

SHETLAND ISLANDS AREA LICENSING BOARD

Clerk: Jan-Robert Riise
Depute Clerk: Susan Brunton

Governance and Law
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If calling please ask for
Leisel Malcolmson
Direct Dial: 01595 744599

Dear Sir/Madam

Date: 30 May 2017

You are invited to attend the following meeting:

**Shetland Islands Area Licensing Board
Auditorium, Museum and Archives, Hay's Dock, Lerwick
Monday 5 June 2017 at 10.00am**

Apologies for absence should be notified to Leisel Malcolmson at the above number.

Yours faithfully

Depute Clerk to the Board

Clerk to the Board: Jan R Riise

AGENDA

- (a) Hold circular calling the meeting as read.
- (b) Apologies for absence, if any.
- (c) Appointment of Convener and Vice-Convener to the Shetland Islands Area Licensing Board. Report enclosed.
- (d) Declarations of Interest.

Item

1. Licensing (Scotland) Act 2005 - Applications for Variation other than a Minor Variation of Premises Licence and Occasional Licenses. Enclosed.
2. Gambling Act 2005 - New Three Year Policy Statement - 2016/2019. Enclosed
3. Hearing for a Personal Licence Holder (Section 74). Enclosed

SHETLAND ISLANDS AREA LICENSING BOARD – MEETING 5 JUNE 2017

1. Application for Variation other than a Minor Variation of Premises Licence

<u>Applicant</u>	<u>Premises</u>	<u>Proposed Variation</u>																
(a) Monterey Jacks Lerwick Ltd Cumbernauld House Cumbernauld Glasgow G67 3JG	Paparazzi Bistro 88 Commercial Street Lerwick Shetland ZE1 0EX	Increase hours when alcohol will be sold for consumption on the premises (currently 11am-Midnight all days) and add hours when alcohol will be sold for consumption off the premises (currently no off-sales provision)																
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Amend Operating Plan to include Indoor/Outdoor Sports as an activity;

Amend Operating Plan to include Outdoor Drinking Facilities as an activity and amend Layout Plan to show same;

Monterey Jacks Lerwick Ltd
Cumbernauld House
Cumbernauld
Glasgow
G67 3JG

Paparazzi Bistro
88 Commercial Street
Lerwick
Shetland
ZE1 0EX

Amend Operating Plan to include deliveries (which may include alcohol);

Delete reference to implementation of a Challenge 21 Scheme and substitute it for a Challenge 25 Scheme;

Change name of premises to 'Monterey Jacks'.

LSO comments:

I refer to the above application and have the following comments to make:

Outdoor drinking area:

- The manager of the premises should take appropriate steps to alert customers to the effect of the local byelaw prohibiting consumption of alcohol in public, if the customers were to take alcohol outwith the licensed area.
- The manager should also give consideration to how the outside area is clearly delineated for customers to prevent them from committing an offence by straying outside the licensed area.
- I note that there is no indication on the variation application of how the outside seating area is to be controlled with respect to the above.

Deliveries (which may include alcohol):

The provision of alcohol deliveries is a new request for Shetland. The requirements for this are also tightly regulated by the following requirements:

- All purchases to be made by 10pm and delivered by 12 midnight. Deliveries are prohibited between midnight and 6am.
- All orders must be recorded prior to dispatch and only delivered to the name and address of the person requesting it.
- Details of the alcohol quantity and price should also be recorded prior to dispatch
- The vehicle must contain a delivery book or invoice with the same information.
- The delivery person must ensure they take all reasonable precautions and exercise due diligence so as not to commit an offence of delivering alcohol to a young person or child. This means they must check the age of the person by examining documents (such as passport, drivers licence, etc).

Live music :

Although this is not mentioned in the list of Proposed variations, Live Music has been requested on the application form. The area where live music is proposed to be located is in the upper bar which is adjacent to a seated area with low coombe ceilings and skylights. The window are likely to be opened if the building is being used to capacity. The request is for music to be played up until 1am for 7 days a week. There are residential properties adjacent and close by to Monterey Jack's and hotel accommodation opposite so there is the likelihood that noise complaints being received whether music is amplified or not.

Police comments:

The variation requested consists of

1. Increase on sales terminal hours from midnight to 1 am the following morning, 7 days per week.
2. Add off sales hours 11am to 10pm, 7 days per week.
3. Amend Operating Plan to include Indoor/Outdoor Sports as an activity.
4. Amend Operating Plan to include Outdoor Drinking Facility as an activity and amend Layout Plan to show same.
5. Amend Operating Plan to include deliveries (which may include alcohol).
6. Delete reference to implementation of a Challenge 21 Scheme and substitute it for a Challenge 25 Scheme.
7. Change name of premises to 'Monterey Jacks'.

In terms of Section 29(5) of the Act this request can be considered a variation.

In terms of Section 22(1)(a) of the same Act, I make the following objection.

In relation to variation 1. As above, "increase on sales terminal hours from midnight to 1 am the following morning, 7 days per week".

Protecting Children from Harm.

Question 6(d) on the operating plan states "Provide statement regarding the times during which children and young persons will be allowed entry" has the response "During all opening hours".

To allow the terminal hour to be extended from midnight to 1 am the following morning fails to adhere to the licensing condition "Protecting Children from Harm" in that it will provide carte blanche for children of all ages to be within the premise until the early hours of the morning during times when alcohol consumption tends to be increased and conduct of patrons tends to be rowdy and language deteriorating.

The Licensing Board Policy details at section 27.6 "limitations on the hours when children may be present, in all or parts of the premise". As such the requested amendment fails to adhere to the Board Policy.

If however the reply to Question 6(d) was amended to a more reasonable time frame for children to leave the bar, for instance "Children will be allowed entry to the premises until 10 pm provided they are accompanied by an adult and are present for the purpose of a meal or whilst attending a private function", then Police Scotland would have no objection to the amendment in terminal hour to 1am.

In relation to variation 4. As above, "Amend Operating Plan to include Outdoor Drinking Facility as an activity and amend Layout Plan to show same"

Preventing Crime and Disorder

Within Lerwick Town Centre there is currently an Alcohol Bylaw in place – Street Drinking Designated place Local Government (Scotland) Act 1973, Section 201, 202 and 203. The area which the applicant is proposing to have outside drinking is a part of the public road within the Alcohol Bylaw zone and as such could cause issues of dubiety

with the public as to where the byelaw was in force. This is likely to cause crime if the patrons were outside the boundaries of the premises license and disorder when Officers are carrying out their duties in relation to the byelaw.

Securing Public Safety

The outdoor drinking area proposed by the applicant is on a public road, the width of which is constrained by buildings on both sides. The potential conflict between patrons who may be intoxicated and moving vehicles is a significant risk to Public Safety.

The premise has no requirement to have security staff employed as part of their licensing conditions, as such, staff working within the premise would have no means of ensuring the safety of those within the outdoor drinking area at times when incidents of street disorder are notably increased.

Preventing Public Nuisance

The outdoor drinking area proposed by the applicant is in a residential area. While there are other licensed premises in the same area, their premises are all enclosed and so the level of noise is contained within. Patrons outside are likely to cause substantial noise nuisance to neighbours.

The applicant has detailed no time restrictions on the outside drinking area, as such outside drinking can continue until midnight, or indeed 1am if the requested extension to licensing hours is granted. This fails to adhere to section 19.1 of the Licensing Board Policy regarding outside seating areas which details “the Board would look more favourably on proposals for suitable outside drinking areas aimed at creating a more family friendly environment”.

In terms of section 22(1)(a) of the Licensing (Scotland) Act 2005, I am of the opinion that the variation should be refused on the grounds that it would be inconsistent with the licensing objectives of:

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

As detailed above.

This objection is submitted for your attention in considering this application.

Building Standards comment:

None received.

Community Council comments:

This application came in too late to be included on the May agenda for Lerwick Community Council. It will be included on the agenda for the meeting on Monday 5 June. I realise this is past the deadline for comments.

Health Board Comments:

We have no objection to the on-sales licence. However, we feel very strongly that there is already over-provision of off-licence facilities in Lerwick in particular. There is substantial evidence of alcohol related harm in Shetland; one of the five key licensing objectives is to protect and improve public health, and we cannot see how either maintaining or increasing the availability of alcohol via off-sales in Lerwick contributes to meeting this Licensing Objective.

The Faculty of Public Health notes that off-licence sales potentially increase health related harm due to the fact that home measures are often larger than pub measures. Reducing the density of alcohol outlets (i.e. the number of alcohol outlets in close proximity) has also been shown to decrease alcohol consumption and harm. There is also strong evidence to suggest that reducing trading hours (i.e. imposing a curfew on licensed venues) results in a reduction in alcohol purchase and consumption and, subsequently, a reduction in alcohol-related harms.

We therefore oppose the Off-sales part of the application.

Fire Board Comments:

None received.

2. Application for Occasional Licence

	<u>Applicant</u>	<u>Premises</u>	<u>Hours Applied For</u>	<u>Event or Occasion</u>
(a)	Walls Regatta Club	Walls Regatta Club Bayhall Walls Shetland ZE2 9PF	11am Friday 14 July 2017 – 1am Saturday 15 July 2017 11am Saturday 15 July 2017 – 1am Sunday 16 July 2017 11am Sunday 16 July 2017 – 1am Monday 17 July 2017	Regatta Weekend

LSO comments:

No objection.

Police comments:

No objection.

SHETLAND ISLANDS AREA LICENSING BOARD

5 June 2017

Gambling Act 2005 New Three Year Policy Statement - 2016/2019

1. Introduction

- 1.1 The purpose of this report is to present an initial draft Three Year Policy Statement under the Gambling Act to the Board and to invite the Board to consider its terms and, if satisfied, publish it for public consultation.

2. Background

- 2.1 In terms of the Gambling Act 2005, Section 349, the Board is required to review every three years their statement of the principles that they propose to apply in exercising their functions under the Gambling Act 2005. This review ought to have been carried out in January 2016, but this was not brought before the Board by the Depute Clerk and is now overdue. The Statement of Principles has to conform to the terms of the Gambling Act 2005 (Licensing Authority Policy Statement) (Scotland) Regulations 2006.

3. Next Steps

- 3.1 The Board is asked to consider the terms of the draft Policy Statement and confirm that the draft properly reflects their views on the matters covered.
- 3.2 The reality is that this Board has had little business to consider under the Gambling Act 2005. There has only ever been one licensed premises under the Act within the area since the Act came into force (Shetland Turf Accountants). In these circumstances there has been no particular issues identified from practice with respect to the current Gambling Act Policy Statement.
- 3.3 There have been changes in the Guidance issued in 2016 by the Gambling Commission since the previous Gambling Act Policy Statement was issued. Those changes have been incorporated into the draft which is produced as Appendix 1 to this report. Amendments reflecting what appears to be good practice from the Statements adopted by other Boards and clarifications when the existing Policy Statement appeared unclear or deficient have also been added by the Depute Clerk.
- 3.4 If the Board is satisfied with the terms of the draft Policy Statement it can be published for public consultation in accordance with the Regulations. A further report would then be presented to the Board at their meeting on 24 August 2017, to consider any representations received and decide on the final terms of their Policy Statement.

3.5 The Gambling Commission has suggested that licensing authorities might wish to complete and map their own assessment of local risks and concerns by developing Local Area Profiles. The Depute Clerk does not recommend such an approach for this area as the work involved is not proportionate to any potential benefit given the low likelihood of any applications.

4. Recommendation

4.1 I recommend the Board approve the terms of the draft Gambling Policy Statement subject to any comments and direction required, and instruct me to publish it for consultation with a closing date of 7 August 2017.

4.2 Consider whether the Board wishes to instruct the Depute Clerk to gather evidence for the purpose of developing a Local Area Profile as set out in clause 3.5.

Depute Clerk to the Licensing Board

Ref: Z/0/18 SB

12 May 2017

**SHETLAND ISLANDS AREA
LICENSING BOARD**

**POLICY
STATEMENT
OF
GAMBLING
LICENSING
PRINCIPLES
2016 - 2019**

GAMBLING ACT 2005

POLICY STATEMENT OF LICENSING PRINCIPLES

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PART A – GENERAL PRINCIPLES

1 Introduction

- 1.1 This policy statement of licensing principles was approved by the Shetland Islands Area Licensing Board (the licensing authority) on [] and was published via our web-site on [] and will come into effect on [] .
- 1.2 All references to the Gambling Commission's Guidance for Local Authorities refer to the 5th Edition Guidance published in September 2015 and updated in 2016, available on www.gamblingcommission.gov.uk.
- 1.3 We will carry out our role under the Gambling Act 2005 (the Act) in a transparent manner and in the public interest.
- 1.4 We are committed to avoid duplication with other legislation and regulatory regimes as far as possible. Legal requirements under other legislation such as health and safety and fire precautions are not replicated in this statement.
- 1.5 This statement has been developed taking into account the statutory guidance from the Gambling Commission and we will give appropriate weight to the views of persons and organisations consulted.
- 1.6 Section 349 of the Act requires licensing authorities to publish a statement of principles which will be applied in exercising their functions under the Act. This policy statement fulfils that statutory requirement for the Shetland Islands Area Licensing Board.
- 1.7 This statement of principles will operate from the date of its adoption by SIALB and will be fully reviewed in 2019; it will be kept under scrutiny and revised if appropriate, during that period.
- 1.8 This document should be read in conjunction with the Act, regulations made under the Act and guidance issued by the Gambling Commission. This is designed to be a strategic gambling statement, not an operational guide.

2 Licensing Objectives

- 2.1 In exercising our functions under the Gambling Act 2005, the Shetland Islands Area Licensing Board, as a licensing authority, will have regard to the statutory licensing objectives, which are set out at Section 1 of the Act: -
 - 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 and other vulnerable persons from being harmed or exploited by gambling.

2.2 Section 153 of the Act requires us, in making decisions concerning premises licences and temporary use notices, to aim to permit the use of premises for gambling in so far as we think it is: -

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives and
- in accordance with the Statement of Licensing Principles

2.3 Nothing in this statement will override the right of any person to make an application, make representations about an application, or apply for a review of a licence. Each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005.

3 Content of Statement

3.1 A summary of information contained within this statement is shown as an Index on page 3 of this document.

3.2 The licensable activities covered by this statement are: -

Premises Licences

- Adult gaming centres
- Betting premises
- Bingo
- Casinos
- Licensed family entertainment centres
- Provisional statements
- Tracks
- Travelling fairs

Permits and Temporary and Occasional Use Notices

- Club gaming and club machine permits
- Gaming machines on alcohol licensed premises
- Occasional use notices
- Prize gaming
- Temporary use notices
- Unlicensed family entertainment centres
- **Small Society Lotteries**

3.3 The contents of this document are not a full or authoritative statement of the law or statutory guidance and do not constitute professional or legal advice.

3.4 This statement is published on the licensing authority's web-site and is available at the offices of the licensing authority during normal working hours.

- 3.5 The address of the licensing authority's web-site is
www.shetland.gov.uk/shetland

4 Geographical Application of Statement

The Shetland Islands are a group of more than 100 islands of which 15 are inhabited, located in the North Atlantic and are virtually equidistant between Norway to the east and the UK mainland to the south. The Islands have a population of approximately 23,000 with the main population centre being Lerwick with approximately 7,000 inhabitants.

5 Consultation Process

- 5.1 The Shetland Islands Area Licensing Board is required by the Gambling Act 2005 to publish a statement of the principles which it proposes to apply when exercising its functions. This statement ought to be reviewed at least every three years. The statement may also be reviewed from time to time and in the light of any such review, it may be revised. Any such revision will be subject to consultation and publication before it takes effect.
- 5.2 The Gambling Act requires that the following parties are consulted by each licensing authority: -
- the Chief Constable of the relevant area;
 - one or more persons who appear to us to represent the interests of persons carrying on gambling businesses in the authority's area; and
 - one or more persons who appear to us to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Act.
- 5.3 We consulted widely on a draft of this statement of principles before finalising it. A list of the persons sent a draft of this document to is attached at Appendix 1.

6 Declaration

- 6.1 In producing the final licensing policy statement, the licensing authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the guidance issued by the Gambling Commission and any responses received from those consulted on the policy statement.

7 Responsible Authorities

- 7.1 We are required under section 157(h) of the Act to designate, in writing, a body competent to advise the licensing authority about the protection of children from harm. In such designation, the following principles are applied: -
- the need for the body to be responsible for an area covering the whole of the licensing authority's area;
 - the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group; and
 - whether the body has experience in relation to protection of children issues.
- 7.2 We designate the Shetland Child Protection Committee for the purpose of providing advice about protection of children from harm.
- 7.3 The responsible authorities under the Act must be notified of applications in relation to premises licences and are entitled to make representations in relation to them. A list of the responsible authorities for our area is attached to this document at Appendix 2.

8 Interested Parties

- 8.1 The Act identifies interested parties in relation to an application for or in respect of a premises licence and who can make representations about licence applications or apply for a review of an existing licence, namely a person who in the opinion of the licensing authority: -
- lives sufficiently close to the premises to be likely to be affected by the authorised activities;
 - has business interests that might be affected by the authorised activities; or
 - represents persons who satisfy either of the two sub-paragraphs above.
- 8.2 In accordance with S.158 the licensing authority shall apply the principles in paragraphs 8.3 to 8.9 to determine whether a person is an interested party.
- 8.3 The licensing authority will consider each case on its merits.
- 8.4 In determining whether a person lives "sufficiently close to the premises", the licensing authority may have regard to such of the following factors as it considers appropriate to the circumstances: -
- the size of the premises;
 - the nature of the activities taking place;
 - the distance of the premises from the location of the person making the representation;
 - what might, in the opinion of the licensing authority, be reasonably regarded as a potential impact of the premises (this might for example be

- influenced by the anticipated number of customers, routes likely to be taken by those visiting the premises etc);
 - the nature of the complainant. This is not meant to cover the personal characteristics of the complainant, but the interest of the complainant where they may be relevant to the distance from the premises. For example, the licensing authority is likely to apply a wider interpretation to the meaning of “sufficiently close” where the complainant provides services attended by children or vulnerable adults; and
 - such other factors as it considers are relevant.
- 8.5 In determining whether a business interest is “likely to be affected”, the licensing authority may have regard to such of the following factors as it considers appropriate to the circumstances: -
- the size of the premises;
 - the “catchment” area of the premises (i.e. how far people travel to visit);
 - the nature of the business that it is suggested is likely to be affected; and
 - such other factors as it considers relevant.
- 8.6 In determining whether a person is regarded as representing a person in either of the other two interested party categories, the licensing authority in particular considers that the following may fall within this category: -
- Members of Parliament or elected councillors;
 - local authorities;
 - residents’ and tenants’ associations; and
 - trade unions and trade associations.
- 8.7 The licensing authority will not necessarily consider a person as representing one of the other categories of interested party unless the person can demonstrate: -
- that they have specifically been requested in writing to represent that person and / or business in relation to the submission of the representation; and / or
 - that, in the case of a body, it represents a significant number of persons that have made submission with regard to the representation.
- 8.8 This authority will not generally consider residents’ or tenants’ associations or trade unions or trade associations to be interested parties unless they have a member who can be classed as one under the terms of the Act e.g. living sufficiently close to the premises to be likely to be affected by the activities being applied for.
- 8.9 Interested parties may also be represented by other persons such as councillors, MPs, etc. Care should be taken when approaching councillors that they are not part of the Licensing Board dealing with the licence application. If there are any doubts then please contact the Clerk to the Board on (01595) 744550 for advice.

9 Responsible Authorities and Interested Parties - Representations

- 9.1 Representation made by a responsible authority or interested party which is not withdrawn will normally result in a hearing taking place.
- 9.2 In certain circumstances however, a hearing need not take place. For example, where the licensing authority considers that the representation: -
- is vexatious;
 - is frivolous; or
 - will certainly not influence the authority's determination of the application.

10 Disclosure / Exchange of Information

- 10.1 In fulfilling its functions and obligations under the Act, the licensing authority will exchange relevant information with other regulatory bodies and will establish protocols as necessary. In exchanging such information, the licensing authority will conform to the requirements of the Act, data protection and freedom of information legislation as well as the Gambling Commission's Guidance to Licensing Authorities.
- 10.2 Contact details of those persons making representations and of their representations will be made available to applicants for a licence. Should a hearing take place, they will form part of a public document. Any party who lodges representations or applies for a review of a premises licence will be informed that these details will be disclosed.

11 Enforcement

- 11.1 The Act provides various bodies including the licensing authority with power to authorise persons to undertake inspections for a variety of purposes. Furthermore the licensing authority has the capacity to instigate criminal proceedings for various offences that are specified within the Act. Any proposal to undertake an inspection or initiate criminal proceedings will be considered on its own merits.
- 11.2 In exercising our functions under the Act with regard to the inspection of premises we will be guided by the Gambling Commission's Guidance and our approach will be: -
- proportionate;
 - accountable;
 - consistent;
 - transparent; and
 - targeted.
- 11.3 In carrying out our enforcement responsibilities, we will normally adopt a risk based approach. Premises will be subject to a scheme of routine inspection, the frequency of which will be determined by the risks posed; those premises

considered to pose the greatest risk will be subject to more frequent inspections than those presenting a lower risk.

11.4 This Authority will use a risk based approach to **its inspection regime**. When assessing risk the Board shall have regard to:

- the nature of the gambling activities carried out on the premises;
- the proximity of the premises to schools and other locations where there are likely to be vulnerable persons;
- the procedures put in place by management of the premises with a view to safeguarding and promoting the licensing objectives.

This Licensing Authority will have regard to the Gambling Commission's risk modelling system set out in their Information Paper on "The Compliance Process, The Risk Modelling System and The Annual Visit Programme" (August 2007).

11.5 The main enforcement and compliance role for this authority under the Act will be to ensure compliance with premises licences and other permissions which it authorises.

11.6 In the event that bookmakers have a number of premises within its area, the Authority shall seek a single named point of contact and contact details, who would be a senior individual, and whom the authority will contact first should any compliance queries or issues arise.

12 Licensing Authority Functions

12.1 This authority will make decisions upon applications or notifications made for: -

- premises licences
- provisional statements
- temporary use notices
- occasional use notices
- permits as required under the Act
- registrations required under the Act

12.2 This statement of principles relates to all those licensable premises, notices, permits and registrations identified as falling within the provisions of the Act, namely:

- adult gaming centres
- betting premises
- bingo
- casinos
- club gaming and club machine permits
- licensed family entertainment centres
- unlicensed family entertainment centres
- permits for gaming machines on alcohol licensed premises

- prize gaming and prize gaming permits
- registration of small society lotteries
- tracks
- temporary and occasional use notices
- travelling fairs

12.3 We will provide information to the Gambling Commission regarding details of licences issued and will maintain registers of the permits and licences that are issued under these functions.

12.4 We will not be involved in licensing remote gambling – regulation will fall to the Gambling Commission through operator licences.

13 Equalities Strategy

13.1 The Board will operate in a way which conforms to its Public Sector Equalities Duties. The Board is a party to the “Shetland’s Equality Mainstreaming Report and Equalities Outcomes 2013-2017”. This can be viewed at http://www.shetland.gov.uk/about_introduction/documents/ShetlandsEqualitiesMainstreamingReportandEqualityOutcomes2013-2017.pdf .

14 Publication Scheme

14.1 The terms of the Freedom of Information (Scotland) Act 2002 apply to the Board’s activities. For the assistance of the public, there is a Publication Scheme with detailed information available at http://www.shetland.gov.uk/about_freedom_of_information/documents/SICPublicationScheme2013.pdf .

PART B – PREMISES LICENCES

15 Premises Licences

- 15.1 Premises licences will be subject to the requirements set out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions, which will be detailed in regulations issued under the Act. We may also exclude default conditions and also attach other conditions where we believe it is appropriate.
- 15.2 In considering an application for a premises licence no regard will be had to the expected demand for the facilities proposed to be provided in the premises for which a premises licence is sought.
- 15.3 We will not consider unmet demand or moral objections to gambling when considering an application for a premises licence, as these do not relate to the licensing objectives and they are not criteria which we can consider under the Act or the Gambling Commission's Guidance for Licensing Authorities. Therefore we will consider any application in accordance with the Act on its own merits without regard to demand or moral objection to gambling in general.

The Gambling Commission's Licence Conditions and Code of Practice, Social Responsibility Code 10:11, includes a requirement for operators of premises-based businesses to conduct local risk assessments. The Board encourages applicants for or the holder of premises licences to share such risk assessments with the Board whenever making an application to them.

- 15.4 In exercising our functions in relation to premises licences, we will aim to permit the use of premises for gambling in so far as we think it is: -
- in accordance with any relevant Code of Practice issued by the Gambling Commission;
 - in accordance with any relevant guidance issued by the Gambling Commission;
 - reasonably consistent with the licensing objectives; and
 - in accordance with this Statement.
- 15.5 Premises are defined in the Act as "any place", including vessels and vehicles and must be premises which are ready to be used i.e. not under construction. Different premises licences cannot apply in respect of single premises at different times. We will assess each case on its individual merits to decide as a matter of fact whether different parts of a building can properly be regarded as being separate premises. Factors which will assist the Licensing Authority in their decision may include the following:
- Is a separate registration for business rates in place for the premises?
 - Is the premises' neighbouring premises owned by the same person or someone else's?

- Can each of the premises be accessed from the street or a public passageway?
- Can the premises only be accessed from another gambling premises?

We note the Gambling Commission's Guidance in this area.

- 15.6 The Board will exercise a high degree of scrutiny in respect of premises where there is a discrete part used for non-gambling purposes. In accordance with the Gambling Commission's Guidance, we will pay particular attention to the protection of children and vulnerable persons from harm or exploitation by gambling, as well as to issues of crime and disorder.
- 15.7 This authority has not adopted any specific policy in relation to areas where gambling premises should not be located, **nor has this Board developed a Local Area Profile.**
- 15.8 Any future policy would not preclude an application for a premises licence being made; the onus would be upon the applicant to show how any potential concerns could be overcome.
- 15.9 In making a determination in respect of a premises licence, we shall have regard to section 210 of the Act and will not consider whether an application is likely to be awarded planning permission or building approval.
- 15.10 We will seek to avoid duplication with other statutory/regulatory systems where possible. We will consider carefully any concerns about conditions which cannot be met by licensees due to planning restrictions, should such a situation arise.

Objective 1: Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime

- 15.11 The Gambling Commission will be taking a leading role in preventing gambling from being a source of crime. Its Guidance envisages that attention is paid to the proposed location of gambling premises in terms of this licensing objective. We recognise the Commission's distinction between disorder and nuisance; disorder meaning an activity that is more serious and disruptive than mere nuisance, which is not a Gambling Act objective. We will consider factors such as whether police assistance was required and how threatening the behaviour was to those who could see it, to assess a disturbance.
- 15.12 In considering licence applications, we will have regard to the following: -
- the design and layout of the premises;
 - the training given to staff in crime prevention measures appropriate to those premises;
 - physical security features installed in the premises, which may include matters such as the position of cash registers or the standard of CCTV that is installed;

- where premises are subject to age-restrictions, the procedures in place to conduct age verification checks; and
- the likelihood of any violence, public order or policing problem if the licence is granted.

Objective 2: Ensuring that gambling is conducted in a fair and open way

15.13 The Gambling Commission has stated that it would generally not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will relate either to the management of the business, therefore subject to an operating licence, or to an individual and therefore subject to a personal licence. Both of these are the responsibility of the Gambling Commission.

Objective 3: Protecting children and other vulnerable persons from being harmed or exploited by gambling

15.14 The Gambling Commission Guidance for Local Authorities states that protecting children from being “harmed or exploited by gambling” can mean preventing children and vulnerable people from taking part in or being in close proximity to gambling and controlling advertising so that gambling products are not aimed at vulnerable people or advertised in such a way that makes them particularly attractive to such people.

15.15 We will consider whether specific measures are required at individual premises to promote this licensing objective. Appropriate measures may include supervision of access points or machines or segregation of areas. We will consult with the Shetland Child Protection Committee on any application that indicates there may be concerns over access or other relevant issues for children or vulnerable persons.

15.16 The term “vulnerable persons” is not defined but the Gambling Commission states that it will for regulatory reasons assume that this group includes people who gamble more than they want to, people who gamble beyond their means and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs.

Conditions

15.17 Any conditions we attach to licences will be proportionate and will be: -

- relevant to the need to make the premises suitable as a gambling facility;
- directly related to the premises and the type of licence applied for;
- fairly and consistently related to the scale and type of premises; and
- reasonable in all other respects.

Decisions on individual conditions will be made on a case by case basis. The control measures which we may consider using include door supervisors, supervision of adult gaming machines and appropriate signage for adult only

areas. We will expect licence applicants to offer their own suggestions as to ways in which the licensing objectives can be met effectively.

15.18 We may consider specific measures for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances, segregation of gambling and non-gambling areas frequented by children, the supervision of gaming machines in non-adult gambling specific premises and the display of notices regarding age restrictions.

15.19 It is noted that there are conditions the licensing authority cannot attach to premises licences which are:

- any condition on the premises licence which make it impossible to comply with an operating licence condition;
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated); and
- conditions in relation to stakes, fees, winning or prizes.

15.20 Whilst each application will be considered on its merits, factors to which the licensing authority may in particular have regard when determining an application include: -

- proximity of gambling premises to properties regularly frequented by vulnerable persons;
- the suitability of the premises for gambling in the context of the licensing objectives;
- the type of gambling that is proposed at the premises;
- any information provided by the applicant showing how it is proposed to overcome any licensing objective concerns; and
- whether any relevant objections to an application could be addressed by the use of one or more conditions.

15.21 In circumstances where the licensing authority proposes to attach or reject conditions as part of a decision it will give reasons as required by the Act. Reasons will also be given if the licensing authority determines to reject an application.

Door Supervisors

15.22 In accordance with the Gambling Commission's Guidance this licensing authority may consider whether there is a need for door supervisors in terms of the licensing objectives relating to children and vulnerable persons and the prevention of crime.

It is however noted that there is no evidence that the operation of betting offices has required door supervisors within premises for the protection of the public.

The authority will only impose this requirement in circumstances where there is clear evidence, from the history of trading at specific premises, that such premises cannot be adequately supervised from the counter and this requirement is both necessary and proportionate.

15.23 The Gambling Act 2005 has amended the Private Security Industry Act 2001, so that “in-house” door supervisors employed by the premises licensee at casinos or bingo premises cannot be licensed by the Security Industry Authority. Contract staff working as door supervisors at casino or bingo premises are still required, by the 2001 Act, to be licensed by the SIA.

15.24 The Board may formulate a policy relating to registration with the licensing authority of all door supervisors working at casinos or bingo premises. This would be in recognition of the nature of the work which might include searching individuals, dealing with potentially aggressive and young and vulnerable persons. If so, the policy will be made available publicly.

Re-site Applications

15.25 The Board will give sympathetic consideration to re-sites within the same locality and to extensions of existing premises in order to enhance the quality of the facility provided for the benefit of the betting public.

16 Adult Gaming Centres

16.1 An adult gaming centre consists of premises for which a premises licence is granted to make Category B gaming machines available only to persons aged eighteen years and over.

16.2 This licensing authority will particularly have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that persons under 18 years of age do not have access to the premises. Appropriate licence conditions may cover issues such as: -

proof of age schemes, CCTV, door supervisors, supervision of entrances / gaming machine areas, physical separation of areas, location of entry, location of adult gaming machines, notices / signage, specific opening hours, self barring schemes, provision of information leaflets / help line numbers for organisations such as GamCare.

This list is indicative and not intended to exclude other conditions in appropriate cases.

While the authority has discretion as to the number, nature and circumstances of use of betting machines, there is no evidence that such machines give rise to regulatory concerns. This authority will consider limiting the number of machines only where there is clear evidence that such machines have been or are likely to be used in breach of the licensing objectives. Where there is such evidence, this

authority may consider, when reviewing the license, the ability of staff to monitor the use of such machines from the counter.

17 Licensed Family Entertainment Centres

17.1 A licensed family entertainment centre consists of premises for which a premises licence is granted to provide, subject to certain restrictions, gaming machines. Persons under 18 years old will not be permitted to use certain gaming machine categories that the premises licence might authorise and there will need to be segregation between the different gaming machine types.

17.2 This licensing authority will particularly have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that persons under 18 years of age do not have access to adult only gaming machine areas. Appropriate licence conditions may cover issues such as: -

proof of age schemes, CCTV, door supervisors, supervision of entrances / gaming machine areas, physical separation of areas, location of entry, location of adult gaming machines, notices / signage, specific opening hours, self barring schemes, provision of information leaflets / help line numbers for organisations such as GamCare, measures/training for staff on how to deal with suspected truants

This list is indicative and not intended to exclude other conditions in appropriate cases.

17.3 In accordance with the Gambling Commission's Guidance, we will ensure that we are sufficiently aware of any conditions that apply to operating licences, for instance those covering the way in which the area containing the category C or higher machines should be delineated. This licensing authority will also make itself aware of any mandatory or default conditions on premises licences when they have been published.

18 Casinos

18.1 This licensing authority has not passed a "no casino" resolution under Section 166 of the Gambling Act 2005, but is aware that it has the power to do so. Should we decide in the future to pass such a resolution, we will update this policy statement with details of that resolution.

19 Bingo Premises

19.1 Bingo does not have a statutory definition.

19.2 **Part 18** of the Gambling Commission's Guidance to Licensing Authorities **5th Edition** sets out the mandatory conditions attached to different types of bingo premises. In addition this Authority will have regard to the Gambling

Commission's publication "Licence Conditions and Codes of Practice" (February 2015) when considering applications of this nature.

The holder of a bingo premises licence will be able to offer any type of bingo game, whether cash or prize. Furthermore the holder of the licence may make available for use: -

- up to four category B gaming machines (B3 or B4);
- any number of category C machines; and
- any number of category D machines.

19.3 This licensing authority notes Gambling Commission Guidance, which states that it is important that if children are allowed to enter premises licensed for bingo that they do not participate in gambling, other than on category D machines. Where category C or above machines are available in premises to which children are admitted, licensing authorities should ensure that:-

- all such machines are located in an area of the premises separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;
- only adults are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;
- the area where the machines are located is arranged so that it can be observed by staff of the operator or the licence holder; and
- at the entrance to, and inside any such area there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

19.4 This licensing authority will particularly have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that persons under 18 years of age do not have access to adult only gaming machines. Appropriate licence conditions may cover issues such as: -

proof of age schemes, CCTV, door supervisors, supervision of entrances / gaming machine areas, physical separation of areas, location of entry, location of adult gaming machines, notices / signage, specific opening hours, self barring schemes, provision of information leaflets / help line numbers for organisations such as GamCare, measures/training for staff on how to deal with suspected truants.

This list is indicative and not intended to exclude other conditions in appropriate cases.

19.5 We will normally expect the applicant to identify the types of gaming machine which will be placed on the premises.

19.6 Whilst each application will be considered on its merits, factors to which we may in particular have regard when determining an application of this nature

include the suitability and layout of bingo premises. We note that the Gambling Commission will issue further guidance on the particular issues that should be taken into account in relation to the suitability and layout of bingo premises and we will consider such guidance when it is published.

20 Betting Premises

- 20.1 The Act contains a single class of licence for betting premises. There will be different types of premises which require licensing, including betting offices on tracks, that have a separate premises licence from the track licence. Licence holders may, subject to certain restrictions, make available for use up to 4 gaming machines. It should be noted that it is illegal for children and young persons to bet.
- 20.2 When considering whether to impose a condition to restrict the number of betting machines in particular premises, we will take into account the size of the premises, the number of counter positions available for person-to-person transactions and the ability of staff to monitor the use of such machines by children and young people or by vulnerable persons.

21 Tracks

- 21.1 Tracks are sites (including horse racecourses and dog tracks) where races or other sporting events take place. At the time of publication of this statement, there are no tracks within the Shetland Islands Area.

22 Travelling Fairs

- 22.1 We will consider whether the applicant falls within the statutory definition of a travelling fair i.e. a travelling fair which “wholly or principally” provides amusements.
- 22.2 A travelling fair must take place on a site that has been used for fairs for no more than 27 days per calendar year, regardless of whether it is the same or different fairs occupying the land.
- 22.3 Travelling fairs do not require a permit or licence to provide category D gaming machines or equal chance prize gaming. It will fall to this authority to decide whether the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.

23 Provisional Statements

- 23.1 A provisional statement may be applied for where we deem that premises have not been completed to our satisfaction. It is important to know what the final form of the building will be in order for the Authority to be satisfied that the premises are suitable for the proposed activity. Whether a building is complete enough to allow for such an assessment is a question of fact and degree, and will be for the Authority to decide.

- 23.2 In terms of representations about premises licence applications following the grant of a provisional statement, no further representations from relevant authorities or interested parties can be taken into account by this authority unless they concern matters which could not have been addressed at the provisional statement stage, or, in our opinion, they reflect a change in the applicant's circumstances.

Further, we may refuse the premises licence or grant it on terms different to those attached to the provisional statement only by reference to matters: -

- which could not have been raised by objectors at the provisional statement stage; or
- which in our opinion reflect a change in the operator's circumstances.

- 23.3 This authority has noted the Gambling Commission's Guidance that licensing authorities should not take into account irrelevant matters such as the likelihood of the applicant obtaining planning or building consent for the proposal.

24 Reviews

- 24.1 Requests for a review of a premises licence can be made by interested parties or responsible authorities. However, it is for the licensing authority to decide whether the review is to be carried out. This will be on the basis of whether the request for the review is relevant to the matters listed below, as well as consideration as to whether the request is frivolous, vexatious, will certainly not cause this authority to wish to alter/revoke/suspend the licence, or whether it is substantially the same as previous representations or requests for review: -

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives and
- in accordance with the authority's statement of licensing policy.

- 24.2 We may also initiate a review of a licence on the basis of any reason which we think is appropriate.

- 24.3 Whilst we recognise the importance of the right of 'responsible authorities' and 'interested parties' to request reviews of premises licences, we would expect a reasonable interval between hearings for the same premises, and unless exceptional and compelling circumstances existed, would not hold a repeat hearing in respect of the same grounds within 12 months.

PART C – MISCELLANEOUS PERMITS AND OCCASIONAL USE NOTICES

25 Registration of Small Society Lotteries

Small society lotteries are non-commercial societies which are established and conducted:

For charitable purposes;

For the purpose of enabling or participation in, or supporting, sport, athletics or a cultural activity; or

For any other non-commercial purpose other than private gain.

All applications for registration must be made in the form specified by Scottish Ministers, and accompanied by any supporting documents specified by Scottish Ministers or required by the Board.

The Board will comply with any guidance produced by the Gambling Commission, and when considering an application for registration and may request further information from an applicant.

If the Board is intending to refuse an application to join the register the applicant will be notified in writing of the reasons why it is considering refusal, and the evidence on which it has based that preliminary conclusion. The applicant will then be given the opportunity to make representations or provide further evidence.

26 Unlicensed Family Entertainment Centre Gaming Machine Permits

26.1 Where premises are not the subject of a premises licence but they wish to provide gaming machines, the applicant may apply to the licensing authority for this permit. This permit authorises the provision of category D gaming machines only. The applicant must show that the premises will be wholly or mainly used for making gaming machines available for use. Permits cannot be issued in respect of vessels or vehicles.

26.2 In addition to the statutory requirements, as part of any application for an Unlicensed FEC gaming machine permit, the licensing authority will require to be satisfied that the applicants can demonstrate: -

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
- that the applicant has no relevant convictions, as set out in Schedule 7 to the Act;
- that their staff are trained to have a full understanding of the maximum stakes and prizes;
- that there are policies and procedures in place to protect children from harm;

26.3 In considering any application the licensing authority will normally have regard to the following: -

- each case will be considered on its merits
- any information received as part of the application process;
- the licensing objectives, any guidance and this statement, and will give particular weight to the protection of children and young persons; and
- such other factors as the licensing authority considers relevant.

26.4 We note that the Act imposes mandatory conditions on Unlicensed FEC gaming machine permits. We cannot impose any other conditions.

27 Alcohol Licensed Premises Gaming Machine Permits

27.1 On notifying the licensing authority, premises licensed to sell alcohol for consumption on the premises can, subject to certain restrictions, have 2 gaming machines of categories C and/or D. In order to exercise this entitlement, the licence holder must give notice to the Licensing Authority of their intention to make gaming machines available for use and must pay the prescribed fee. The automatic entitlement relates to the premises as a whole and not to each individual bar area within the premises.

27.2 We have the power to remove this automatic authorisation if: -

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises in breach of section 282 of the Act;
- the premises are mainly used for gaming; or
- an offence under the Act has been committed on the premises.

27.3 An alcohol licensed premises gaming machine permit is required if more than 2 gaming machines are sought. The issue of such a permit replaces the automatic entitlement identified above.

27.4 In addition to the statutory requirements, as part of any application for a permit, we will require the following in order to ensure that adequate information is provided to enable a proper assessment to be made: -

- a plan showing the location and category of gaming machine being sought; and
- details of any proposed precaution for preventing persons under eighteen from using any category of gaming machine being sought and how it would be implemented.

27.5 We will consider applications taking into account the licensing objectives and such other matters as we consider relevant on a case by case basis. We will take into account the Gambling Commission's Gaming Machine Permits Code of Practice 2014 and any amendments thereof.

- 27.6 We may decide to grant an application with a smaller number of machines and/or a different category of machine but note that we cannot attach any other conditions.

28 Prize Gaming Permits

- 28.1 A prize gaming permit is a permit issued by the licensing authority to authorise the provision of facilities for gaming with prizes on specified premises.
- 28.2 The Gambling Act 2005 states that a Licensing Authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule (ie Schedule 14)”. In particular the Licensing Authority may specify matters which they propose to consider in determining the suitability of the applicant for a permit.
- 28.3 This Authority’s Statement of Principles for this purpose is that applicants must satisfy the authority that:-
- they have a full understanding of the maximum stakes and prizes of the legislative framework for prize gaming;
 - that the gaming offered is within the law.
- 28.4 In considering any application we will normally have regard to the following: -
- each case will be considered on its merits
 - any information received as part of the application process;
 - the licensing objectives, any guidance and this statement, and will give particular weight to the protection of children and young persons; and
 - such other factors as we consider relevant.
- 28.5 We note that the Act imposes mandatory conditions on prize gaming permits. We cannot impose any other conditions.

29 Club Gaming and Club Machines Permits

- 29.1 There are two types of club permits available under the 2005 Act - a Club Gaming Permit and a Club Machine Permit. A Club Gaming Permit allows a club to provide gaming machines, equal chance gaming and games of chance as prescribed in regulations.
- 29.2 In circumstances where a club is only able or interested in the provision of gaming machines (as opposed to other forms of gaming), a club gaming machine permit authorises establishments to provide gaming machines where the establishment is a members club as referred to above.
- 29.3 Only a Members Club (not a Commercial Club) may apply for a Club Gaming Permit. We will ask an applicant for a Club Gaming Permit to produce their constitution or other evidence of their governance arrangements. A Members Club is permanent in nature, not established to make a profit, and is conducted

for the benefit of its members. The British Legion is an example of a Members Club.

29.4 A club gaming permit authorises establishments to provide, subject to certain restrictions, no more than 3 gaming machines in total of categories B, C or D, equal chance gaming and other games of chance as prescribed in regulations.

29.5 Before granting the permit, we must be satisfied that the premises meet the requirements of a members club and that the majority of members are over 18.

29.6 We note that we cannot attach conditions to either of these permits.

29.7 We note that we may only refuse an application on the grounds that: -

- the applicant does not fulfil the requirements of a member's or commercial club;
- the applicant's premises are used wholly or mainly by persons under the age of 18;
- an offence under the Act, or a breach of permit has been committed by the applicant while providing gaming facilities;
- a permit held by the applicant has been cancelled in the previous 10 years; or
- an objection to the application has been made by the Gambling Commission or the Police.

30 Temporary Use Notices

30.1 Temporary use notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. They may only be granted where a relevant operating licence has been granted.

30.2 It is for us to determine in each case what constitutes premises. We may consider ownership, occupation and control of the premises.

30.3 The Secretary of State has the power to determine what form of gambling can be authorised by Temporary Use Notices. The current provisions are contained in the Gambling Act 2005 (Temporary Use Notices) Regulations 2007, SI No. 3157.

30.4 The Authority will normally object to Notices where it appears that their effect would be to permit regular gambling in a place which could be described as one set of premises.

31 Occasional Use Notices

31.1 Where there is betting on a track on 8 days or less in a calendar year, betting may be permitted by an occasional use notice without the need for a premises licence.

31.2 The Authority has very little discretion as regards these Notices, but will consider whether the area falls within the definition of a “track” and whether the applicant is permitted to avail him/herself of an Occasional use Notice.

SCHEDULE OF CONSULTEES TO THE DRAFT STATEMENT OF PRINCIPLES

This document has been made available in draft on our web-site at www.shetland.gov.uk/licensing

It has been sent to all the consultees listed below and will be sent to any other interested party on request.

The consultation period was from 7 June 2017 until 7 August 2017. Thereafter, all responses will be considered and any appropriate adjustments will be made to the text. The Policy will then commence from 24 August 2017.

If anyone has any queries, please contact the Clerk to the Shetland Islands Area Licensing Board, Governance & Law, 8 North Ness Business Park, Lerwick, Shetland, ZE1 0LZ.

1. All members of the Shetland Islands Council
2. Advocacy Shetland, Market House, 14 Market Street, Lerwick, Shetland, ZE1 0JP
3. The Gambling Commission, Victoria Square House, Victoria Square, Birmingham B2 4BP
4. The Chief Constable, Police Scotland, Headquarters, Perth Road, Inverness IV2 3SY
5. The Chief Fire Officer, Scottish Fire and Rescue Services, Headquarters, 16 Harbour Road, Longman West, Inverness IV1 1TB
6. The Director of Infrastructure Services, Shetland Islands Council – (and Heads of Service for Planning and Environmental Health)
7. The Director of Children's Services, Shetland Islands Council
8. The Director of Community Services, Shetland Islands Council
9. The Shetland Child Protection Committee – c/o Kate Gabb, Adult & Child Protection Co-ordinator, Shetland Islands Council, Old Library, Lerwick
10. HM Revenue & Customs, National Registration Unit, Portcullis House, 21 India Street, Glasgow G2 4PZ
11. NHS Shetland, Upper Floor Montfield, Burgh Road, Lerwick ZE1 0LA
12. Citizens Advice Bureau, Market House, 14 Market Street, Lerwick, Shetland, ZE1 0JP

13. Shetland Turf Accountants, c/o J W Gray & Co, Gremista Industrial Estate, Lerwick, Shetland, ZE1 0PX
14. Disability Shetland, Market House, 14 Market Street, Lerwick, Shetland, ZE1 0JP

SCHEDULE OF RESPONSIBLE AUTHORITIES

1. Shetland Islands Area Licensing Board
2. The Gambling Commission
3. The Chief Constable, Police Scotland
4. The Chief Fire Officer, Scottish Fire and Rescue Service
5. The Director of Infrastructure Services, Shetland Islands Council – Planning and Environmental Health
6. The Shetland Child Protection Committee
7. HM Revenue & Customs

SHETLAND ISLANDS AREA LICENSING BOARD

5 June 2017

Application for a Personal Licence

1. Summary

- 1.1 Mr Foote has a relevant conviction. The Licensing Board are asked to make a decision on whether to:
- hold a hearing for the purpose of considering and determining the application
 - or grant the application

2. Statutory Provisions

- 2.1 The process for applying for a personal licence is set out in Part 6 of the Licensing (Scotland) Act 2005.
- 2.2 As part of the process the Board is required to contact Police Scotland and ask them if they are aware of any relevant convictions relating to the Applicant. The Act sets out what are regarded as relevant convictions for this purpose.
- 2.3 If Police Scotland notify the Board of a relevant conviction, they can include a recommendation that the personal licence application be refused. The reason for making such a recommendation would be because the Chief Constable considers that it is necessary for the purpose of any of the licensing objectives that the licence be refused. If Police Scotland make a recommendation that the licence be refused then the Board must hold a hearing to decide whether or not to refuse the application.
- 2.4 If Police Scotland do not make a recommendation that the application be refused then the Board may hold a hearing or grant the application. The Board cannot refuse the application without a hearing.

3. Current case

- 3.1. Mr Roger Kenneth Michael Foote applied for a personal licence on 28 February 2017.
- 3.2 Mr Foote's application was referred to Police Scotland on 2 March 2017.
- 3.3 Police Scotland notified the Council that Mr Foote has a conviction under Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010. The conviction is dated 21 February 2011 and the disposal was a fine of £200.
- 3.4 S. 38(1) provides that the following is an offence.

38 Threatening or abusive behaviour

(1) A person ("A") commits an offence if—

(a) A behaves in a threatening or abusive manner,

(b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and

(c) A intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.

4. Conclusion

- 4.1 Police Scotland notified the Board of a relevant conviction in relation to this applicant for a Personal Licence but did not make a recommendation that this application be refused. The options for the Board are therefore to grant the application or to fix a hearing to consider and determine the application.

Depute Clerk to the Licensing Board

Ref: SB

5 June 2017