and to the Consultees listed in Annex 2 (the Child Health Commissioner for NHS Ayrshire &amp; Arran, and two Trade bodies).</i>				
<b>10. What are the monitoring and review arrangements?</b>				
<i>By statute, the LPS is reviewed every 3 years.</i>				
<b>11. What are the recommendations and further action resulting from this Equality Screening? (please explain)</b>				
Full Equality Assessment (or) -		<i>Not required</i>		
Full Equality Assessment and Children's Rights Impact required.		<i>Not required</i>		
Screening Only (Please explain)		<i>It is considered that the screening undertaken does not require a full Equality Assessment. The impact of the LPS on those with Protected Characteristics is neutral.</i>		

Authorisation	
Policy Lead/Manager	Date:
Aileen Craig	31/1/19
Head of Service	Date:
Andrew Fraser	31/1/19

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\*If relating to a Budget proposal, the Screening and/or Full ECRIA should be attached to Committee Report and published on the Council's external website Equality pages

\*\*If a potential impact is identified for people under the age of 18, the CRIA screening questions in Appendix 1 should be answered

### Appendix 1 – Children's Rights Impact Screening Form

#### CRIA - Screening Questions

**1. What aspects of the Policy/measure will affect children and young people?**

*(The articles of the UNCRC and the wellbeing indicators under the Children and Young People (Scotland) 2014 apply to all people under the age of 18, including non-citizen and undocumented children and young people). More information can be found – (Appendix 1 of the full form)*

*([Children & Young People's Commissioner Scotland](#) )*

The Licensing Objectives of (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime, and (c) protecting children and other vulnerable persons from being harmed or exploited by gambling have a particular relevance for children and young people. The policy is considered to be of neutral impact however the operation of these objectives will assist in minimising any potential negative impacts of gambling on children and young people.

**2. What Likely Impact (direct or indirect) will the policy have on children and young people – considering any positive, negative or neutral impacts.**

*(Direct impact, where changes directly impact the young person, e.g. education, child protection etc or Indirect Impact, where although not directly aimed at young people, will still have an impact, e.g. welfare reforms, parental leave, housing supply etc)*

The Policy does not have a direct impact, is considered to have neutral impact on children although it may mitigate any potential negative impacts of gambling on children and young people.

**3. Are there particular groups of young people who are more likely to be affected than others?**

*(‘Children’ can refer to individuals, groups or children in general, and can also be related to the range of characteristics under the Equality Act – disability, race, religion or belief, sex, sexual orientation. It also includes those that are eligible for special protection, including pre-school children, children in hospitals, rural areas, looked after children, victims of abuse, young people who offend, child asylum seekers, children living in poverty)*

No