

**NORTH AYRSHIRE LICENSING BOARD
LICENSING POLICY STATEMENT 2013 - 2018
UNDER THE LICENSING (SCOTLAND) ACT 2005**

Annex H, part (f) "Third Party Comments and Complaints"

General

1. In many procedures the statute permits third parties (such as neighbours) to make Objections and Representations (here "O/R") about proposals or to make complaints about existing Premises ("Section 36 Reviews").

The Board will accept communication by email.

2. It is not possible to raise issues with the Licensing Board which relate to legislation other than the Licensing (Scotland) Act 2005. For example, issues about parking and Planning Permission are dealt with by the Roads (Scotland) Act 1984 or the Town and Country Planning (Scotland) Act 1997, and the Licensing Board cannot deal with these.

However, the Board may accept that the issues raised are relevant to the Licensing Objectives or statutory Grounds for Refusal.

3. It is important that a comment should be specific. It is not enough to say "I object" or "I complain", without giving an explanation for that view.

For example, in an Application for a new Premises Licence, the Board must make a decision based on the "Grounds for Refusal" stated in Section 23(5) (the position is similar with Major Variations, where the "Grounds for Refusal" are stated in Section 30(5)). An O/R would have to state in what way the proposal would give rise to one or more of the "Grounds for Refusal".

If the O/R is insufficiently specific, the Board may reject it as "frivolous or vexatious" (Section 22(4)), and if the O/R is rejected then the Board may recover expenses from the person making it (Sections 22(5) and 22(6)).

For these reasons, a Petition is unlikely to be accepted as a valid O/R. If 100 people sign a Petition, they are unlikely to all have the same complaints. The Board has to determine the weight to be placed on individual comments. In the common example of an objection or complaint based on nuisance or Anti-social behaviour, the Board is likely to be more influenced by comments from immediate neighbours of the Premises than from residents further away. If a person signs a Petition without specifying his address his comment is likely to be disregarded.

The fact that an anonymous complaint has been made will not itself lead to a Review, but it would lead to some investigation. If that investigation uncovers info which justifies Board action, the Board would be advised if the LSO and other staff cannot resolve the issue (see also Para. f.4 below - the Board can reject an objection or complaint as "frivolous or vexatious").

Complaints

4. The position is similar with complaints ("Premises Licence Review Applications under Section 36"). They can be made by anyone, but they must specify the alleged "Ground for

Review” (Section 36(5); the Grounds are stated in Section 36(3), by reference to the Licensing Objectives in Section 4).

The Board must be able to establish that a “Ground for Review” might exist, and the Licence Holder is entitled to fair notice of the complaints. It is therefore expected that the Applicant for Review should, for each alleged incident, answer questions such as:

what was the day, date and time?

were the staff of the Premises advised? (if so, who was told and when?)

was there any official complaint (e.g. to Police, Environmental Services) ?

If so, what action was taken?

If there was no complaint, why not?

Again the Board may reject the Application if the Board considers the Application either

(a) is vexatious or frivolous, or

(b) does not disclose any matter relevant to any Ground for Review.

and order the maker to pay expenses (Section 36(6) and 36(7)(b)).