

**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.

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):

	North Ayrshire	North Ayrshire %	Scotland %	G.B. %
Economically active	62,700	74.7	77.8	78.4
In employment	58,700	69.8	74.5	75.0
Employees	51,000	61.1	66.0	64.2
Self-employed	7,300	8.2	8.2	10.6
Unemployed	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):

	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
Most deprived 0-15% (overall)	33	33	43	46	51

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
North Ayrshire (overall)	33	33	43	46	51

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.

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,

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;

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
- 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."

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

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—

- (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 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.

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

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.

(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 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, 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 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.

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

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

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

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

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

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

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

TheSLTA@aol.com

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

mail@abb.uk.com