



**NORTH AYRSHIRE**  
COUNCIL

Cunninghame House,  
Irvine.

27 February 2014

### **Licensing Committee**

You are requested to attend a Meeting of the above mentioned Committee of North Ayrshire Council to be held in the Council Chambers, Cunninghame House, Irvine on **WEDNESDAY 5 MARCH 2014** at **10.00 a.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

**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 of the Committee held on 22 January 2014 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: Licensing Matters**

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

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

Submit report by the Chief Executive on of the circumstances relating to Applications for Landlord Registration (copy enclosed).

**5. Urgent Items**

Any other items which the Chair considers to be urgent.

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## Licensing Committee

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Sederunt: Ronnie McNicol (Chair)  
Tom Marshall (Vice Chair)  
Robert Barr  
John Bruce  
Ian Clarkson  
Catherine McMillan  
Alan Munro  
Donald Reid  
Robert Steel  
Vacancy

Chair:

Attending:

Apologies:

Meeting Ended:



Licensing Committee  
22 January 2014

**IRVINE, 22 January 2014** - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 am.

**Present**

Ronnie McNicol, Tom Marshall, Robert Barr, Ian Clarkson, Catherine McMillan, Donald Reid and Robert Steel.

**In Attendance**

C. Andrew, Senior Manager Legal Services, W. O'Brien, Solicitor (Licensing), K. Sharkey, Trainee Solicitor, A. Toal, Administrative Assistant, and D. McCaw, Committee Services Officer (Chief Executive's Service).

**Also In Attendance**

Inspector Jones and Sergeant McIntosh (Police Scotland).

**Chair**

Councillor McNicol in the Chair.

**Apologies for Absence**

John Bruce and Alan Munro.

**1. Declarations of Interest**

There were no declarations of interest by Members in terms of Standing Order 16 and Section 5 of the Councillors Code of Conduct.

**2. Minutes**

The accuracy of the Minutes of the meeting of the Committee held on 20 November 2013 were confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

**3. Chair's Remarks**

The Chair, in terms of Standing Order 9.1, agreed to vary the order of business to allow earlier consideration of Agenda Item 4 (Civic Government (Scotland) Act 1982: Taxi Fare Scale Review).

**4. Civic Government (Scotland) Act 1982: Taxi Fare Scale Review**

Submitted report by the Chief Executive on the continuation of the statutory process in connection with the Taxi Fare Review.

At its meeting on 20 November 2013, the Committee reviewed the existing scales and the proposed new scales under Section 17(4A)(b)(ii), and authorised the Chief Executive to advertise the draft scales for public consultation.

The Committee (i) having carried out a review of the existing scales in accordance with Section 17(4A), and (ii) having considered representations received on the draft scales previously agreed by the Committee, agreed (a) under Section 17(2) to fix the scales for the fares of taxis and other charges, by amending that draft as follows:-

### **Maximum Taxi Fares effective from Monday 10 March 2014**

#### **Tariff 1 (Day)**

All journeys starting or ending in the period 07.00 a.m. to 12.00 p.m. (midnight) (except where Tariff 3 applies):

Initial Charge - For a distance not exceeding 1,320 yards ( $\frac{3}{4}$  of a mile) (or waiting time not exceeding 10 minutes) - £2.60.

Additional Charge - Each additional  $\frac{1}{17}$  of a mile (about 104 yards) or additional waiting time of up to 25 seconds - 10p.

#### **Tariff 2 (Nights, Sundays and across zones)**

All journeys (except where Tariff 3 applies):

- starting or ending in the period 12.00 p.m. (midnight) to 07.00 a.m., or
- starting or ending at any time on Sundays, or
- from the zone for which the vehicle is licensed to another zone in North Ayrshire.

Initial Charge - For a distance not exceeding 1,320 yards ( $\frac{3}{4}$  of a mile) (or waiting time not exceeding 10 minutes) - £3.00.

Additional Charge - Each additional  $\frac{1}{18}$  of a mile (about 98 yards) or additional waiting time of up to 25 seconds - 10p.

#### **Tariff 3 (Festive Periods)**

All journeys starting or ending in the periods

- any time on 25 December until 7.00 a.m. on 26 December
- any time on 1 January until 7.00 a.m. on 2 January

Double Tariff 1 Charges (Initial and Additional).

#### **Extra Charges**

1. If the vehicle is carrying more than 4 passengers, the charge is 50% added to the Tariff.
2. Soiling Charge - £35.

## **Notes**

1. The fare scale applies only to journeys which end within North Ayrshire. Fares for journeys beyond the Council area should be agreed between the passenger and the driver before the start of the journey.
2. Luggage shall be carried free if it is of a size which can reasonably be accommodated in the car.
3. The metered charge is the maximum which can be charged. The driver can always charge less."

and (b) under Section 18A(1)(a) that the scales should come into effect on 10 March 2014.

## **5. Exclusion of the Public**

The Committee resolved in terms of Section 50(A)4 of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public for Part A - Hearings on the grounds indicated in terms of Paragraph 14 of Part 1 of Schedule 7A of the Act.

## **6. Civic Government (Scotland) Act 1982: Licensing Matters**

Submitted report by the Chief Executive on (a) Hearings to be determined; (b) applications for the grant or renewal of licences and permits; and (c) issues arising in respect of existing licences, all in terms of the Civic Government (Scotland) Act 1982.

### **Part A: Hearings**

#### **6.1 Metal Dealer's Licence MDL/047 (New) - William Morgan**

The Committee, at its meeting on 20 November 2013, 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 applicant, having been duly cited to attend, was present. Representatives from Strathclyde Police were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Strathclyde Police then addressed the Committee on the terms of a letter dated 11 November 2013 setting out the observations of the Chief Constable of Police Scotland on the applicant.

Inspector Jones advised the Committee that there were also 'spent convictions' which should not be considered by the Committee, due to Section 1(1) of the Rehabilitation of Offenders Act 1974, although he submitted that the condition in Section 7(3) was satisfied (that justice could not be done in the case except by admitting evidence relating to spent convictions). The Applicant agreed that the Committee could look at the spent conviction. The Committee was satisfied that the condition was satisfied, and accordingly agreed to consider the terms of a further letter from the Chief Constable in relation to a 'spent' conviction. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

The applicant and representatives of Police Scotland then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

After discussion, Councillor Reid, seconded by Councillor Marshall moved that the application should be granted.

As an amendment, Councillor Barr, seconded by Councillor Steel, moved that the application should be refused.

On a division, there voted for the amendment 3 and for the motion 4 and the motion was declared carried.

## **Decision**

Accordingly, the Committee agreed to grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

## **6.2 Public Charitable Collection - Renalda Ruginiene**

The Committee considered an application for permission for a Public Charitable Collection made under Section 119 of the Civic Government (Scotland) Act, 1982. This application was continued from the meeting on 20 November 2013.

The applicant, having been duly cited to attend, was not in attendance. The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant.

## **Decision**

The Committee agreed to continue consideration of this application to its meeting on 5 March 2014 in order that further information can be obtained from the applicant.

### **6.3 Taxi Driver's Licence TDL/00814 (Renewal) - Alan Duncan**

The Committee, at its meeting on 20 November 2013, 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 licenceholder, having been duly cited to attend, was present. Representatives from Strathclyde Police were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licenceholder. The representatives from Police Scotland then addressed the Committee on the terms of a letter dated 23 October 2013 setting out the observations of the Chief Constable of Police Scotland on the licenceholder. Thereafter the licenceholder addressed the Committee on the issues raised and responded to questions.

The licenceholder and representatives of Police Scotland then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

#### **Decision**

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

### **6.4 Taxi Driver's Licence TDL/01479 (New) - Bradley McGrath**

The Committee, at its meeting on 20 November 2013, 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 applicant, having been duly cited to attend, was present. Representatives from Strathclyde Police were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Police Scotland then addressed the Committee on the terms of a letter dated 10 October 2013 setting out the observations of the Chief Constable of Police Scotland on the applicant. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

The applicant and representatives of Police Scotland then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

## **Decision**

The Committee agreed, Councillor Barr dissenting, to grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

### **6.5 Taxi Driver's Licence TDL/01880 (New) - Charles Rawley**

The Committee, at its meeting on 20 November 2013, 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 applicant, having been duly cited to attend, was present. Representatives from Strathclyde Police were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licenceholder. The representatives from Police Scotland then addressed the Committee on the terms of a letter dated 23 October 2013 setting out the observations of the Chief Constable of Police Scotland on the applicant. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

The applicant and representatives of Police Scotland then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

## **Decision**

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

### **6.6 Taxi Driver's Licence TDL/01883 (New) - Russell Drummond**

The Committee, at its meeting on 20 November 2013, 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 Committee was advised that the application had been withdrawn.

Noted.

### **6.7 Taxi Driver's Licence TDL/01885 (New) - Peter Brown**

The Committee, at its meeting on 20 November 2013, 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 applicant, having been duly cited to attend, was present. Representatives from Strathclyde Police were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Police Scotland then addressed the Committee on the terms of a letter dated 6 November 2013 setting out the observations of the Chief Constable of Police Scotland on the applicant. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

The applicant and representatives of Police Scotland then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

## **Decision**

The Committee unanimously agreed to refuse the application in terms of Paragraph 5(1)(c) of Schedule 1 of the Civic Government (Scotland) Act 1982, on the grounds set out in Paragraph 5(3)(a)(ii) of the said Schedule, that the applicant is not a fit and proper person to be the holder of a Taxi Driver's Licence.

## **Part B: Applications for Licences and Renewal of Licences**

### **6.8 MOL/044 (New) Continental Market Ltd**

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.

### **6.9 TDL/01013 (New) Brian Hamilton**

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

### **6.10 TDL/01384 (New) Andrew Gillespie**

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.

### **6.11 TDL/01773 (New) Colin Bennett**

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.

#### **6.12 TDL/01889 (New) David Clarkson**

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.

### **Part C: Issues in Respect of Existing Licences**

#### **6.13 TDL/00901 William Simson**

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982.

### **7. Urgent Items**

The Chair agreed that the following items be considered as a matter of urgency to allow the matters to be actioned without delay.

#### **7.1 TL/66 Thomas Coombe**

The Committee was advised that in respect of the above Taxi Licence, the licenceholder had requested to alter the vehicle specification due to the purchase of a hybrid vehicle.

The Committee unanimously agreed to the use of a hybrid vehicle in respect of this Taxi Licence.

The meeting ended at 12.25 p.m.

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## **NORTH AYRSHIRE COUNCIL**

### **Agenda Item 3**

**5 March 2014**

#### **Licensing Committee**

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**Subject:** **Civic Government (Scotland) Act 1982: Licensing Matters**

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**Purpose:** To advise the Committee of (a) Hearings to be determined; (b) applications for the grant or renewal of licences and permits; and (c) issues arising in respect of existing licences, all in terms of the Civic Government (Scotland) Act 1982.

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**Recommendation:** That the Committee considers and determines the matters before it.

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#### **1. Introduction**

- 1.1 In terms of the Civic Government (Scotland) Act 1982, the Council, as Licensing Authority, requires to determine issues in respect of the grant, renewal or suspension of licences.

#### **2. Current Position**

- 2.1 The attached appendices detail the matters before the Committee for determination as follows:-

**Appendix A:**

Issues in respect of existing licences.

**Appendix B:**

Applications for the grant or renewal of licences and permits.

**Appendix C:**

Issues in respect of existing licences.

#### **3. Proposals**

- 3.1 It is proposed that the Committee considers and determines each of the listed cases in accordance with the required procedures.

#### **4. Implications**

Financial Implications

- 4.1 There are possible financial implications in relation to the refusal of any application.

Human Resource Implications

4.2 None

Legal Implications

4.3 There are possible legal implications in relation to the refusal of any application.

Equality Implications

4.4 None

Environmental Implications

4.5 None

Implications for Key Priorities

4.6 None

Community Benefit Implications

4.7 None

**5. Consultations**

5.1 Consultations have been undertaken with Police Scotland, Strathclyde Fire and Rescue, and the appropriate Council Services.

**6. Conclusion**

6.1 The Committee is requested to consider and dispose of the matters before it.



ELMA MURRAY  
Chief Executive

Reference : PAT

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

**Background Papers**

none

## APPENDIX A

### Hearings

<b>Hearing 1</b>	<b>Market Operator's Licence</b>	<b>MOL/044</b>
<b>Applicant and Address</b>	<b>Continental Market Ltd</b> 47 Petrel Way Dumfermline Fife KY11 8GY	
<b>Hearing 2</b>	<b>Public Entertainment Licence</b>	<b>PEL/199</b>
<b>Applicant and Address</b>	<b>Michael Stirling</b> 3 Springbank Crescent Glasgow G31 4PZ	
<b>Hearing 3</b>	<b>Taxi Driver's Licence</b>	<b>TDL/01384</b>
<b>Applicant and Address</b>	<b>Andrew Gillespie</b> The Bungalow 2 Sloan Avenue Irvine KA12 0HU	
<b>Hearing 4</b>	<b>Taxi Driver's Licence</b>	<b>TDL/01773</b>
<b>Applicant and Address</b>	<b>Colin Bennett</b> 12 Alford Place Irvine KA11 1RZ	
<b>Suspension Hearing 5</b>	<b>Taxi Driver's Licence</b>	<b>TDL/00901</b>
<b>Licenceholder and Address</b>	<b>William Simson</b> Reids Avenue Stevenston KA20 4BD	
<b>Hearing 6</b>	<b>Public Charitable Collection</b>	

<b>Applicant and Address</b>	Renalda <b>Ruginiene</b> Studio 320 Highgate Studios 53-79 Highgate Road London NW5 1TL	
<b>Organisation</b>	Appco Group Support (collection on behalf of Erskine Hospital)	
<b>Hearing 7</b>	<b>Taxi Driver's Licence</b>	<b>TDL/01889</b>
<b>Licenceholder and Address</b>	David <b>Clarkson</b> 34 Hunter Drive Irvine	

## APPENDIX B

### Applications for Licences/Renewal of Licences

Type of Licence/Reference Number	Details of Applicant	Comments
<b>LHCL/084 (New)</b>	Nasir <b>Gulem</b> 3 McKillop Place Saltcoats KA21 6AZ	Police observation received
<b>Premises</b>	Turkish Food Club 49a Hamilton Street Saltcoats KA21 5DT	
<b>MDL/048 (New) (Itinerant)</b>	Joseph <b>Quinn</b> 77A Beechwood Drive Bonhill Vale of Leven G83 9LR	Police objection received
<b>PCC (Temporary)</b>	<b>Breast Way Round Scotland</b> Kate Anderson 55 Broom Crescent Ochiltree KA18 2PS	Outwith Council Policy
<b>SPTL/020 (New)</b>	Stacey <b>Galbraith</b> 20 Phillips Avenue Largs KA30 9EP	Police observation received
<b>Premises</b>	The Studio Largs KA30 8LE	
<b>TDL/00821 (Renewal)</b>	James <b>McDowall</b> 62 Links Road Saltcoats KA21 6BH	Police observation received
<b>TDL/01513 (New)</b>	Steven <b>Robb</b> 2 Sersley Drive Kilbirnie KA25 6AZ	Police observation received

<b>TDL/01649 (New)</b>	Paul <b>Williams</b> 1 Green Avenue Irvine KA12 0UQ	Police observation received
<b>TDL/01819 (Renewal)</b>	David <b>Hebenton</b> 69 Glenacre Drive Largs KA30 9HF	Medical grounds
<b>TDL/01893 (New)</b>	James <b>Carroll</b> 8E South Crescent Road Ardrossan KA22 8DU	Police observation received
<b>TDL/01895 (New)</b>	Davis <b>Konthuruthy</b> 26 Morven Avenue Paisley PA2 8DR	Failure to produce qualification in English language

## APPENDIX C

### Issues in respect of Existing Licences

<b>Case 1</b>	<b>Taxi Driver's Licence</b>	<b>TDL/00539</b>
<b>Licenceholder and Address</b>	George <b>Dickson</b> 34 Burns Street Irvine KA12 8RP	
<b>Duration of Licence</b>	01/07/2011 - 30/6/2014	
<b>Case 2</b>	<b>Late Hour's Licence</b>	<b>LHCL/108</b>
<b>Licenceholder and Address</b>	<b>Malthurst Petroleum</b> Mayfield Service Station High Road Saltcoats KA21 6HX	
<b>Duration of Licence</b>	22/05/2013 - 30/04/2016	



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## **NORTH Ayrshire Council**

### **Agenda Item 4**

**5 March 2014**

#### **Licensing Committee**

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

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**Purpose:** To inform the Committee of the circumstances relating to Applications for Landlord Registration.

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**Recommendation:**

1. That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which this Report is to be considered;
2. That the Committee should consider each Application and:
  - (a) decide whether or not to grant it;
  - (b) if refusing, to decide whether or not to make an order under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of any house referred to in the Application, or to delegate authority to the Solicitor (Licensing) to make such an order.

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#### **1. Introduction**

- 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.
- 1.2 Applications for Registration have been made by the Applicants listed in the attached Schedules (each Applicant has one Schedule). These Applications relate to the rented houses listed in the Schedules.
- 1.3 The Committee will consider information about Applicants' criminal convictions or their prosecution. Such information is "Exempt Information":

"Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime." (as defined by Local Government (Scotland) Act 1973, Schedule 7A, Part 1, Paragraph 14).

- 1.4 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)).
- 1.5 Accordingly, if a Resolution is made:
- (a) the Minutes must exclude so much of the proceedings during which the public were excluded (Section 50C);
  - (b) the proper officer shall make a written summary of the proceedings without disclosing the 'Exempt Information' (Section 50C(2)), and that summary shall be included with the publicly-accessible Minutes (Sections 50C(2) & 50C(1)(b)).
- 1.6 In Landlord Registration cases, the summary will record:
- (a) applicant name,
  - (b) addresses of any house for which Registration was sought,
  - (c) the Committee decision to grant or refuse the application,
  - (d) the Committee decision whether or not to make a Rent Penalty Notice in relation to that house or houses.
- 1.7 Although the Committee's Agenda and connected Reports are generally to be made public information has been withheld under Section 50B(2), as the proper officer has the opinion that they relate to items during consideration of which the Meeting is likely not to be open to the public, i.e. that the Committee is likely to make a Resolution under Section 50A(4) to exclude the public during consideration of that item of business.
- 1.8 Accordingly the Schedules to this Report (which give details of such information in relation to a number of Applicants) are not part of the publicly-available Agenda, although in each case the individual Applicants have been given notice of the information and of the Committee Meeting.

## **The Landlord Registration Scheme**

- 1.9 The general rule is that a person wishing to let out a house must be Registered with the Council. Registration lasts 3 years. A person must re-apply within that time to remain Registered. The requirement to be Registered is subject to many exceptions, e.g. lets to family-members do not require Registration.
- 1.10 The Act specifies conditions which prospective Landlords must meet. One of these conditions is that the Landlord is a 'fit and proper person' (Section 84(3)(c)). The considerations which are relevant to this question are set out by the Act.
- 1.11 The Applicant's convictions are relevant to the consideration of whether or not he is 'fit and proper' to be Registered. Section 85(2) lists material which is relevant, including material which shows that the Landlord, Agent or other person applying for registration has:
- (a) committed any offence involving fraud or other dishonesty, firearms, violence or drugs or has committed a sexual offence;
  - (b) practised unlawful discrimination in, or in connection with, the carrying on of any business; or
  - (c) contravened any provision of any Letting Code, the law relating to housing, or landlord and tenant law.
- 1.12 In any case, the Council may take into account any material (even if not expressly listed in the statute) if it considers that the material is relevant to the 'fit and proper' question (Section 85(4)).
- 1.13 Where the Council is not satisfied that the conditions for Registration are met, the Council is obliged to refuse Registration (Section 84(2)(b)).

## **Rent Penalty Notice**

- 1.14 If a Landlord rents a house without being Registered, or if Registration is revoked, then two things can happen:
- (a) the Council may issue a Notice under Section 94 (often called a 'Rent Penalty Notice' or 'RPN'), meaning:
    - (i) the Tenant ceases to be liable for rent (but otherwise the Lease continues, so the Tenant remains in occupation and cannot be evicted for non-payment, and the Landlord remains responsible for repairs); and

(ii) any Housing Benefit stops being paid.

(b) the Landlord can be prosecuted for a criminal offence under Section 93(1). The penalty is a fine up to £50,000.

1.15 In addition, if Registration is revoked, the Landlord can be prosecuted if he tries to obtain a new Tenant, e.g. by advertising the house for letting, or discussing terms with a prospective Tenant (Section 93(2)). The penalty is a fine of up to £50,000.

## **2. Current Position**

2.1. The Applications have not been determined. Most such Applications are approved under delegated powers, but in the cases described in the Schedules the Solicitor (Licensing) has information indicating that the exercise of delegated powers is not appropriate.

2.2. The legislation does not provide for police vetting in all cases, but Scottish Government Guidance recommends sampling. Accordingly, a proportion of Applications are sent to the Police for comment. Where the Police report that the Applicant has either no convictions, or convictions which may be disregarded under the Scheme of Delegations previously approved by the Committee, the Application is granted. Alternatively, if the Police report material which makes the use of delegated powers inappropriate, the case is referred to the Committee.

2.3. In addition, where the Solicitor (Licensing) acquires information of any other material, e.g. that the Applicant has breached housing law, the case may be referred to the Committee.

## **3. Proposals**

3.1. The Committee should consider each Application and decide whether or not to grant it.

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

- 3.3. If it is not so satisfied, it may delegate authority to the Solicitor (Licensing) to make a RPN if and when the Solicitor (Licensing) is so satisfied. Given that there would be nothing to stop the Landlord receiving Housing Benefit even if he was unregistered, the Committee may wish to delegate authority to the Solicitor (Licensing) to issue a RPN if the Solicitor (Licensing) later receives information that the house is occupied by a Tenant.

#### **4. Implications**

##### Financial Implications

- 4.1 If a 'Rent Penalty Notice' is issued, the Housing Benefit Office will be informed, so that the Landlord will no longer receive HB.

##### Human Resource Implications

- 4.2 None

##### Legal Implications

- 4.3 Where the Council makes any decision to refuse or revoke Registration, to make a RPN, or to refuse to recall a RPN, the Applicant or Landlord may appeal to the Sheriff.

If the Council issues a 'Rent Penalty Notice', 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)).

For example:

- (a) the Tenant will continue to have whatever security of tenure he already had (he cannot be evicted for non-payment of rent where that non-payment is due to the Notice);
- (b) the Landlord will only be entitled to evict the Tenant if the Sheriff grants a Decree;
- (c) the Landlord continues to have repairing obligations.

##### Equality Implications

- 4.4 None

#### Environmental Implications

4.5 None

#### Implications for Key Priorities

4.6 None

#### Community Benefit Implications

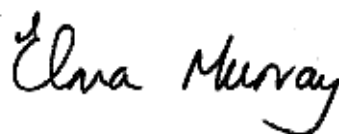
4.7 Preventing unfit Landlords from operating may contribute to the wellbeing of the community. Preventing Housing Benefit being paid to unregistered Landlords safeguards public funds.

### 5. Consultations

5.1 No consultations are appropriate. The Schedules contain information supplied by the Police or other agencies.

### 6. Conclusion

6.1 The Committee is invited to take the actions recommended.



ELMA MURRAY  
Chief Executive

Reference : WO'B

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

### Background Papers

None