



North Ayrshire Council  
Comhairle Siorrachd Àir a Tuath

Cunninghame House,  
Irvine.

17 September 2015

### **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 23 SEPTEMBER 2015** 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 Committee held on 2 September 2015 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 19

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

Submit report by the Chief Executive on (a) Hearings to be determined; and (b) applications for the grant or renewal of licences and permits, 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.

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## Licensing Committee

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Sederunt: Ian Clarkson (Chair)  
Tom Marshall (Vice Chair)  
Robert Barr  
John Bruce  
John Easdale  
Grace McLean  
Catherine McMillan  
Ronnie McNicol  
Donald Reid  
Vacancy

Chair:

Attending:

Apologies:

Meeting Ended:



Licensing Committee  
2 September 2015

**IRVINE, 2 September 2015** - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

**Present**

Ian Clarkson, Tom Marshall, Robert Barr, John Bruce, John Easdale, Grace McLean, Catherine McMillan, Ronnie McNicol, and Donald Reid.

**In Attendance**

C. Reilly, Team Manager (Food /Health and Safety) (Economy and Communities); and W. O'Brien, Solicitor (Licensing) and K. Sharkey, Solicitor (Contracts and Licensing) and A. Toal, Administrative Assistant 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 Clarkson in the Chair.

**1. Declarations of Interest**

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

**2. Minutes**

The accuracy of the Minutes of the meeting of the Committee held on 12 August 2015 was confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

**2.1 Matter Arising**

The Solicitor (Licensing) referred to Item 4 (Civic Government (Scotland) Act 1982: Taxi Fare Scales Review) of the Minute, advising that a taxi operator had now submitted an appeal to the Traffic Commissioner in respect of the revised taxi fares and charges agreed by the Committee, and that this was likely to be the subject of a hearing in due course.

Members asked questions, and received clarification, on the following:-

- the appeal process and timescales;
- the mechanisms already used by the Committee to gather the views of the taxi trade prior to decisions on revised fares; and
- the need for a suspension of Standing Orders should the Committee wish to revisit its decision within a period of six months.

Noted.

### **3. 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**

##### **3.1 Public Charitable Collection: Alzheimer Scotland**

The Solicitor (Licensing) advised that this application had been withdrawn by the applicant.

Noted.

##### **3.2 Public Entertainment Licence: Kelburn Productions**

The Committee considered an application for a temporary Public Entertainment Licence under Section 41 of the Civic Government (Scotland) Act 1982 for an event at 6.00 p.m. on 19 September until 4.00 a.m. on 20 September 2015.

The applicant, having been duly cited to attend, was present and represented. The applicant did not appear and was not represented. Representatives from Police Scotland and from the Council's Environmental Health Service were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland addressed the Committee on the terms of a letter setting out an observation in relation to the application. The representative from the Council's Environmental Health Service also addressed the Committee on a complaint received in respect of a previous event. The applicant also addressed the Committee, providing details of the proposed event, and responded to questions.

## **Decision**

The Committee unanimously agreed to grant the application for the event at 6.00 p.m. on 19 September until 4.00 a.m. on 20 September 2015, subject to (i) the Council's standard conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982 and (ii) a further condition that the licence holder meet the expenditure incurred by the employment of two Police Officers during the event.

### **3.3 Taxi Driver's Licence TDL/01986 (New): George MacFarlane**

The Committee, at its meeting on 12 August 2015, 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 not present or represented. Representatives from Police Scotland were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant and referred to a letter from Kilbirnie Medical Practice in respect of the application. The representatives of Police Scotland then addressed the Committee on the terms of a letter setting out an observation in relation to the application.

## **Decision**

Councillor McNicol, seconded by Councillor McLean, moved that the application be granted in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982, subject to the licence being restricted to the use of vehicle with an automatic gearbox.

As an amendment, Councillor Barr moved that the application be refused. There being no seconder, the amendment fell. There being no amendment, the motion was declared carried.

Accordingly, the Committee agreed to grant the application, subject to (a) the standard conditions, in terms of Paragraph 5(1)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010); and (b) an additional condition under Paragraph 5(1A): "This Licence shall only be valid for the driving of a vehicle with automatic transmission".

### **3.4 Taxi Driver's Licence TDL/01987 (New): Niall O'Flaherty**

The Committee, at its meeting on 12 August 2015, 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 Police Scotland were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee on the terms of a letter setting out an observation in relation to the application. 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**

Councillor Barr, seconded by Councillor McNicol, moved that the application be refused.

As an amendment, Councillor Easdale, seconded by Councillor McMillan, moved that the application be granted in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

On a division, there voted for the amendment 6 and for the motion 3, and the amendment was declared carried.

Accordingly, the Committee 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.

### **3.5 Taxi Driver's Licence TDL/01988 (New): Gordon Law**

The Committee, at its meeting on 12 August 2015, 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 not present or represented. Representatives from Police Scotland were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee on the terms of a letter setting out an observation in relation to the application.

### **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 Schedule, that the applicant is not a fit and proper person to be the holder of a Taxi Driver's Licence.

### **3.6 Taxi Driver's Licence TDL/01991: John Muir**

The Committee, at its meeting on 12 August 2015, 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.

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.

### **3.7 Taxi Operator's Licence TL/213: William Myers**

The Committee, at its meeting on 12 August 2015, 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 not present or represented. Representatives from Police Scotland were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee, advising of the withdrawal of a letter setting out an observation in relation to the application, following clarification that there were now no legal proceedings outstanding in respect of the applicant.

## **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.

### **3.8 Taxi Operator's Licence TL/250: William Myers**

The Committee, at its meeting on 12 August 2015, 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 not present or represented. Representatives from Police Scotland were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee, advising of the withdrawal of a letter setting out an observation in relation to the application, following clarification that there were now no legal proceedings outstanding in respect of the applicant.

## **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.

### **3.9 Taxi Licences TL/067, 041, 074, 116, 151, 050 and 043: Kevin Blades**

The applicant, having been duly cited to attend, was not present or represented. Representatives from Police Scotland were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee, advising of the withdrawal of a letter requesting an 'Ordinary Suspension' under Paragraph 11(2)(a) and (c) of Schedule 1 of the Civic Government (Scotland) Act 1982, following clarification that there were no legal proceedings outstanding in respect of the applicant.

## **Decision**

The Committee unanimously agreed not to take any action in respect of the request by Police Scotland for an 'Ordinary Suspension' of the licence under Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982.

### **3.10 Private Hire Car Licences PHCL/332 and 333: William Taylor**

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

The Solicitor (Licensing) provided information on a request in respect of the applicant's licensed private hire cars to grant an exemption to the policy regarding the display of the North Ayrshire Council door crest on the vehicles. Thereafter, the applicant addressed the Committee on the issues raised in his written submission and responded to questions.

#### **Decision**

The Committee unanimously agreed to grant the request for an exemption from Council policy regarding the display of the North Ayrshire Council door crests on the two Private Hire Cars which were the subject of the Hearing.

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

#### **3.11 MDL/03 (Itinerant) (New) Robert Kerr**

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/

#### **3.12 PCC Hansel Foundation**

The Committee unanimously agreed, having regard to the information presented, (a) that there were sufficient grounds to treat the case as an exception to the Council's policy on street collections; and (b) to grant the application under Section 119(5) of the Civic Government (Scotland) Act 1982 on 4 December and 7-11 December 2015 in the Rivergate Shopping Centre, subject to the Council's usual conditions.

#### **3.13 TDL/01837 (Renewal) Mohamed Asli**

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.

#### **3.14 TDL/01995 (New) John Young**

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. Exclusion of the Public**

The Committee resolved, in terms of Section 50A(4) of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public for the agenda item 7 (Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8) on the grounds that otherwise "Exempt Information" of the type described in Paragraphs 14 and 15 of Part 1 of Schedule 7A to the Act ("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") might be disclosed.

#### **5. Landlord Registration under the Antisocial Behaviour Etc. (Scotland) Act 2004, Part 8**

Submitted report by the Chief Executive on landlord registration matters.

#### **Decision**

The Committee unanimously agreed to proceed to a hearing in terms of Part 8 of the Antisocial Behaviour Etc. (Scotland) Act 2004.

The meeting ended at 11.35 a.m.

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## **NORTH AYRSHIRE COUNCIL**

### **Agenda Item 3**

**23 September 2015**

#### **Licensing Committee**

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**Title:** **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.
- 1.2. A meeting of a local authority is open to the public except to the extent that they are excluded (whether during the whole or part of the proceedings) under:
  - (a) the rule about 'confidential information' (as defined) or
  - (b) by Resolution.

(Local Government (Scotland) Act 1973, Section 50A, and especially Subsection 50A(4)).
- 1.3. Under the Resolution procedure, the Committee is entitled to resolve to exclude from the Meeting the press and the public for any one or more items of business on the grounds that otherwise "Exempt Information" of any type described in Part 1 of Schedule 7A to the Act might be disclosed.

- 1.4. The types of "Exempt Information" which may arise during Committee business include those described in Paragraphs 14 and 15 of that Schedule:
  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 to mean a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.)
- 1.5. Such a Resolution, once made, continues until the end of the Meeting unless the Committee earlier Resolves to revoke it.

## **2. Current Position**

### **Appendix A:**

Licences where Hearings have been convened;

### **Appendix B:**

Applications for the grant or renewal of licences and permits; and

### **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 and Sustainability Implications

4.5 None

Implications for Key Priorities

4.6 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 telephone number 01294 324305

## **Background Papers**

None



<b>Hearings</b>		
<b>Hearing 1</b>	<b>Caravan Licence</b>	<b>CAR/01</b>
<b>Licenceholder and Address</b>	<b>Verdant Leisure 2 Limited</b> Riverside Country Park Brewery Lane Wooler Northumberland NE71 6NJ	
<b>Premises</b>	<b>Viewfield Manor Leisure</b> Torranyard Lochlibo Road Kilwinning KA13 7RD	
<b>Hearing 2</b>	<b>Metal Dealer's Licence (Itinerant)</b>	<b>MDL/038 (New)</b>
<b>Applicant and Address</b>	<b>Robert Kerr</b> 5 Martin Avenue Irvine KA12 9NU	
<b>Hearing 3</b>	<b>Taxi Driver's Licence</b>	<b>TDL/01837 (Renewal)</b>
<b>Licenceholder and Address</b>	<b>Mohamed Asli</b> 27 Irvine Mains Crescent Irvine KA12 0UB	
<b>Hearing 4</b>	<b>Taxi Driver's Licence</b>	<b>TDL/01995 (New)</b>
<b>Applicant and Address</b>	<b>John Young</b> 39 Howden Avenue Kilwinning KA13 7AN	

Applications for Licences/Renewal of Licences		
Type of Licence/Reference Number	Details of Applicant	Comments
TDL/00018 (New)	Alexandria Mary <b>Hughes</b> 30 Morar Place Castlepark Irvine KA12 9PU	Previous convictions received

Issues in Respect of Existing Licences		
<b>Case 1</b>	<b>Taxi Driver's Licence</b>	<b>TDL/01995</b>
<b>Licenceholder and Address</b>	Donald Patrick <b>Newell</b> 37 Dalry Road Saltcoats KA21 6JZ	



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## NORTH AYRSHIRE COUNCIL

### Agenda Item 4

23 September 2015

#### Licensing Committee

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

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**Purpose:** To inform the Committee of Landlord Registration matters.

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**Recommendation:**

- a. 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;
- b. For each Application or Review Proposal described in the Schedules: that the Committee should consider each case and:
  - (i) decide whether or not the Application should be granted, or the Relevant Person should be removed from the Register;
  - (ii) 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.

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#### 1. Introduction

1.1. The Licensing Committee have 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. The persons named in the attached Schedules are either:

- Applicants for Registration, or
- already Registered under the 2004 Act, or
- are not Registered.

Each person has one Schedule. The rented houses concerned are listed in the Schedules.

Although the scheme under the Antisocial Behaviour etc. (Scotland) Act 2004 is described as "Landlord Registration", it is the fact that living accommodation is occupied that is important, not the question of whether or not a formal Lease has been entered into or rent paid or the occupier has the formal status of "tenant". The Act applies to both (i) a Lease and (ii) an Occupancy Arrangement, and most of the laws relating to rented housing also apply as much to occupiers as tenants.

For convenience, in this Report:

- (a) Applicants seeking Registration, and
  - (b) people who are already Registered ("Registered Persons"), and
  - (c) people who own houses occupied as residences,
- are called "Landlords" and the occupiers are called "Tenants".

#### Exempt Information

- 1.3. Landlord Registration cases are referred to the Committee using two documents:
  - (a) this Report, and
  - (b) one or more Schedules.
- 1.4. This is done because the Committee may consider that the cases involve "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A, so that information about the cases should not be disclosed to the public. The Committee are 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. Since the Committee have frequently made the necessary Resolution in the past, it is permissible for future Schedules to be withheld from publication. Although a Committee's Agenda and connected Reports are generally to be made public (Section 50B(1)), publication of the Schedules to this Report (but not the Report itself) 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 are likely to make a Resolution to exclude the public during consideration of the Schedules.

- 1.6. Accordingly, individual cases do not appear on the public agenda. The Report operates as a 'front page', and only appears once, regardless of how many individual cases are being referred to the Committee. The Report is general and sets out the legal structure. The Schedules detail the alleged facts of the particular cases and how the legislation appears to apply.
- 1.7. Depending on the circumstances of the individual case, the Schedules contain:
- (a) information about the Landlord's criminal convictions or their prosecution; and/or
  - (b) information that suggests that he is not a 'fit and proper' person by reason of his conduct in relation to alleged Anti-Social Behaviour; and/or
  - (c) information that suggests that he is not a 'fit and proper' person by reason of his breach of the legal obligations on Landlords; and/or
  - (d) information about conduct involving nuisance or crime (whether or not there have been any criminal Court proceedings).
- 1.8. The information is covered by one or other or both of the following categories of "Exempt Information" under Schedule 7A:

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."*

- 1.9. "Protected informant" is defined in Part III of the Schedule and means:

*"a person giving the Local Authority information which tends to show that—*

- (a) a criminal offence,*
- (b) a breach of statutory duty,*
- (c) a breach of planning control, within the meaning of section 123(1) of the Town and Country Planning (Scotland) Act 1997, or*
- (d) a nuisance,*

*has been, is being or is about to be committed".*

- 1.10. For example, Paragraph 15 would 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 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).
- 1.11. Accordingly, if a Resolution is made the publicly-accessible Minutes:
- (a) must exclude so much of the proceedings during which the public were excluded (Section 50C); but
  - (b) shall include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).
- 1.12. Although the Schedules have not been published, in each case the individual Landlords have been given appropriate copies and notice of the Committee Meeting.

#### The Landlord Registration Scheme

- 1.13. 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 - Registration is not automatically renewed. The requirement to be Registered is subject to many exceptions, e.g. lets to family-members do not require Registration.
- 1.14. The Act specifies conditions which 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.
- 1.15. Once a Landlord has been Registered, the Council is entitled to review the Registration. If not satisfied that the 'fit and proper' condition for Registration is met, the Council is obliged to remove Registration (Section 89).

- 1.16. If a Landlord rents a house without being Registered, or if Registration is removed, 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.
- 1.17 In addition, if Registration is removed, 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 up to £50,000.

## **2. Current Position**

- 2.1 The Clerk has received information set out in the Schedules. This information suggests that there may be a basis for the Committee concluding that the Landlord is not 'fit and proper', and that either the Application should be refused or the Registration already granted should be removed.

## **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 decide to refuse an Application, or to remove a Registration, and if they are satisfied that the house is presently occupied by a Tenant, they 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 they are not so satisfied, they 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 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 Implications

- 4.1 If a RPN is issued, the Housing Benefit Office will be informed, so that the Landlord will no longer receive Housing Benefit.

##### 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 Landlord may appeal by Summary to the Sheriff or the First Tier Tribunal.

##### Equality Implications

- 4.4 If the Council issues 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).

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 RPN);
- (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.

##### Environmental and Sustainability Implications

- 4.5 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)).

##### Implications for Key Priorities

- 4.6 None.

**5. Consultations**

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

**6. Conclusion**

- 6.1 The Committee is invited to take the actions recommended.

A handwritten signature in black ink, reading 'Elma Murray' in a cursive style.

ELMA MURRAY  
Chief Executive

Reference : PAT

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

**Background Papers**

None