



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Licensing Committee

A Meeting of the **Licensing Committee** of North Ayrshire Council will be held in the **Council Chambers, Ground Floor, Cunninghame House, Irvine, KA12 8EE** on **Wednesday, 28 November 2018** at **10:00** to consider the undernoted business.

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

1 Declarations of Interest

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

2 Minutes

The accuracy of the Minutes of the meeting held on 24 October 2018 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 1 of the Local Government (Scotland) Act 1973 (copy enclosed).

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

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

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

Submit report by the Head of Democratic Services on Landlord Registration matters (copy enclosed).

5

Urgent Items

Any other items which the Chair considers to be urgent.

Licensing Committee Sederunt

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

Chair:

Apologies:

Attending:

IRVINE, 24 October 2018 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Todd Ferguson, John Easdale, Scott Gallacher, Davina McTiernan, Donald L. Reid and Angela Stephen.

In Attendance

E. Anderson, Private Sector Team Manager and G. Tolmie Policy Officer (Private Sector) (Place) (Item 5 only); S. Bodys, Trading Standards Officer (Economy and Communities) (Item 4.3 only); W. O'Brien, Solicitor, (Licensing), C. Pollock, Licensing Administration Officer (Item 4.7 onwards), D. Robertson, Enforcements Officer (Item 4.5 only) and A. Toal, Administrative Assistant (Legal Services); and A. Little, Committee Services Officer (Chief Executive's Service).

Also in Attendance

Inspector Cameron, Sergeant Ridge and PC McArthur (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies

Robert Barr and Jean McClung.

1. Order of Business

In terms of Standing Order 9.5, the Chair agreed that the Committee (a) consider within Appendix A, an application in respect of a Public Entertainment Licence (The Braes, Saltcoats) as a matter of urgency in order to allow the matter to be progressed without delay; and (b) receive an update on an application considered at the meeting on 12 September 2018 (William Laughlan).

The Chair further agreed, in terms of Standing Order 9.4, to vary the order of business to allow consideration of Agenda Item 3 (Case 2, LHCL/115 (Variation) A G Restaurants Ltd) as the first item of business.

2. Declarations of Interest

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

3. Minutes

The Minutes of the meeting of the Committee held on 12 September 2018 were confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

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

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

Appendix A: Hearings

4.1 Late Hours Catering Licence: LHCL/115 (Variation) A G Restaurants Ltd

The Committee at its meeting held on 12 September 2018 agreed on the basis of the information presented to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The licence holder, having been duly cited to attend, was present and 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 licence holder and referred to a letter submitted by Police Scotland setting out an objection in respect of the application. Thereafter the licence holder and his representative addressed the Committee on issues raised and responded to questions.

Decision

Councillor Gallagher, seconded by Councillor Easdale moved that the application be granted 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) an additional condition that appropriate security staff be on the premises during the hours of 01:00 – 05:00 on each Friday and Saturday night for 3 months after the variation is effective.. There being no amendment, the motion was declared carried.

4.2 Public Entertainment Licence: PEL/568 (Temp) Ardrossan Community Association

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

Decision

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

Exclusion of the Public

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

The 'Exempt Information' concerned is information of the type described in one or more of Paragraphs 3, 6, 14 and 15 of Part 1 of Schedule 7A to the Act:

3. "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."
6. "Information relating to the financial or business affairs of any particular person (other than the authority)."
14. "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."
15. "The identity of a Protected Informant" - where "Protected Informant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance."

4.3 Second Hand Dealer's Licence: SHDL/199 (New) - William Neil

The Committee at its meeting held on 22 August 2018 agreed on the basis of the information presented to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The applicant (William Neil) having been duly cited, was not present or represented.

The proposed Day-to-Day Manager (John Imrie) 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, and separately to the proposed Day-to-Day Manager.

Police Scotland had sent the Licensing Authority letters setting out objections in respect of both the Application and the inclusion in the requested Licence of the proposed Day-to-Day Manager. These letters had respectively been copied to the Applicant and to the proposed Day-to-Day Manager, in each case the letters being addressed only to the person described to avoid disclosure of sensitive personal data.

Police Scotland addressed the Committee on their objection relating to the proposed Day-to-Day Manager, and he responded. Both responded to questions from the Committee.

The proposed Day-to-Day Manager then withdrew.

Police Scotland then addressed the Committee on their objection relating to the applicant.

The Police representatives then left the meeting temporarily while the Committee deliberated on the questions of:

1. whether or not the Applicant should be granted a Licence, and (if granted)
2. whether or not the proposed Day-to-Day Manager should be permitted to act as such.

Decision

Councillor Reid, seconded by Councillor Ferguson, moved that:

(a) the application be refused in terms of Paragraph 5(3)(a)(ii) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the grounds that the applicant was not a fit and proper person to be holder of the licence; and

(b) the proposed Day-to-Day Manager should not be permitted to act as such on the grounds that he was not a fit and proper person to be holder of the licence, in terms of Paragraph 5(3)(a)(ii) of Schedule 1 of the Civic Government (Scotland) Act 1982.

There being no amendment, the motion was declared carried.

Representatives from Police Scotland left the meeting at this point.

4.4 Late Hours Catering Licence: LHCL/116 (Variation) - Mascot Scotland Ltd

The Committee at its meeting held on 12 September 2018 agreed on the basis of the information presented to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The Committee was advised that the licence holder had requested the application be continued to a future meeting to allow him to attend.

Decision

The Committee unanimously agreed to continue consideration of the application to the next meeting.

4.5 Taxi Driver's Licence: TDL/00392 - John Convery

The Committee at its meeting held on 12 September 2018 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.

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

The Council's Enforcement Officer was in attendance and a witness to the incident was also present.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder. The Enforcement Officer outlined the incident that had been reported by a member of the public and showed CCTV footage of the incident at Saltcoats taxi rank.

The licence holder and his representative, the Enforcement Officer and witness addressed the Committee on issues raised and responded to questions. Thereafter the licence holder, his representative, the Enforcement Officer and the witness withdrew to allow the Committee to deliberate.

On their return the Chair advised the licence holder and his representative that the Committee was minded to suspend the licence and sought their views on the terms and length of suspension.

The licence holder and his representative withdrew to confer and on their return suggested that the suspension should be for 14 days, that provided that the suspension was for no more than 14 days, the Licence-Holder would consent to the suspension being immediate and that there would be no appeal.

The licence holder, his representative, the Enforcement Officer and the witness withdrew to allow the Committee to deliberate.

Decision

Councillor Reid, seconded by Councillor McTiernan, moved the Committee:-

- (a) find the grounds of suspension stated in Civic Government (Scotland) Act 1982, Schedule 1, Paragraphs 11(2)(a) and 11 (2)(d) were established and that the licence should be suspended;
- (b) fix the period of suspension as 14 days, in terms of Paragraph 11(11); and
- (c) given the circumstances of the case, agree that the suspension should take immediate effect in terms of Paragraph 11(10).

There being no amendment, the motion was declared carried.

4.6 Taxi Driver's Licence: TDL/01885 (New) - Peter Brown

The Committee at its meeting held on 12 September 2018 agreed on the basis of the information presented to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The applicant, having been duly cited to attend, was present and accompanied by a friend.

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

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

Decision

Councillor Easdale, seconded by Councillor Reid, moved that the Committee grant the application, subject to the Council's standard conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

4.7 Public Entertainment Licence: PEL/571 - John Irvin

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. The applicant addressed the Committee on issues raised, responded to questions and advised that he would be willing to amend the application to Sunday 4 November 2018 only.

Decision

The Committee unanimously agreed (a) to grant the application subject to the Council's standard conditions in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for Sunday 4 November 2018 from 1.00 pm – 9.00 p.m.; and (b) that the applicant be advised to contact the Council's Estates Section to clarify leasing arrangements for the car park

Appendix B: Applications for Licences/Renewal of Licences

4.8 MDL/038 (Renewal) (Itinerant) - Robert Kerr

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

4.9 STL/E/286 (New) - Neil D McIntyre

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

4.10 TDL/01848 (New) - Charles Stewart

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.

4.11 TDL/02041 (Renewal) - Pamela Gaw

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.

4.12 TDL/02124 (New) - Andrea Fairfield

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.

4.13 TDL/002140 (New) - Alan McTurk

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.

At 1.20 p.m., in terms of Standing Order 5.7, the Chair adjourned the meeting for a short comfort break. The meeting reconvened at 1.25 p.m. with the same Members and officers present and in attendance.

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

5.1 Mr S.

The Committee at its meeting on 22 August 2018 agreed to continue consideration of the matter to allow the landlord a further opportunity to provide to the Private Sector Housing Team evidence confirming all necessary work had been completed to the satisfaction of all legal standards

The Registered Landlord, having been cited to attend, was present.

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

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

Decision

The Committee unanimously agreed that the Landlord had provided evidence confirming all necessary work had been completed to the satisfaction of all legal standards and no further action was required.

5.2 Mr I.

The Team Manager (Private Sector Housing) provided a summary report in respect of the Landlord's four properties and the positive steps taken to address issues raised with regards to tolerable and repairing standards.

The Committee unanimously agreed to (a) note the update provided; and (b) remove the Rent Penalty Notice applied to one of the properties.

5.3 Mr M.

The Committee was advised that the application for Landlord Registration had been withdrawn.

Noted.

6. Urgent Item

6.1 TDL/01557 William Laughlan

The Committee was advised that the issue relating to the photo card driving licence had been resolved and the licence would be granted under delegated powers.

Noted.

The meeting ended at 1.40 p.m.

NORTH AYRSHIRE COUNCIL

28th November 2018

Licensing Committee

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

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

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

1. Executive Summary

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

2. Background

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

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

Exempt Information

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

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

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

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

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

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

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

2.5. For example:

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

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

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

2.6. Accordingly, if a Resolution is made:

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

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

3. Proposals

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

4. Implications

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

5. Consultation

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

A handwritten signature in blue ink, appearing to read 'A. Fraser'.

Andrew Fraser
Head of Democratic Services

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

Background Papers
None

Hearings (Appendix A)		
Case 1	Skin Piercing and Tattoo Licence	SPTL/033 (Renewal)
Applicant	Robert Alexander	
Premises	Midian Tattoo Studio 97 Main Street Kilwinning KA13 6AW	
Case 2	Late Hours Catering Licence	LHCL/116 (variation)
Licenceholder	Mascot Scotland Ltd 1 Glencairn Street Stevenston	
Premises	1 Glencairn Street Stevenston	
Case 3	Taxi Driver's Licence	TDL/01848 (New)
Applicant	Charles Stewart	
Case 4	Taxi Driver's Licence	TDL/02041 (Renewal)
Applicant	Pamela Gaw	
Case 5	Taxi Driver's Licence	TDL/02124 (New)
Applicant	Andrea Fairfield	
Case 6	Taxi Driver's Licence	TDL/02140 (New)
Applicant	Alan McTurk	

Applications for Licences/Renewal of Licences (Appendix B)

Type of Licence/Reference Number	Details of Applicant
WCL/005 (New)	Partnership of James McCallum Jamie McCallum Ewan McCallum
TDL/00978 (Renewal)	Gordon Hewitt
TDL/01139 (New)	Robert Kerrigan
TDL/02138 (New)	Nicola Drummond
TDL/02141 (New)	Brian McNamee
TDL/02145 (New)	Steven Arrol

Note:

WCL Window Cleaner's Licence

TDL Taxi Driver's Licence

NORTH Ayrshire Council

28th November 2018

Licensing Committee

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

1. Executive Summary

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

2. Background

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

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

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

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

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

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

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

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

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

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

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

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

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

2.3. For example:

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

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

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

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

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

3. Proposals

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

3.2. Options at the preliminary consideration stage are:

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

[b] take no action.

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

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

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

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

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

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

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

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

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

4. Implications

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

5. Consultation

5.1 There is no statutory obligation to consult here.



Andrew Fraser
Head of Democratic Services

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

Background Papers

None

NORTH AYRSHIRE COUNCIL

28th November 2018

Licensing Committee

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

Purpose: To inform the Committee of Landlord Registration matters.

Recommendation:

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

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

2. Background

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

2.2 Exempt Information

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

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

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

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

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

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

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

2.5 For example:

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

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

Paragraphs 14 or 15 could apply where it was alleged:

- (a) that there was anti-social behaviour committed by the Tenant of a rented house, involving crime or nuisance, or
- (b) that the state of repair of the rented house indicated that the Landlord had defaulted in his/her legal obligations, or
- (c) that the Landlord had defaulted in another obligation applying to Landlords, or

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

2.6. Accordingly, if a Resolution is made:

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

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

3. Proposals

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

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

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

4. Implications

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

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

5. Consultation

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

A handwritten signature in blue ink, appearing to read 'A. Fraser'.

Andrew Fraser
Head of Democratic Services

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

Background Papers

None

