

Cunninghame House,
Irvine.

10 August 2017

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 16 AUGUST 2017** at **10.00 a.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

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 (Page 5)

The accuracy of the Minutes of the meeting held on 7 June 2017 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 (Page 11)

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

- 4. Licensing of Street Traders (Page 15)**
Submit report by the Chief Executive on changes in Licence conditions and application practice for street traders (copy enclosed).
- 5. Review and Fixing of Taxi Scales (Civic Government (Scotland) Act 1982, Sections 17 to 18A) (Page 21)**
Submit report by the Chief Executive on the procedure for reviewing and fixing of taxi scales (copy enclosed).
- 6. Licensing of Taxis and Private Hire Cars - Drivers' obligations to passengers using wheelchairs - Equality Act 2010 (Page 27)**
Submit report by the Chief Executive on changes in Licence conditions and application practice for taxi and private hire car drivers (copy enclosed).
- 7. 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:

Attending:

Apologies:

Meeting Ended:

Licensing Committee
7 June 2017

IRVINE , 7 June 2017 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m

Present

Ronnie McNicol, Robert Barr, Todd Ferguson, John Easdale, Scott Gallacher, Davina McTiernan, Jimmy Miller and Donald L. Reid.

Also Present

Jean McClung.

In Attendance

W. O'Brien, Solicitor (Licensing), K. Sharkey, Solicitor (Contracts and Licensing), C. Pollock, Licensing Administration Officer and A. Toal, Administrative Assistant; and H. Clancy and E. Gray, Committee Services Support Officers and M. Anderson, Committee Services Team Leader (Chief Executive's Service).

Also In Attendance

Inspector J. McMillan and Sergeant G. Griffiths (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies for Absence

John Glover.

1. Declarations of Interest

There were no declarations of interest by Members in terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors.

2. 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 the following items of business, 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 1983. The 'Exempt Information' concerned is that described in Section 7A, Paragraph 6 ("Information relating to the financial business affairs of any particular person (other than the authority)") and Paragraph 14 ("Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime").

3. Order of Business

The Chair agreed, in terms of Standing Order 9.3, to vary the order of business to allow consideration of an Urgent Matter immediately following Agenda Item 2 (Civic Government (Scotland) Act: Licensing Matters).

4. Civic Government (Scotland) Act 1982: Licensing Matters

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

Part A: Hearings

4.1 Taxi Driver's Licence: TDL/01780 - John Swindle

The licence holder, having been duly cited to attend, was present and accompanied by his partner. Representatives of Police Scotland were also in attendance.

The representatives of Police Scotland addressed the Committee on the terms of a letter which advised of potential grounds for suspension of the licence. Thereafter, the licence holder addressed the Committee on the issues raised and responded to questions.

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

Decision

Councillor Easdale, seconded by Councillor Miller, moved that the Committee agree not to take any action in respect of an 'Ordinary Suspension' of the licence under Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982.

As an amendment, Councillor Barr, seconded by Councillor Reid, moved to continue consideration of this matter pending the decision of the Procurator Fiscal as to whether or not proceedings should be taken against the licence holder and, if there are such proceedings, until those are concluded.

On a division, there voted for the amendment 5 and for the motion 3, and the amendment was declared carried.

Accordingly, the Committee agreed to continue consideration of this matter pending the outcome of a report to the Procurator Fiscal.

4.2 Second Hand Motor Vehicle Dealer : SHDL/190 (New) - Kristofer William Gibbs

The applicant, having been duly cited to attend, was not present but was represented by Mrs I. Gibbs, who produced a signed letter of authority to represent the applicant. Two objectors to the application were also in attendance.

The applicant's representative addressed the Committee on the terms of two letters of objection received in connection with the application. One of the objectors present then addressed the Committee on the objections and the applicant's representative responded to the issues raised. Thereafter, both parties responded to questions.

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

Decision

Councillor Barr, seconded by Councillor Miller, moved that the application be refused in terms of Paragraph 5(1)(c) of Schedule 1 to the Civic Government (Scotland) Act 1982 on the grounds that the premises were not suitable or convenient for the conduct of the activity having regard to the location of the premises, the nature and extent of the proposed activity, and the possibility of undue public nuisance. There being no amendment, the motion was declared carried.

4.3 Taxi Driver's Licence : TDL/02016 (New) - Joanne Carol Harper

The applicant, having been duly cited to attend, was present. Representatives of Police Scotland were also in attendance.

Inspector McMillan, the representative of the Chief Constable, addressed the Committee on a letter setting out an objection from the Chief Constable to the application. The letter indicated that, in addition to the material reported in that letter, the Chief Constable had other information relating to the applicant's "Spent or Protected Convictions".

The representative of the Chief Constable, under reference to Section 7(3) of the Rehabilitation of Offenders Act 1974, submitted that the Committee's proceedings were "Proceedings Before A Judicial Authority" and that the Committee was entitled to be satisfied, in the light of any considerations which appeared to it to be relevant (including any evidence which had been or may thereafter be put before it), that justice could not be done in the case except by admitting or requiring evidence relating to the applicant's "Spent or Protected Convictions" or to circumstances ancillary thereto.

The representative of the Chief Constable gave the Committee a summary of the age and general nature of those convictions, and submitted that those convictions would, if admitted, have a bearing on the Committee's decision. He invited the Committee to admit and require such evidence, and to take that evidence into account in determining the case before it.

The Chair invited the applicant to comment on the Police Scotland submissions. The Solicitor (Licensing) summarised Section 7(3) for the applicant and explained that she had copies of two letters, not one, from Police Scotland; that the first letter, which the representative of the Chief Constable had read out, had already been seen by the Committee Members, but the second letter had not been seen by them; and that the preliminary question for the Committee was whether or not the "justice cannot be done" test was satisfied.

Apart from pointing out that the second letter referred to the wrong surname, the applicant had no objection to the Committee looking at the second police letter. The applicant confirmed that, notwithstanding the wrong surname, the second Police Scotland letter did relate to her and was accurate.

The Committee unanimously agreed that justice could not be done in the case except by having regard to the applicant's "Spent or Protected Convictions".

Thereafter, the Solicitor (Licensing) distributed to the Committee copies of the second police letter, and the representative of the Chief Constable read it out.

The applicant then addressed the Committee on the issues raised and responded to questions.

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

Decision

Councillor Miller, seconded by Councillor Reid, moved that the application be refused in terms of Paragraph 5(3)(a)(ii) of Schedule 1 to the Civic Government (Scotland) Act 1982 on the ground that the applicant was not a fit and proper person to be the holder of the licence. There being no amendment, the motion was declared carried.

Councillor Easdale left the meeting at this point.

4.4 Taxi Driver's Licence: TDL/O1469 - Charlene McIver

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 that the application be refused (i) in terms of Paragraph 5(3)(a)(ii) of Schedule 1 to the Civic Government (Scotland) Act 1982 on the ground that the applicant was not a fit and proper person, having failed to respond to reasonable inquiries from the Licensing Authority intended to establish whether or not the application was capable of being granted, given that any applicant for a Taxi Driver's Licence or Private Hire Car Driver's Licence must produce evidence to the Licensing Authority that he/she is not "disqualified by reason of the person's immigration status from driving a taxi or private hire car" (Civic Government (Scotland) Act 1982, Section 13(3A) (as added by the Immigration Act 2016, Section 37, and the Immigration Act 2016 (Commencement No. 2 and Transitional Provisions) Regulations 2016, No. 1037)); (ii) in terms of Paragraph 5(3)(d) of Schedule 1 to the Civic Government (Scotland) Act 1982 on the ground that there was another good reason for refusing the application, in that (a) the applicant had failed to respond to reasonable inquiries from the Licensing Authority intended to establish whether or not the she held a valid Driving Licence and (b) the application had been made on 31 January 2017, meaning that the six-month period which the Civic Government (Scotland) Act 1982, Section 3 allows for the determination of a licence application would have expired before the next scheduled meeting of the Committee.

4.5 Taxi Operator's Licence: TL/062 (Substitute Vehicle) - Samuel Burns Stephens

The licence holder, having been duly cited to attend, was not present, but was represented.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder, advising that the substitute vehicle proposed did not meet the Specification set by Committee for a wheelchair accessible vehicle, in that it was not fitted with the listing mechanism referred to in Condition 2 of the Specification. Thereafter, the licence holder's representative addressed the Committee on the issues raised and responded to questions .

In terms of Standing Order 5.7, the Chair then adjourned the meeting to allow Members to inspect the vehicle. The meeting reconvened with the same Members, officers and licence holder's representative present and in attendance. Representatives of Police Scotland left the meeting at this point.

The applicant then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

The Committee unanimously agreed (a) that there were sufficient grounds to treat the case as an exception to the Vehicle Approval Specification; (b) to grant the application in terms of Section 10(5) of the Civic Government (Scotland) Act 1982 for a substitute vehicle under Taxi Licence number 062; and (c) that the Vehicle Approval Specification be the subject of future consideration by the Committee.

Part B: Applications for Grant/Renewal of Licences

4.6 Taxi Driver Licence: TDL/01611 - Charles Caven

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 for a period of three years.

4.7 Taxi Driver's Licence: TDL/02021 - Colin Joseph Campbell Thomson

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.

4.8 Taxi Driver's Licence & Private Hire Car Licence : TDL/02025 & PHCL/0349 - Russell Drummond

The Committee unanimously agreed to grant both applications in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

4.9 Second Hand Motor Vehicle Dealer : SHDL/192 - Dennis Lawrence Greenberg

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. Urgent Item

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

5.1 Taxi Driver's Licence TDL/64 and Taxi Licence TL/14 - Samuel Dean

The Committee was advised of a complaint from a member of the public.

The Solicitor (Licensing) set out the background to the complaint and the potential grounds for suspension of the licence.

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 11 (7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

6. Booking Office Licences

Submit report by Chief Executive on the current licensing system and which proposed a new condition and Variation procedure.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

16 August 2017

Licensing Committee

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

Purpose: To advise the Committee of

- a. Hearings to be determined; and
- 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.

Recommendation: That the Committee considers and determines 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, including the Civic Government (Scotland) Act 1982. Depending on the legislation, 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 detailed in three Appendices:

Appendix A: Licences where Hearings have been convened;

Appendix B: Applications for the grant or renewal of licences and permits.

3. Proposals

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

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:	An "Equality Impact Assessment" is not necessary as the Equality Act 2010 is not a consideration in making a Licensing decision.
Environmental & Sustainability:	None.
Key Priorities:	An effective licensing system, e.g. monitoring the 'fit and proper' status of hire-car drivers and the safety of their 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
Chief Executive

Reference : WOB

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

Background Papers

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APPENDIX A

Hearings

Hearing 1 Licenceholder & Address	Taxi Licence & Taxi Driver's Licence Samuel Dean 62 Ford Avenue Dreghorn Irvine KA11 4BN and Michael Ferguson 51 Hunter Drive Irvine KA12 9BP	TL/014 & TDL/0064
Hearing 2 Applicant & Address	Second Hand Motor Vehicle Dealer Dennis Lawrence Greenberg 95 Heriot Avenue Kilbirnie KA25 7JB	SHDL/192 (New)
Hearing 3 Applicant & Address	Taxi Driver's Licence Colin Joseph Campbell Thomson 5 Holehouse Drive Kilbirnie KA25 7BJ	TDL/2021 (New)
Hearing 4 Applicant & Address	Public Charitable Collection Asthma UK (Scotland) Sheila Gillan 70 Millburn Gardens Largs KA30 9NG	
Hearing 5 Applicant & Address	Public Charitable Collection Soldiers off the Street, Scotland Hugh O'Brien 1/R 15 Stanlane Place Largs KA30 8DA	
Hearing 6 Applicant & Address	Public Charitable Collection Royal British Legion Scotland, Largs Branch Stuart Rumble 2C Kelvin Street Largs KA30 9BA	

APPENDIX B

Applications for the grant/renewal of licences

APPLICATION TYPE	APPLICANT	REFERENCE No.
Taxi Driver's Licence (New Application)	James McMeekin 124B Montgomery Street Irvine KA12 8PW	TDL/2030
Taxi Driver's Licence (New Application)	Scott William Walker 19 Corrie Crescent Saltcoats KA21 6JJ	TDL/2026
Second Hand Dealer's Licence (New Application)	Gianpiero Narducci 5 South Crescent Road Ardrossan KA22 8DU	SHDL/194

NORTH AYRSHIRE COUNCIL

Agenda Item 4

16 August 2017

Licensing Committee

Title: **Licensing of Street Traders**

Purpose: To advise Committee of changes in Licence conditions and application practice

Recommendation: That the Committee notes the position

1. Executive Summary

- 1.1 The Licensing Committee exercises the functions of the Council as "Licensing Authority" under many statutes, including the Civic Government (Scotland) Act 1982 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010).
- 1.2 These functions under the 1982 Act include the Licensing of Street Trading (Section 39) and Public Entertainment (Section 41).
- 1.3 "Street Trading" is defined by Section 39(2) and means doing any of the following things in a public place—
 - (a) hawking, selling or offering or exposing for sale any article;
 - (b) offering to carry out or carrying out for money or money's worth any service, to any person in the public place and includes doing any of these things there in or from a vehicle or in or from a kiosk or moveable stall not entered in the valuation roll except where it is done in conjunction with or as part of a retail business being carried on in premises abutting the public place.
- 1.4. Although the Licence is called a "Street Trader's Licence", the need for it is not limited to streets, but is needed for trading in a public place.
- 1.5. Street Trader's Licences are granted subject to conditions. The amendment of these conditions is delegated to the Head of Service (Democratic Services) under the "Scheme of Delegation to Officers" (approved by North Ayrshire Council on 1 April 2015 (delegation 54: "Attach such conditions as are deemed appropriate to any licence). The purpose of this Report is to inform the Committee of progress towards amending licensing procedures to assist the public.

2. Background

- 2.1 The Licence conditions currently used divide Street Traders between "Static" and "Itinerant" Street Traders.
- 2.2 "Itinerant" Street Traders:
- can only trade for 20 minutes, before requiring to move to another site.
 - cannot trade within 50 metres of
 - (a) Premises selling similar goods or services
 - (b) any school or educational establishment.
- 2.3 The Licensing Office has frequently found that the "Static" / "Itinerant" division is sometimes inconvenient for Applicants. For example, a trader might operate an Ice Cream van under an "Itinerant" Licence, usually travelling a route and stopping for 20 minutes frequently, but on occasion he might want to operate all day from a single location, e.g. at a fairground or market.
- 2.4 Therefore the Licensing Office have revised the Conditions, and the main revision is that the 20 minutes and 50 metres rules:
- (a) do not apply while the Licence-Holder is trading at a Public Entertainment Event or Market held within North Ayrshire, if the Event or Market either holds a separate Licence under the Civic Government (Scotland) Act 1982 or is exempt from holding a Licence, but
 - (b) do apply if the Licence-Holder is trading at any other time or place.
- 2.5. In addition, the Licensing Office propose to alter practice to allow for Street Trading without a Street Trader's Licence, where both of these apply:
- (a) the vehicle, kiosk or moveable stall is operated within land covered by a Public Entertainment Licence; and
 - (b) the operator of the vehicle, kiosk or moveable stall the holder of that Licence or travels from place to place with that holder;

This change is consistent with 1982 Act, Section 39(3)(e):

"A Street Trader's Licence shall not be required for— ... (e) any activity in respect of which a Licence is required under this Act apart from this section;"

- 2.6. Where the vehicle, kiosk or moveable stall is to be used for a "Food Business", there is to be a further requirement, due to the need to maintain Food Safety that the operator of the vehicle, kiosk or moveable stall either
- (a) holds a Street Trader's Licence applying to it issued by another Council in Scotland, or

(b) North Ayrshire Council (as "Food Authority" for the purposes of the Food Safety Act 1990) has issued a Certificate for that vehicle, kiosk or moveable stall stating that it complies with the specified requirements referred to in Civic Government (Scotland) Act 1982, Section 39(4).

- 2.7. The proposed changes will eliminate or substantially reduce the cost of licensing, since (depending on the situation) existing licensed traders will no longer have to pay for
- (a) licence alteration (£30)
 - (b) temporary licences (£165)

It is likely that it will be sufficient for most traders to apply for a 'full' 3-year licence, which will enable them to trade both itinerantly and at events or markets (costing £240 for 3 years), rather than having to pay for a succession of temporary licences (£165 each).

3. Proposals

- 3.1 It is proposed that the Committee agrees to note the position.

4. Implications

Financial:	See Para. 2.7
Human Resources:	None
Legal:	None
Equality:	An "Equality Impact Assessment" is not necessary as the Equality Act 2010 is not a consideration in making a Licensing decision
Environmental & Sustainability:	None
Key Priorities:	<p>An effective licensing system, e.g. monitoring the 'fit and proper' status of hire-car drivers and the safety of their cars, 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>The changes:</p> <p>(a) ensure that Food Safety will be maintained.</p> <p>(b) may have an indirect benefit to community groups, as often organisers of community events engage an existing trader to cater for the fairground or market.</p> <p>(c) will reduce the inconvenience to traders in requiring to apply for licences or alterations to Licences at short notice.</p>
Community Benefits:	Not applicable, as the report does not relate to tendering or procurement exercises.

5. Consultation

5.1 No consultations are necessary or appropriate.

A handwritten signature in black ink, reading "Elma Murray". The signature is written in a cursive, flowing style.

ELMA MURRAY
Chief Executive

Reference : GEN56/GEN62

For further information please contact William O'Brien, Solicitor (Licensing)
on 01294 324345

Background Papers

None

NORTH AYRSHIRE COUNCIL

Agenda Item 5

16 August 2017

Licensing Committee

Title: **Review and Fixing of Taxi Scales (Civic Government (Scotland) Act 1982, Sections 17 to 18A)**

Purpose: To advise Committee of procedure

Recommendation: That the Committee agrees:

(a) to approve the proposed timetable for the Review and Fixing Process, as set out in the Appendix to this Report; and (b) to set a date and time for the Trade Consultation meeting with Taxi Operators.

1. Executive Summary

- 1.1 The Licensing Committee exercises the functions of the Council as "Licensing Authority" under many statutes, including the Civic Government (Scotland) Act 1982 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010).
- 1.2. Taxi fares and other charges are limited to the Scales fixed by the Licensing Authority (1982 Act, Section 17). These are the maximum amounts which may be charged. It is open to Operators to discount these rates if they wish.
- 1.3. The Licensing Authority must fix those Scales within 18 months of the current Scales coming into effect. The current Scales came into force on 1 August 2016, so the new Scales should take effect no later than 1 February 2018.
- 1.4. Before fixing Scales the Licensing Authority must review the Scales in accordance with Section 17(4A). The Appendix to this Report sets out a possible timetable for the review process.

2. Background

- 2.1 The procedure for reviewing and fixing Scales is set by the 1982 Act, and consists of stages:

(a) First Committee Meeting - Trade Consultation (Section 17(4A)(a))

The Licensing Authority must consult with persons or organisations appearing to it to be, or to be representative of, the operators of taxis operating within its area. The Council will:

- send letters to the principal trade associations inviting them to attend
- write to individual holders of Taxi Licences

A Notice would be placed on the Council website and on the Council's Facebook page. In past Consultations the meeting has been set for 10.00 a.m., and some operators have stated that this was too early for them.

As in past years, the Committee will have information about:

- the current Scales in North Ayrshire
- the rate of inflation
- the Scales set by other Licensing Authorities. The Committee should treat this information with caution as each authority has its own charging basis, so comparison may not always be possible.

(b) Second Committee Meeting - Proposal (Section 17(4A)(b))

Following the Trade Consultation the Licensing Authority must review the existing Scales, and propose new Scales, whether at altered rates or the same rates;

(c) Public Consultation - First Advertisement (Section 17(4A)(c))

Following such Review the Licensing Authority must publish the proposed Scales in a newspaper circulating in its area, stating that any person may make representations in writing until a specified date falling at least one month after the first publication. Previous advertisements have appeared in local newspapers.

(d) Third Committee Meeting - Fixing the Scale (Section 17(2))

The Licensing Authority must consider such representations, and fix the Scales.

(e) Notification to Trade (Section 17(4D)..17(5))

The Licensing Authority informs both individual operators and trade organisations within 7 days of the Scales being 'fixed'. Any of them may appeal to the Traffic Commissioner within 14 days of receiving Notice, and Appeal suspends the decision to fix new Scales (Section 18(4)).

(f) Second Advertisement (Section 18A)

The Licensing Authority is to publish the new Scales in local newspapers. The date of publication depends on whether or not there is an appeal:

- If there has been no appeal, publication occurs as soon as practicable after the expiry of the 14 day appeal period.

- If there is an appeal, publication occurs as soon as practicable after the determination of the appeal.

Publication is not a 'consultation', but is simply informing the public that the new scale has been fixed and will shortly come into effect.

- 2.2 In the previous Review: The final Committee Meeting at which the Scales were adopted was on 12 August 2015, and the Scales adopted were to take effect on 2 November 2015. However, those Scales did not commence then, as the effect of the subsequent Appeal to the Traffic Commissioner was to continue the previous Scales (which were effective from 10 March 2014) until the Appeal ended. The Traffic Commissioner held a Hearing at Council offices in Irvine on 20 May 2016 and later issued a decision. The altered Scales came into force on 1 August 2016.
- 2.3 The process of reviewing and fixing Taxi Fare Scales does not have a direct cost to the Trade, but it may have an indirect effect. The Licensing Authority must pay the Traffic Commissioner's account, regardless of the outcome of the Appeal: Section 18(10). The Council paid the Traffic Commissioner £4,277 after the 2015-16 Appeal. Such expenditure could be reflected in future Taxi Licence fees, as the reviewing and setting of Taxi Fare Scales is one of the 'functions' mentioned in 1982 Act, Schedule 1, Paragraph 15:

"A Licensing Authority shall charge such fees in respect of Taxi and Private Hire Car Licences and Applications for such Licences as may be Resolved by them from time to time and shall seek to ensure that the total amount of such fees is sufficient to meet the expenses incurred by them in carrying out their functions under sections 10 to 23 (other than section 19) of this Act in relation to such Licences."

3. Proposals

- 3.1 It is proposed that the Committee agrees to:-
- (a) approve the proposed timetable for the review process as set out in the appendix to the report; and
 - (b) set a date and time to meet with the Taxi Operators to carry out Trade Consultation (Stage (a)).

4. Implications

Financial:	The Taxi fare structure has substantial implications for both the trade and the community. In addition, legal costs to the Licensing Authority may arise if the fare review becomes subject to an appeal to the Traffic Commissioner, which may affect future Licence fees.
Human Resources:	None.
Legal:	Possible appeal to the Traffic Commissioner.
Equality:	An "Equality Impact Assessment" is not necessary as the Equality Act 2010 is not a consideration in making a Licensing decision.
Environmental & Sustainability:	None.
Key Priorities:	An effective licensing system, e.g. monitoring the 'fit and proper' status of hire-car drivers and the safety of their 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 No consultations are necessary or appropriate at this stage of the statutory process, which will later involve consultation with the Trade and the general public.



ELMA MURRAY
Chief Executive

Reference : GEN17

For further information please contact William O'Brien, Solicitor (Licensing)
on 01294 324345

Background Papers

Possible timetable - Taxi Fare Review 2017

Appendix 1

Possible timetable - Taxi Fare Review 2017

(Stages as described in Report)

Stage (a) - Meeting with taxi trade representatives/taxi operators to discuss proposals, consider revisions and finalise draft tariff - To be arranged

Stage (b) - Licensing Committee meeting to approve finalised draft tariff and seek authority to advertise proposed tariff in local press - Wednesday 13 September 2017

Stage (c) - Public Consultation - Advertise proposals and invite representations - As soon as possible thereafter

Stage (d) - Licensing Committee meeting to consider representations and to fix new Scales - Wednesday 1st November 2017

Stage (e) - Notification to Trade - within 7 days of (d)

Stage (f) - Advertise new Scales - As soon as possible, subject to any appeal

NORTH AYRSHIRE COUNCIL

Agenda Item 6

16 August 2017

Licensing Committee

Title:	Licensing of Taxis and Private Hire Cars - Drivers' obligations to passengers using wheelchairs - Equality Act 2010.
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Purpose:	To advise Committee of changes in legislation and to propose action.
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Recommendation:	That the Committee decides (i) whether or not there should be (a) a List of Designated Taxis and/or (b) a List of Designated Private Hire Cars, and (ii) if there should be any list, that the Committee (a) prepare a draft List; (b) instruct the Clerk to intimate to the holders of the relevant Operator's Licences that the Committee proposes to Designate the Licensed Vehicle; to inform them of the legal consequences of this; and to invite representations; (c) continue consideration of the proposed List to await representations; (d) after considering any representations, to determine what that List should contain; and (e) instruct the Clerk to publish that List on the Licensing Committee website, with a summary of the relevant Law.
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1. Executive Summary

1.1 The Licensing Committee exercises the functions of the Council as "Licensing Authority" under many statutes, including the Civic Government (Scotland) Act 1982 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010).

1.2 The 1982 Act covers the licensing of Hire Cars. Hire Cars are of two kinds:

"Taxis" are able to be hailed in public places, and can park at Stances;

"Private Hire Cars" can only be pre-booked (for example, by telephone). They cannot be hailed in public places, and cannot park at Stances.

1.3 The Equality Act 2010 imposes duties on the drivers of certain Taxis and Private Hire Cars (not all of them). This system was commenced on 6th April 2017.

1.4 It was not practical to place a report on this matter before the Committee earlier:

- (a) The commencement of the system of legislation followed the the last Licensing Committee meeting scheduled to sit before the Scottish Local Government election on Thursday 4 May 2017 (the meeting of 20 March 2017);
- (b) The first meeting of the Licensing Committee following the Local Government election (the meeting of 7 June 2017, which was held on the day before the United Kingdom Parliamentary Election on 8th June 2017) was busy with other business.

Therefore this matter is being reported to the Licensing Committee at its second meeting after the election (16 August 2017).

2. Background

2.1 The statutory system operates as follows. Each Council in the United Kingdom has the right (not the obligation) to have a List of 'Designated' Taxis or Private Hire Cars. The consequences of the Council having a List, and deciding the content of any List, are:

- (a) If a Hire Car is on the 'Designated' List, this means that any driver of that Hire Car has duties to disabled passengers who use wheelchairs;
- (b) If there is no List, no drivers have these duties towards disabled passengers who use wheelchairs;
- (c) If there is a List, but a particular Hire Car is not on it, the driver of that Hire Car has no duties towards disabled passengers who use wheelchairs.

2.2 In cases (b) and (c) drivers of both Taxis and Private Hire Cars have no duties towards passengers in wheelchairs, but under other legislation they have duties to carry passengers' assistance dogs (The Taxi Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations S.S.I. 2003-73; The Private Hire Car Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations S.S.I. 2004-88).

2.3 The duties towards disabled passengers who use wheelchairs in Designated Vehicles are set out in Equality Act 2010, Section 165(4) and (5). The Driver must

- (a) carry the disabled passenger while in the wheelchair;
- (b) not to make any additional charge for doing so;
- (c) carry the wheelchair, if the disabled passenger chooses to sit in a passenger seat;
- (d) take such steps as are necessary to ensure that the disabled passenger is carried in safety and reasonable comfort;
- (e) give the disabled passenger reasonable "mobility assistance".

A driver of a Designated Vehicle commits a criminal offence by failing to comply with any such duty, and is liable to a fine up to £1,000.

The legislation allows Licensing Authorities to exempt drivers from the duties on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for him/her to comply with those duties.

2.4 "mobility assistance" is assistance:

- (a) to enable the passenger to get into or out of the vehicle;
- (b) if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
- (c) to load the passenger's luggage into or out of the vehicle;
- (d) if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.

2.5 A Licensing Authority which maintains a List must have regard to any guidance issued by the Secretary of State (Section 167(7)). Such Guidance was issued by the Department for Transport on 21 February 2017 and includes:

"1.19 Before drivers can be subject to the duties under Section 165 of the Act, the Local Authority must first publish their List of Designated Vehicles, and clearly mark it as 'designated for the purposes of Section 165 of the Act'."

3. Proposals

3.1 Each Council must consider the following preliminary questions:

"Should there be a List of Designated Taxis?"

"Should there be a List of Designated Private Hire Cars?"

The Council is not obliged to answer either question "yes", but the consequence of not answering "yes" in either case is that no duties are owed by drivers towards disabled passengers who use wheelchairs. If the answer is "yes" in either case, the Committee should consider what the List should contain.

3.2 The Clerk recommends that the Committee should proceed as follows:

- (a) make a draft List of Designated Taxis but not a List of Designated Private Hire Cars;
- (b) continue consideration of the question of the contents of the List;
- (c) instruct the Clerk to intimate to the holders of the relevant Operator's Licences that the Committee proposes to Designate the Licensed Vehicle; to inform them of the legal consequences of this; and to invite representations;

- (d) after considering any representations made, make a List;
 - (e) instruct the Clerk to publish that List on the Licensing Committee website, with a summary of the relevant Law.
- 3.3 The Clerk suggests that the Designation should be limited to those vehicles which are already obliged to be 'wheelchair accessible'. This means that there should not be, at present, any List of Designated Private Hire Cars, and that any List should relate only to Taxis.
- 3.4 In the future, the Committee might review the Vehicle Specification, and might then require that any Private Hire Car Licence to be granted should relate to a 'wheelchair accessible' vehicle (that obligation would not apply to Licences that had already been granted, unless the Committee directed otherwise, so vehicles substituted on existing Licences would not need to be 'wheelchair accessible'.)
- 3.5 In North Ayrshire Council there are 214 Taxis. Of these, 34 vehicles are 'wheelchair accessible', but there are two types:
- (a) 'wheelchair licence' - 29 vehicles
 - (b) 'wheelchair modified' - 5 vehicles
- 3.6 The difference is that the 'wheelchair modified' vehicles are 'wheelchair accessible' due to the Operator's choice, as opposed to by obligation. The Licence will initially have been granted for a vehicle which was not 'wheelchair accessible'. At some later time the Operator will have applied to the Council to substitute another vehicle under the Licence. The application form will have asked 'Can the vehicle provide access for disabled passengers in wheelchairs - Yes-No?'. The operator will have said 'yes', and been issued with a Licence a plate with a 'wheelchair' logo.
- 3.7 Vehicles in (a) and (b) are the only vehicles which conform to "Accessibility Requirements" (as defined by Section 167(5)):
- "requirements for securing that it is possible for disabled persons in wheelchairs—*
- (a) to get into and out of vehicles in safety, and*
 - (b) to travel in vehicles in safety and reasonable comfort,*
- either staying in their wheelchairs or not (depending on which they prefer)."*
- 3.8 It is proposed that the Taxi List should be in two parts, corresponding to the distinction (a) and (b). Part (b) of the List will be revised from time to time, as the Licensing Authority grants Applications to substitute a vehicle which change whether or not the particular vehicle then used under the Taxi Licence is, or is not, 'wheelchair accessible'.

4. Implications

Financial:	None.
Human Resources:	None.
Legal:	<p>An Operator who is aggrieved:</p> <p>(a) at the inclusion of a Licensed Vehicle in a List, or</p> <p>(b) at the refusal of the Council to issue an exemption certificate,</p> <p>may appeal to the Sheriff.</p>
Equality:	<p>The proposed action recognises the importance which the Council gives to promoting the interests of Disabled people, and is in accordance with the Public Sector Equality Duty (the "equality duty" obliging the Council to have due regard to the matters mentioned in section 149(1) of the Equality Act 2010 relating to people who have "Relevant Protected Characteristics".)</p>
Environmental & Sustainability:	None.
Key Priorities:	<p>An effective licensing system, e.g. monitoring the 'fit and proper' status of hire-car drivers and the safety of their cars, helps achieve Priority 4 of the North Ayrshire Council Plan 2015-2020, ("Supporting all of our people to stay safe, healthy and active").</p>
Community Benefits:	Not applicable, as the Report does not relate to tendering or procurement exercises.

5. Consultation

5.1 Consultations will be carried out as above described.

A handwritten signature in black ink, reading "Elma Murray". The signature is written in a cursive, flowing style.

ELMA MURRAY
Chief Executive

Reference : GEN01/GEN37

For further information please contact William O'Brien, Solicitor (Licensing)
on 01294 324345

Background Papers

None.