



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Licensing Committee

A Meeting of the **Licensing Committee** of North Ayrshire Council will be held in the **Council Chambers, Ground Floor, Cunninghame House, Irvine, KA12 8EE** on **Wednesday, 12 September 2018 at 10:00** to consider the undernoted business.

Please note that, whilst the items on this Agenda are public documents, consideration of some reports at the meeting may necessitate the passing of a resolution to exclude from the meeting the press and public in terms of Section 50A(4) of the Local Government (Scotland) Act 1973.

1 Declarations of Interest

Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.

2 Minutes

The accuracy of the Minutes of the meeting held on 22 August 2018 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

3 Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters

Submit report by the Chief Executive on hearings to be determined, applications for the grant or renewal of licences and permits and issues arising in respect of existing licences, all in terms of the Civic Government (Scotland) Act 1982 (copy enclosed).

4 Landlord Registration under the Antisocial Behaviour etc (Scotland) Act 2004, Part 8

Submit report by the Chief Executive on Landlord Registration matters (copy enclosed).

5

Urgent Items

Any other items which the Chair considers to be urgent.

Licensing Committee Sederunt

Ronnie McNicol (Chair)
Todd Ferguson (Vice Chair)
Robert Barr
John Easdale
Scott Gallacher
Jean McClung
Davina McTiernan
Donald L. Reid
Angela Stephen
Vacancy

Chair:

Apologies:

Attending:

**Licensing Committee
22 August 2018**

Agenda Item 2

At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Todd Ferguson, Robert Barr, Scott Gallacher, Jean McClung, Davina McTiernan and Donald L. Reid.

In Attendance

E. Anderson, Private Sector Team Manager and G. Tolmie Policy Officer (Private Sector) (Place); W. O'Brien, Solicitor, (Licensing), S. Montgomery, Solicitor, C. Pollock, Licensing Administration Officer, A. Toal, Administrative Assistant (Legal Services), D. Robertson, Enforcement Officer and A. Little, Committee Services Officer (Chief Executive's Service).

Chair

Councillor McNicol in the Chair.

Apologies

John Easdale and Angela Stephen.

1. Declarations of Interest

In terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors, Councillor Ferguson declared an indirect non-pecuniary interest in Hearing 7 Newton Leisure Ltd, the circumstances being that the applicant was personally known to him, and left the meeting for that item of business.

Councillor McTiernan declared an indirect, non-pecuniary interest in Agenda Item 6, Landlord Registration, the circumstances being that the landlord was personally known to her, and left the meeting for that item of business.

2. Minutes

The Minutes of the meeting of the Committee held on 6 June 2018 were confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973, subject to the following amendment:-

Item 4 – Exclusion of the Public – the word Section should read Schedule.

3. Licensing of Taxis: List of Designated Taxis

Submitted report by the Chief Executive on the process of adoption of a List of Designated Taxis, which would require any driver of a vehicle on the list to have duties to disabled passengers who use wheelchairs. A Medical Exemption Certificate is required to exempt taxi drivers from carrying out the duties to disabled passengers who use wheelchairs. A draft list of wheelchair accessible taxis was attached as an appendix to the report.

Mr Reid, a driver of a wheelchair accessible taxi was in attendance and made representations in respect of safety issues. Mr. Reid told the Committee that he would usually comply with the 'wheelchair duties' imposed on drivers by Section 165, but in the particular circumstances of a prospective passenger he was unable to do so safely. The Solicitor (Licensing) drew the Committee's attention to the potential defence created by Section 165(9) available to drivers prosecuted for alleged breach of the statutory offence, and advised Mr. Reid of this.

The Committee considered Mr. Reid's representation but did not determine that it was appropriate to exclude the Taxi in question from the List, given that its inclusion was otherwise appropriate since the vehicle met the "Accessibility requirements" referred to in Section 167(5). The Committee was satisfied that the concern raised by Mr. Reid was sufficiently addressed by the possibility that the statutory defence created by Section 165(9) might be available to drivers who faced being prosecuted for alleged commission of the Section 165(7) offence.

The Committee (a) agreed to adopt a List of Designated Taxis for the purposes of Section 165 to 167 of the Equality Act 2010, and (b) directed that the Solicitor (Licensing) (i) publish the List on the Council website, with a summary of the relevant Law; and (ii) provide Mr. Reid with a summary of the statutory defence created by Section 165(9).

4. Exclusion of the Public

The Committee resolved, under Section 50A(4) of the Local Government (Scotland) Act 1973, to exclude from the Meeting, the press and the public, for Agenda Item 3 (Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters) and Agenda Item 5 (Landlord Registration under the Antisocial Behaviour, etc (Scotland) Act 2004, Part 8), on the grounds that they involved the likely disclosure of exempt information as defined in Section 50J of, and Schedule 7A to, the Local Government Act 1973, Paragraphs, 3, 6, 14 and 15.

5. Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters

Submitted report by the Chief Executive on hearings to be determined and applications for the grant or renewal of licences, consents and permits, on hearings, and on other matters, under the Civic Government (Scotland) Act 1982 and other Licensing legislation.

5.1 Public Entertainment Licence PEL/067 (Variation) North Ayrshire Council Education Services

The licence holder has applied for a temporary variation of the licence in respect of the Volunteer Rooms, High Street, Irvine to allow an extension by an extra one hour on Marymass Saturday, 25 August 2018 until 2.00 a.m.

The licence holder, having been duly cited to attend, was present at the hearing.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder. Thereafter the licence holder addressed the Committee on the issues raised and responded to questions.

Decision

The Committee agreed to (a) grant the application; and (b) authorise the Solicitor (Licensing) to determine under delegated powers any future variation applications relating to the Volunteer Rooms, High Street, Irvine where these were intended to affect a licensed period starting on Marymass Saturday and where the proposal was to extend this to any time up to 2.00 a.m. the next day. The Committee confirmed to the applicant that notwithstanding this delegation an Application for Variation would still have to be lodged in the usual way each year.

5.2 Public Entertainment Licence PEL/548 (Temp): North Ayrshire Council Education Services

An application for a temporary Public Entertainment Licence has been received for Williamsfield, Irvine for 22 – 25 August 2018 (Wednesday and Thursday 6.00 p.m. – 10.00 p.m., Friday 6.00 p.m. – 10.15 p.m. and Saturday noon – 10.15 p.m.).

The applicant, having been duly cited to attend, was present at the hearing and accompanied.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

Decision

The Committee unanimously agreed to grant the application subject to the standard conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.3 Taxi Driver's Licence: TDL/01539 (Renewal) Gordon McKenzie

The Committee at its meeting held on 6 June 2018 agreed on the basis of the information presented, to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The licence holder, having been duly cited to attend, was present at the hearing and accompanied.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder. Thereafter the licence holder addressed the Committee on the issues raised and responded to questions.

Decision

The Committee unanimously agreed (a) to grant the application subject to the Council's standard conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982; and (b) that the licence holder advise the Licensing Office if a scheduled medical examination to take place later that week led to an unfavourable report.

5.4 Public Charitable Collection: Hugh O'Brien (Soldiers Off the Street)

The applicant, having been duly cited to attend was present.

The Solicitor (Licensing) set out the background to the application for a Public Charitable Collection permission on 1, 2, 8 and 9 September 2018 in Largs.

Members asked questions and received clarification from the applicant in respect of the area for the collection being the Gallowgate area of Largs.

Decision

The Committee unanimously agreed to grant the application in terms of Section 119(5) of the Civic Government (Scotland) Act 1982 subject to (a) the Council's Standard Conditions; and (b) a special condition under Section 119(5)(b) specifying Gallowgate Street in Largs as the area within which the collection was to take place.

5.5 Public Charitable Collection: Patrick Murphy (Royal British Legion)

The applicant, having been duly cited to attend was present.

The Solicitor (Licensing) set out the background to the application for a Public Charitable Collection permission on 1, 2, 8 and 9 September 2018 in Largs.

Members asked questions and received clarification from the applicant in relation to the area for the collection being the market area of the festival in Largs.

Decision

The Committee unanimously agreed to grant the application in terms of Section 119(5) of the Civic Government (Scotland) Act 1982 subject to (a) the Council's Standard Conditions; and (b) a special condition under Section 119(5)(b) specifying the market area of the festival in Largs as the area within which the collection was to take place.

5.6 Public Charitable Collection: Sheila Gillan (Asthma U.K. Scotland)

The applicant, having been duly cited to attend was not present or represented.

The Solicitor (Licensing) set out the background to the application for a Public Charitable Collection on 1 and 8 September 2018 in Largs.

Members asked questions and received clarification in relation to the area for the collection being the Main Street in Largs.

Decision

The Committee unanimously agreed to grant the application in terms of Section 119(5) of the Civic Government (Scotland) Act 1982 subject to (a) the Council's Standard Conditions; and (b) a special condition under Section 119(5)(b) specifying the Main Street in Largs as the area within which the collection was to take place.

5.7 Street Trader Operator STL/O/482 (Temp): Newton Leisure Ltd

The applicant, having been duly cited to attend, was present and represented.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. Thereafter the applicant and her representative addressed the Committee on the issues raised and responded to questions.

Decision

The Committee unanimously agreed to grant the application in terms of Schedule 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982, subject to the relevant permissions being agreed with Physical Environment Services in respect of the location of the vehicle in Millport.

Councillor D L Reid left the meeting at this point.

5.8 Street Trader Operator STL/O/455: James Taberner

The applicant, having been duly cited to attend, was not present.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant.

Decision

The Committee unanimously agreed to continue the application to the next meeting to allow the Solicitor (Licensing) to consult with Physical Environment Services in respect of the site on Millport.

5.9 Late Hours Catering Licence LHCL/129: Parminder Singh

The applicant, having been duly cited to attend, was not present or represented.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant.

Decision

The Committee unanimously agreed to continue the application to the next meeting to allow for further information to be provided by Environmental Health.

In terms of Standing Order 5.7, the Chair adjourned the meeting for a short recess at 11.15 a.m. The meeting reconvened at 11.25 a.m. with the same Members and officers present and in attendance.

Part B: Applications for Licences/Renewal of Licences

5.10 MDL/063 (New) (Itinerant): Blair Skipper

The Committee unanimously agreed, on the basis of the information presented, to grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.11 SPTL/046 (New): Louise Walker

The Committee unanimously agreed on the basis of the information presented, to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.12 SHDL/199 (New): William Neill

The Committee unanimously agreed on the basis of the information presented, to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.13 TDL/00314 (Renewal): James McCallum

The Committee unanimously agreed to grant the application in terms of Schedule 5 (1)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982 for a period of three years subject to (a) the Council's Standard Conditions; and (b) the Special Condition: within 14 days after the Licence-Holder's 70th birthday, and within 14 days of each later birthday, then he/she must give the Licensing Office evidence that he/she continues to have a driving entitlement under an 'ordinary' Driving Licence granted by DVLA.

5.14 TDL/00365 (Renewal): Robert Thallon

The Committee unanimously agreed to grant the application in terms of Schedule 5 (1)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982 for a period of three years subject to (a) the Council's Standard Conditions; and (b) the Special Condition: within 14 days after the Licence-Holder's 70th birthday, and within 14 days of each later birthday, then he/she must give the Licensing Office evidence that he/she continues to have a driving entitlement under an 'ordinary' Driving Licence granted by DVLA.

5.15 TDL/02105 (New) Brian Spiers

The Committee unanimously agreed on the basis of the information presented, to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.16 TDL/02110 (New): Derek Murdoch

The Committee unanimously agreed on the basis of the information presented, to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.17 TDL/02114 (New): Andrew Dysart

The Committee unanimously agreed to grant the application subject to the Council's standard conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982;

5.18 TDL/02125 (New): John Murphy

The Committee unanimously agreed on the basis of the information presented, to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.19 TL/125 (Renewal): Claire and Anton Docherty

The Committee unanimously agreed on the basis of the information presented, to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.20 TL/159 (Renewal): John Bruce Snr and John Bruce Jnr

The Committee unanimously agreed to grant the application subject to the Council's standard conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982;

5.21 TL/407 (Renewal): Angela Murray and Julie Whiteman and Catherine Wilkie

The Committee unanimously agreed to grant the application subject to the Council's standard conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982;

5.22 TL/422 (New): Russell Drummond

The Committee, being satisfied that the particular circumstances of the application merited an exception to be made to the Taxi Numbers Limitation Policy adopted under Section 10(3) of the Civic Government (Scotland) Act 1982, (a) determined in principle that the application should be granted; and (b) unanimously agreed to delegate authority to the Solicitor (Licensing) to grant the application subject to the Council's Standard Conditions in terms of Paragraph 5(1)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982, provided that the applicant proposed a vehicle which complied with the requirements of Section 10(2) as to suitability, safety and insurance.

5.23 TL/423 (New): Alexander Davidson

The Committee, being satisfied that the particular circumstances of the application merited an exception to be made to the Taxi Numbers Limitation Policy adopted under Section 10(3) of the Civic Government (Scotland) Act 1982, (a) determined in principle that the application should be granted; and (b) unanimously agreed to delegate authority to the Solicitor (Licensing) to grant the application subject to the Council's Standard Conditions in terms of Paragraph 5(1)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982, provided that the applicant proposed a vehicle which complied with the requirements of Section 10(2) as to suitability, safety and insurance.

Part C: Preliminary consideration of matters arising possible revocation or suspension complaint (Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 11)

5.24 J.C.

The Committee heard from the Enforcement Officer regarding a breach of the Dress Code condition of the Taxi Driver's Licence.

The Committee unanimously agreed to proceed to a hearing in terms of Paragraph 11(7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.25 A.J.

The Committee heard from the Enforcement Officer regarding a breach of the Dress Code and Smoking conditions of the Taxi Driver's Licence.

The Committee unanimously agreed to proceed to a hearing in terms of Paragraph 11(7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.26 C.B.

The Committee heard from the Enforcement Officer regarding a breach of the Dress Code condition of the Taxi Driver's Licence and failure to allow an authorized inspection of the vehicle.

The Committee unanimously agreed to proceed to a hearing in terms of Paragraph 11(7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.27 S.R.

The Committee heard from the Enforcement Officer regarding a breach of the Dress Code condition of the Taxi Driver's Licence.

The Committee unanimously agreed to proceed to a hearing in terms of Paragraph 11(7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.28 S.R.

The Committee heard from the Enforcement Officer regarding a breach of vehicle specification (full wrap on all windows except the front driver and passenger window).

The Committee unanimously agreed to proceed to a hearing in terms of Paragraph 11(7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

Councillor D L Reid rejoined the meeting.

The Solicitor (Licensing) advised the Committee of a complaint made relating to taxi driver G.L. and that the circumstances have been reported to Police Scotland.

The Committee unanimously agreed to continue to a future meeting to allow Police Scotland to conclude their enquiries.

6. Landlord Registration under the Antisocial Behaviour etc (Scotland) Act 2004, Part 8

Submitted report by the Chief Executive on Landlord Registration matters.

6.1 Mr and Mrs S

The Registered Landlord, having been cited to attend, was present and accompanied by his property manager.

The Solicitor (Licensing) advised on information received in respect of the registered landlord which raised the question of whether or not his registration should be removed.

The Team Manager (Private Sector Housing) and Policy Officer (Private Sector) then addressed the Committee on the terms of a report on the condition of a tenanted property owned by the landlord. Thereafter the landlord addressed the Committee on the issues raised and responded to questions.

Both parties then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

Councillor Barr, seconded by Councillor Reid moved to continue consideration of this matter to the meeting on 24 October 2018 to allow the landlord a further opportunity to provide to the Private Sector Housing Team evidence confirming all necessary work had been completed to the satisfaction of all legal standards. There being no amendment, the motion was declared carried.

6.2 A. M.

The applicant, having been cited to attend, was present.

The applicant had previously been registered but his registration was removed in 2018 due to failures in the legal duties applying to Landlords, and at the time the Committee had issued Notices under Section 94 (commonly known as 'Rent Penalty Notices') on several of the Landlord's houses. He was now seeking a grant of Landlord Registration, his application related to 7 houses, and the removal of the Rent Penalty Notices over those houses.

The Solicitor (Licensing) advised on information received in respect of the applicant, which raised the question of whether or not the applicant was a 'fit and proper' person to be entered on the Register.

The Team Manager (Private Sector Housing) and Policy Officers (Private Sector) then addressed the Committee on the terms of a report on the condition of a number of tenanted properties owned by the applicant. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

Both parties then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

Councillor Barr seconded by Councillor Gallagher, moved the Committee (a) to grant the Application for Landlord Registration; (b) to revoke the Rent Penalty Notices for six of the seven houses; and (c) to continue consideration of the Application to recall the seventh Rent Penalty Notice to allow the Anti-Social Behaviour Team to further investigate the allegations relating to the tenant of this property and report their findings to a future meeting of the Committee. There being no amendment, the motion was declared carried.

The meeting ended at 1.15 p.m.

NORTH AYRSHIRE COUNCIL

12th September 2018

Licensing Committee

Title: **Civic Government (Scotland) Act 1982 and other Licensing statutes: Licensing Matters**

Purpose: To advise the Committee of

- (a) Hearings to be determined;
- (b) Applications for the grant or renewal of licences and permits; under the Civic Government (Scotland) Act 1982 and other statutes within the Committee's remit;
- (c) Issues arising in respect of existing licences,

Recommendation:

- 1. That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which any of the matters in this Report are to be considered.
- 2. That the Committee consider and determine the matters before them.

1. Executive Summary

1.1 The Licensing Committee's remit is to exercise the Council's licensing functions. These functions arise under many statutes, mainly the Civic Government (Scotland) Act 1982. Depending on the legislation and the circumstances of each individual case, the Committee is entitled to grant, refuse, renew, vary, suspend and revoke Licences.

2. Background

2.1 The Committee's business under the 1982 Act is as follows:

- 1. Licences and Permits where Hearings have been convened – Appendix A
- 2. Applications for the grant or renewal of Licences and Permits – Appendix B
- 3. Issues in respect of existing Licences and Permits will be considered in terms of Appendix C.

Exempt Information

- 2.2. The Committee will consider "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. The information is covered by one or more of the following categories of "Exempt Information" under Schedule 7A:

Paragraph 3: "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

Paragraph 6: "Information relating to the financial or business affairs of any particular person (other than the authority)."

Paragraph 14: "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."

Paragraph 15: "The identity of a Protected Informant" - where "Protected Informant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.

- 2.3. The details of the cases in the Appendices, with any relevant documents (such as letters from the Police or objectors) are in the background papers given to Committee Members and will be sent to the respective Applicants or Licence-Holders before the Meeting. The Schedules are excluded from the published Agenda under Local Government (Scotland) Act 1973, Section 50B(2) and (5). This has been done as the Clerk considers that the meeting is likely not to be open to the public while those Schedules are being considered, as they contain "Exempt Information".

- 2.4. The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).

- 2.5. For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment).

Paragraphs 14 or 15 could apply where it was alleged that there was criminal conduct or anti-social behaviour committed by or against a Licence-Holder or Applicant for a Licence, or where the Committee was told that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).

- 2.6. Accordingly, if a Resolution is made:

(a) the publicly-accessible Minutes will exclude so much of the proceedings during which the public were excluded (Section 50C);

(b) the Minutes will include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).

3. Proposals

- 3.1 It is proposed that the Committee consider and determine each of the listed cases in accordance with the required procedure.

4. Implications

Financial:	There are possible financial implications in relation to any Licensing decision.
Human Resources:	None
Legal:	There are possible legal implications in relation to any licensing decision. Depending on the legislation, there may be a right of appeal.
Equality:	The Clerk has considered the "Public Sector Equality Duty" in preparing the Appendices and any specific equalities impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant equalities impacts to be considered.
Children and Young People:	Licensing does not automatically affect under 18s but in particular cases the Committee will be given relevant information.
Environmental & Sustainability:	None
Key Priorities:	An effective licensing system, e.g. monitoring the 'fit and proper' status of licence holders; and the safety of hire cars, helps achieve Priority 4 of the North Ayrshire Council Plan 2015-2020, ("Supporting all of our people to stay safe, healthy and active").
Community Benefits:	Not applicable, as the Report does not relate to tendering or procurement exercises.

5. Consultation

- 5.1 Consultations have been undertaken where appropriate with Police Scotland, Scottish Fire and Rescue, and Council Directorates



Elma Murray OBE
Chief Executive

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

Background Papers

None

Hearings (Appendix A)

Agenda Item 3

Case 1	Second Hand Dealer's Licence	SHDL/199 (New)
Applicant	William Neil & John Imrie	
Premises	Springside Valet & Tyre Centre Overtoun Road Springside	
Case 2	Taxi Driver's Licence	TDL/02105 (New)
Applicant	Brian Speirs	
Case 3	Taxi Driver's Licence	TDL/02110 (new)
Applicant	Derek Murdoch	
Case 4	Taxi Licence	TL/125 (Renewal)
Applicant	Claire Docherty & Anton Docherty	
Case 5	Late Hours Catering Licence	LHCL/129 (New)
Applicant	Parminder Singh	
Premises	Singh is King 35/37 Old Raise Road Saltcoats	
Case 6	Private Hire Car Licence	PHCL/366 (New)
Applicant	Paul Forbes & James Tracey	
Case 7	Taxi Driver's Licence	TDL/02125 (New)
Applicant	John Murphy	
Case 8	Taxi Driver's Licence	TDL/00397

Licenceholder

John **Convery**

Agenda Item 3

Case 9

Taxi Driver's Licence

TDL/00695

Licenceholder

Andrew **Johnston**

Case 10

Taxi Driver's Licence

TDL/01773

Licenceholder

Colin **Bennett**

Case 11

Taxi Driver's Licence

TDL/01962

Licenceholder

Stephen **Reid**

Case 12

Taxi Licence

TL/085

Licenceholder

Stephen **Reid**

Case 13

Public Entertainment Licence

PEL/566

Wesley Smith

Premises

South Beach
Ardrossan

Applications for Licences/Renewal of Licences (Appendix B)

Type of Licence/Reference Number	Details of Applicant
LHCL/115 (variation)	A G Restaurants Ltd McDonalds Riverway Retail Park Irvine
LHCL/116 (variation)	Mascot Scotland Ltd 1 Glencairn Street Stevenston
PCC	Kilwinning Community Events
PCC	Promoting Kilwinning
TDL/01557 (Renewal)	William Laughlan
TDL/01754 (New)	Derek Boyd
TDL/01885 (New)	Peter Brown
TDL/02043 (New)	Colin Jamieson
TDL/02128 (New)	Alexander Lammie

Note

LHCL – Late Hours Catering Licence

PCC – Public Charitable Collection

TDL – Taxi Driver's Licence

NORTH Ayrshire Council

12th September 2018

Licensing Committee

Title:	APPENDIX C Preliminary consideration of Revocation or Suspension complaints (Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 11)
Purpose:	To advise the Committee of complaints received and to outline the Committee's powers.
Recommendation:	That the Committee should give preliminary consideration to cases referred as complaints and decide what action, if any, should follow.

1. Executive Summary

1.1 The Council is the Licensing Authority under the Civic Government (Scotland) Act 1982 and licenses various activities regulated by that Act, such as the operation of Taxis and Private Hire Cars, Street Traders and Public Entertainment.

2. Background

2.1 The provisions for what is sometimes described as "Ordinary Revocation or Suspension" are in 1982 Act, Schedule 1, Paragraph 11. Paragraphs 11(1) and (2) are:

"11(1) A Licensing Authority may, whether upon a complaint made to them or not, Suspend or Revoke a Licence in accordance with the provisions of this Paragraph.

(2) A Licensing Authority may order the Suspension or Revocation of a Licence if in their opinion—

(a) the holder of the Licence or, where the holder is not a natural person, any director of it or partner in it or any other person responsible for its management, is not or is no longer a fit and proper person to hold the Licence;

(b) the activity to which the Licence relates is being managed by or carried on for the benefit of a person, other than the Licence holder, who would have been refused the Grant or Renewal of the Licence under Paragraph 5(3) above;

(c) the carrying on of the activity to which the Licence relates has caused, is causing or is likely to cause undue public nuisance or a threat to public order or public safety;

(d) *a condition of the Licence has been contravened.*"

2.2. The Clerk has received a complaint from a member of the public against a licence-holder.

This complaint contains "Exempt Information" to which Local Government (Scotland) Act 1973, Section 50A to 50K and Schedule 7A apply. The "Exempt Information" is information of the type described in one or more of Paragraphs 3, 6, 14 and 15 of Part 1 of Schedule 7A to the Act:

3. "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

6. "Information relating to the financial or business affairs of any particular person (other than the authority)."

14. "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."

15. "The identity of a Protected Informant" - where "Protected Informant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.

2.3. For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment, or where a Landlord lets a house).

Paragraphs 14 or 15 could apply where it was alleged that a Licence-Holder had either defaulted in an obligation applied by the Licence, or committed a criminal offence (whether or not there had been concluded Court proceedings).

2.4. The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of "Exempt Information" (Section 50A(4)). As the Clerk considers that the meeting is likely not to be open to the public while the Schedule is being considered, Section 50B(2) and (5) apply. The particular circumstances of the case are not contained in the publicly-accessible Agenda, but instead are detailed in a confidential Schedule which is marked "Not for Publication".

2.5. The Schedule will be circulated to Members. The Minutes will be redacted, and the disclosure of Background Papers will be modified to take account of the "Exempt Information" rules (Sections 50C, 50D).

3. Proposals

3.1 The Committee is invited to consider the information in the Schedule and determine what action, if any, is appropriate.

3.2. Options at the preliminary consideration stage are:

[a] continue the case to a later Meeting, to which both the licence-holder and the complainer will be invited. After hearing from all attending the Committee will decide what action, if any, is appropriate (for example, Revocation or Suspension of the Licence, or the issue of a Warning Letter to the licence-holder);

[b] take no action.

3.3. Since the Committee at this stage is only conducting a preliminary consideration of the complaint:

- neither the Licence-Holder nor the Complainer have been invited to attend, and
- neither has a right to address the Committee.

If the Committee now decides to continue the case to a hearing, both parties will be advised and invited to attend. The Licence-Holder will be told of the options available to the Committee if the Committee considers that grounds to Revoke or Suspend the Licence exist.

3.4. If a Hearing is later held, the Committee's powers depend on whether or not the Committee is satisfied that there are grounds to Revoke or Suspend the Licence.

If the Committee is not so satisfied, the proceedings will end without action.

If the Committee is satisfied, it will have to consider what action should be taken. Options will be:

- [a] Immediate Revocation of the Licence
- [b] Revocation of the Licence
- [c] Immediate Suspension of the Licence
- [d] Suspension of the Licence
- [e] Issue of a warning to the Licence Holder
- [f] No action

If the Committee orders Revocation or Suspension, the default position is that the order is postponed for 28 days, to allow any party to appeal to the Sheriff Court. If the Committee considers that the order should be effective immediately, it may so order.

Any suspension is either for a fixed period, set by the Committee, or for the unexpired duration of the Licence.

4. Implications

Financial:	There are possible financial implications in relation to any Licensing decision.
Human Resources:	None
Legal:	There are possible legal implications in relation to the procedure, although these implications do not arise at the preliminary stage where the Licensing Authority is considering what action, if any, should be taken in relation to a complaint.
Equality:	The Schedule deals with the Council's "Public Sector Equality Duty" under Equality Act 2010.
Children and Young People:	None
Environmental & Sustainability:	None
Key Priorities:	An effective licensing system, e.g. monitoring the 'fit and proper' status of Licence Holders, helps achieve Priority 4 of the North Ayrshire Council Plan 2015-2020, ("Supporting all of our people to stay safe, healthy and active")
Community Benefits:	Not applicable, as the Report does not relate to tendering or procurement exercises.

5. Consultation

5.1 There is no statutory obligation to consult here.

Insert Director's electronic signature when final version approved
 Insert Director's name
 Insert Director's title

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

Background Papers

None

NORTH AYRSHIRE COUNCIL

12th September 2018

Licensing Committee

Title: **Landlord Registration under the Antisocial Behaviour etc (Scotland) Act 2004, Part 8**

Purpose: To inform the Committee of Landlord Registration matters.

Recommendation:

1. That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which this Report and its Schedules is to be considered;
 2. For each Application or Review Proposal described in the schedules: That the Committee should consider each case and
 - (a) decide whether or not the Application should be granted, or the Relevant Person should be removed from the Register;
 - (b) if appropriate, decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of any house, or to delegate authority to the Clerk to issue such a Notice.
-

1. Executive Summary

- 1.1 The Licensing Committee has delegated authority from the Council to administer the Council's functions under the Landlord Registration Scheme regulated by the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8.

2. Background

- 2.1 The persons named in the attached Schedules are Landlords who are either applying for Registration or who are unregistered. The Clerk has information suggesting that there may be a basis for the Committee concluding that the Landlords are not 'fit and proper', and that either the Application should be refused or the Registration already granted should be removed (each person has one Schedule). The rented houses concerned are listed in the Schedules. The Schedules are marked "Not for Publication".

2.2 Exempt Information

The Committee will consider "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. The information is covered by one or more of the following categories of "Exempt Information" under Schedule 7A:

Paragraph 3: "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

Paragraph 6: "Information relating to the financial or business affairs of any particular person (other than the authority)."

Paragraph 14: "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."

Paragraph 15: "The identity of a Protected Informant" - where "Protected Informant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.

2.3 The Schedules are in the background papers given to Committee Members and will be sent to the respective Landlords before the Meeting. The Schedules are excluded from the published Agenda under Local Government (Scotland) Act 1973, Section 50B(2) and (5). This has been done as the Clerk considers that the meeting is likely not to be open to the public while those Schedules are being considered, as they contain "Exempt Information".

2.4 The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).

2.5 For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment, or where a Landlord lets a house).

Paragraphs 14 or 15 could apply where it was alleged:

(a) that there was anti-social behaviour committed by the Tenant of a rented house, involving crime or nuisance, or

(b) that the state of repair of the rented house indicated that the Landlord had defaulted in his/her legal obligations, or

(c) that the Landlord had defaulted in another obligation applying to Landlords, or

(d) that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).

2.6. Accordingly, if a Resolution is made:

(a) the publicly-accessible Minutes will exclude so much of the proceedings during which the public were excluded (Section 50C);

(b) the Minutes will include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).

3. Proposals

3.1 The Committee should consider each case and decide whether or not to grant the Application, or remove the Registration.

3.2. If the Committee decides to refuse an Application, or to remove a Registration, and if it is satisfied that the house is presently occupied by a Tenant, it should then decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice' or 'RPN') in respect of any house referred to in the Application or Registration.

3.3. If it is are not so satisfied, it may delegate authority to the Clerk to issue a RPN if and when the Clerk is so satisfied. Given that there would be nothing to stop the Landlord receiving Housing Benefit even if he/she was unregistered, the Committee may wish to delegate authority to the Clerk to issue a RPN if the Clerk later receives information that any house which is currently covered by the Registration is occupied by a Tenant.

4. Implications

Financial:	There are possible financial implications in relation to any Licensing decision. If a RPN is made, the Benefit Authorities will be informed, so that the Landlord will no longer receive Housing Benefit or Universal Credit, if any is claimed for the house.
Human Resources:	None

<p>Legal:</p>	<p>There are possible legal implications in relation to any licensing decision. Depending on the legislation, there may be a right of appeal.</p> <p>If the Council makes a RPN, only the Tenant's liability to pay rent will cease. The other rights and obligations of the Lease will be unaffected (Section 94(3) & (8)).</p> <p>For example:</p> <p>(a) the Tenant will continue to have whatever security of tenure he/she already had (and cannot be evicted for non-payment of rent where that non-payment is due to the RPN);</p> <p>(b) the Landlord will only be entitled to evict the Tenant if the First-Tier Tribunal grants an Eviction Order;</p> <p>(c) the Landlord will continue to have repairing obligations.</p> <p>If a RPN is revoked by the Sheriff or Tribunal on appeal by the Landlord, the Tenant only has to pay 'arrears' of rent if, and to the extent, ordered. If a RPN is revoked by the Council then 'arrears' are not due (Section 95(3)).</p>
<p>Equality:</p> <p>Children and Young People:</p>	<p>The Clerk has considered the "Public Sector Equality Duty" in preparing the Appendices and any specific equalities impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant equalities impacts to be considered.</p> <p>None - where the Clerk has information about under-18s living in rented houses, this may be set out in the Schedules.</p>
<p>Environmental & Sustainability:</p>	<p>None</p>
<p>Key Priorities:</p>	<p>An effective licensing system, e.g. monitoring the 'fit and proper' status of Landlords and the suitability of rented houses, helps achieve Priority 4 of the North Ayrshire Council Plan 2015-2020, ("Supporting all of our people to stay safe, healthy and active")</p>
<p>Community Benefits:</p>	<p>Not applicable, as the Report does not relate to tendering or procurement exercises.</p>

5. Consultation

- 5.1 No consultations are appropriate. Depending on the circumstances, the Schedules contain information supplied by the Police, other Council officers, or other agencies.



Elma Murray OBE
Chief Executive

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

Background Papers

None