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## NORTH AYRSHIRE COUNCIL

18 April 2018

### Licensing Committee

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**Title:** Licensing of Window Cleaners – Civic Government (Scotland) Act 1982, Section 43

**Purpose:** To advise the Committee of the present state of affairs.

**Recommendation:** That the Committee decide whether or not to make a Resolution requiring that Window Cleaners hold a Licence; and if so to determine the other questions set out in Part 3 of this Report.

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### 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.
- 1.2. Many activities under the 1982 Act are covered by the "Optional Provisions", which means that the activities only require a Licence if and when the local Council so resolves. Examples of the Licences covered by the "Optional Provisions" are Taxi and Private Hire Car Licences (Section 10, often called "Operator's Licences" to distinguish them from the "Driver's licences" under Section 13); Taxi Driver's and Private Hire Car Driver's Licences (Section 13) and Second-hand Dealer's Licences (Section 24).
- 1.3. In North Ayrshire, all but one of the "Optional Provisions" are included in Council Resolutions. The exception is Section 43, which is:

*"A Licence, to be known as a "Window Cleaner's Licence" shall be required for carrying on the trade of, or being employed as, a window cleaner."*

This exception arises from a decision by Cunninghame District Council over 30 years ago. When the 1982 Act was commenced the Council resolved to adopt all but one of the "Optional Provisions" - the exception being window cleaning.

- 1.4. It is possible that an activity might need a Licence in one Council area but not in a neighbouring Council area. An example is the position with Window Cleaners. At present, Window Cleaners do not need a Licence in North Ayrshire Council or South Ayrshire Council, but they do in East Ayrshire Council.

## 2. Background

2.1 The Committee on 10 January 2018 considered a representation from Chief Inspector Brian Shaw of Police Scotland asking that North Ayrshire Council consider Licensing Window Cleaners. He reported that over the past 12 months there were 17 alleged offences committed by people who at time of detection gave their occupation as a window cleaner. These offences are:

- Housebreaking (two offences)
- Theft from Motor Vehicle and Fraud
- Possession of Drugs (3 offences)
- Serious Assault (3 offences, one involving Carrying an Offensive Weapon)
- Shoplifting
- Road Traffic offences
- Drinking in Public
- Stalking & Indecently communication
- Culpable & Reckless Conduct
- Drink Driving
- Abusive Behaviour offence (against a rival window cleaner)

2.2. He stated:

*"Window Cleaners have by the nature of their business opportunities to gain access to premises without necessarily drawing much suspicion and they should therefore be trusted individuals and fit and proper people to have that kind of access. I am not sure whether we can say we have that assurance currently as no checks would appear to take place. I think this could be viewed as a similar position to taxi drivers who do go through a process and are accountable for their actions to the board ultimately."*

2.3. The statutory procedure leading to a Resolution follows a number of stages

- (a) The Committee first considers whether or not to propose to make a Resolution;
- (b) If the Committee makes a proposal, this is advertised in local newspapers,
- (c) After at least 28 days, the Committee considers the matter further, taking into account any representations made by the public and others;
- (d) the Committee decides whether or not to make a Resolution;
- (e) If the Committee decide to make a Resolution, there is a second newspaper advertisement, advising;
  - that the Resolution has now been made;
  - that Window Cleaners should apply for, and have granted, a Licence before the Resolution takes effect on a specified date (this date is at least nine months after the Resolution);

- that Window Cleaners working without a Licence would commit a criminal offence;
- that Licence Application forms can be lodged with the Council after a specified date (one month after the Resolution was made);

(f) If the Committee decide not to make a Resolution, there is no further newspaper advertisement. The Committee's decision would appear as usual in the publicly-available Minutes.

2.4. The Hearing on 18 April 2018 is Stage (c). The Committee first considered this matter on 10 January 2018. The Committee considered the representation from Police Scotland and decided to propose making a Resolution extending the requirement to be licensed to Window Cleaners. That Proposal was advertised in local newspapers and the consultation period has expired. There have been no comments from the public.

2.5. The Committee should consider several questions outlined in Part 3 of this Report ("Proposals"). For the purpose of discussion, a possible Resolution might be:

*"The Committee resolves, under Section 9 of the Civic Government (Scotland) Act 1982, that from and after Monday 21 January 2019, Section 43 of that Act shall apply, so that a Window Cleaner's Licence shall be required for carrying on the trade of, or being employed as, a window cleaner, except that no Licence will be needed:*

*a) if the activity is done without payment of money or other consideration, and without the expectation of payment; or*

*b) is done to raise funds for a charity or other good cause."*

2.6. The commencement date in January 2019 arises because the legislation delays the effective date of a new Resolution by at least nine months (unless the Committee is limiting or rescinding a prior Resolution, when the new Resolution may take effect the following day).

This delay allows anyone affected by the Resolution to apply for and have granted a new Licence before the Resolution takes effect. Therefore, if the Committee makes the Resolution, the newspaper advertisement will include words to the effect of:

*"Any Window Cleaner should apply for a Licence as soon as possible after Monday 21 May 2018. This is because once the Resolution takes effect on 21 January 2019 it will be a criminal offence to carry out the activity even if the person has already applied for a Licence. It will not be enough simply to apply for a Licence. The Application must have been granted by the Council before the Effective Date, or an appeal in the Sheriff Court must be pending. Window Cleaners should allow for the time that it takes for the Council to carry out statutory consultation and refer the Licence Application to the Licensing Committee for a decision. This can take up to 6 months."*

### 3. Proposals

#### 3.1 The Committee should consider several questions

Q.1. "should there be a Resolution?"

If 'yes' - Window Cleaners are to need Licences - further questions arise:

Q.2. "... should they need them throughout North Ayrshire, or only in particular parts?"

Q.3. "... should there be situations where they wouldn't need them?"

Q.4. "... how much should these cost?"

#### Q.1. "should there be a Resolution?"

3.1. The Committee is not obliged to make a Resolution, since the purpose of the earlier Proposal was simply to raise the issue for discussion. The Committee was not stating a view that there should be, or there should not be, licensing here.

3.2. In deciding whether or not to require Licensing of Window Cleaners, the Committee should seek to balance the potential advantages to the community if Window Cleaners were licensed with the potential disadvantages. The Committee should consider:

- the representation made by the Police;
- the Council's duties as a "Regulator" (see below);
- that operators would have to pay a Licence Fee (the suggested level is £126.00 for a 3-year Licence - see below);
- that operators might have to maintain Public Liability Insurance (if the Committee so decide - some Councils which already license Window Cleaners require insurance, but not all do);
- that the Council would have to establish a new Licensing system, with a new set of Licence conditions and an application form being drafted;
- that the Council would have to determine the scope of Application consultation. All Licence Applications under the 1982 Act are sent to the Police for comment, but the extent of further consultation is a matter for the Committee (for example, should other Council Core Services be consulted before a Licence is granted?);
- that the Committee would have to decide whether or not Applications should be referred for a Hearing even where the Scheme of Delegations would not require this.

## The Council's duties as a "Regulator"

3.3. The Regulatory Reform (Scotland) Act 2014, Section 4(1) is:

*"In exercising its regulatory functions, each Regulator must contribute to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of those functions to do so."*

In making a decision to create or extend a Licensing requirement, the Committee must have regard to the Code of Practice issued by Scottish Ministers under Section 5.

## The Code of Practice

3.4. The "Scottish Regulators' Strategic Code of Practice" (approved 18 February 2015), Paragraph 2 is:

*"2. Regulators should adopt the following high level operational approaches:*

- *Adopt a positive enabling approach in pursuing outcomes that contribute to sustainable economic growth.*
- *In pursuing their core regulatory remit be alive to other interests, including relevant community and business interests; taking business factors appropriately and proportionately into account in their decision making processes; and protecting public health and safety.*
- *Adopt risk and evidence based protocols which help target action where it's needed and help to ensure the achievement of measurable outcomes.*
- *Develop effective relationships with those they regulate and have clear two-way communication in place.*
- *Tailor their approach depending on the nature of the sector they are regulating and the desired outcomes. This includes a commitment to advice and support for those who seek to comply, allied with robust and effective enforcement when justified.*
- *Recognise, in their policies and practice, a commitment to the five principles of better regulation: regulation should be transparent, accountable, consistent, proportionate and targeted only where needed.*
- *Pursue continuous improvement in regulatory practice based on the principles of better regulation."*

3.5. The Committee should consider whether or not the creation of a new licensing requirement would attain the legislation's goal of "achieving sustainable economic growth". Genuine window-cleaners have operated without a Licensing system for many years. One of the benefits of creating a system would be that less-scrupulous operators might cease to compete with licensed window cleaners.

3.6. Licensing of Window Cleaners would meet all 5 principles of Better Regulation:

"transparent" - the regulation is applied by Law and is to be overseen by Elected Members sitting on a Committee whose Agenda and Minutes are public (subject to the Law permitting private hearings) or administered under the usual Scheme of Delegations;

"accountable" - any licensing function is subject to judicial control by the Sheriff;

"consistent" - subject to express exceptions decided on by the Committee, the Resolution would apply the licensing requirement to all Window Cleaners;

"proportionate" - once a need for some degree of regulation is established, there is no middle ground (again subject to exceptions). The Committee either has a Licensing scheme or it does not;

"targeted" - this licensing is aimed at a business activity which has the potential to hide criminal conduct.

**Q.2. "If window cleaners are to need Licences, should they need them throughout North Ayrshire, or only in particular parts?"**

3.7. Civic Government (Scotland) Act 1982 Act, Section 9(3)(b) permits a Resolution to cover the whole or any part of the area of the Licensing Authority.

The Committee is invited to adopt an 'all-or-nothing' approach - either require licences everywhere, or do not require them at all. Any territorial restriction depends on the boundaries being clearly understood by the public and the Licence-Holder.

**Q.3. "If window cleaners are to need Licences, should there be situations where they wouldn't need them?"**

3.8. Civic Government (Scotland) Act 1982 Act, Section 9(3)(c)(ii) permits a Resolution to contain exceptions. The draft Resolution set out above contains exceptions.

**Q.4. "If window cleaners are to need Licences, how much should these cost?"**

3.9. It is suggested that the Licence fee might be £126.00, renewable at the same rate (most Licences under the 1982 Act last 3 years). This is the same as the fee charged from 1 April 2018 for "Street Trader Employee Licences". Those Licences are held by people working in burger vans or doing other Street Trading, as opposed to the Licence for the vehicle or kiosk itself which is held by the Street Trader (£252.00). The higher fee is justified by the need to have the vehicle or kiosk inspected by Environmental Health officers, and by the need to consult with other Council offices as to the suitability of the proposed location. The "Employee" fee has been chosen as a comparator as:

- it is likely to involve the same basic level of consultation (Police);
- includes the cost of a photocard issued by the Licensing Department confirming that the person is licensed, similar to that already issued to Street Trader Employees.

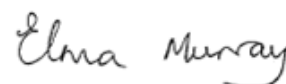
#### 4. Implications

<b>Financial:</b>	There will be costs to both window cleaners and the Council if a Licensing system is set up.
<b>Human Resources:</b>	Staff time will be engaged in establishing a system and processing applications.
<b>Legal:</b>	None at present, although if a licensing requirement is applied then operators will face criminal prosecution if they are unlicensed. There are possible legal implications in relation to any licensing decision. Depending on the legislation, there may be a right of appeal.
<b>Equality:</b>	The Clerk has considered the "Public Sector Equality Duty" in preparing this Report. There are no significant equalities impacts to be considered.
<b>Children and Young People:</b>	None
<b>Environmental &amp; Sustainability:</b>	None
<b>Key Priorities:</b>	An effective licensing system, e.g. monitoring the 'fit and proper' status of business operators, helps achieve Priority 4 of the North Ayrshire Council Plan 2015-2020, ("Supporting all of our people to stay safe, healthy and active").
<b>Community Benefits:</b>	Not applicable, as the Report does not relate to tendering or procurement exercises.

#### 5. Consultation

5.1 Statutory consultation has already taken place, and no other consultation is appropriate.

If the Committee decides to make a Resolution, that will be advertised in newspapers and Applicants will be able to apply for Licences.



Elma Murray OBE  
Chief Executive

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

#### Background Papers

N/A