
NORTH AYRSHIRE COUNCIL

5 June 2019

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.

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

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/Socio-economic Duty

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/Socio-economic Duty:	<p>Equality Act 2010 imposes duties on the Council:</p> <p>Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council</p> <p>"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."</p> <p>Section 149(1) ("Public sector equality duty") the Council</p> <p>"must, in the exercise of its functions, have due regard to the need to—</p> <ul style="list-style-type: none"> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act]; (b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it; (c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it." <p>The "Relevant Protected Characteristics" are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.</p> <p>The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant impacts to be considered</p>
Children and Young People:	See "Equality/Socio-economic Duty"
Environmental & Sustainability:	None
Key Priorities:	An effective licensing system, for example monitoring the 'fit and proper' status of licence-holders, the safety of vehicles, and the suitability of premises, helps progress towards one Priority Outcomes of the draft North Ayrshire Council Plan 2019-2024: "North Ayrshire's residents and communities are safe."

Community Benefits:	Not applicable, as the Report does not relate to tendering or procurement exercises.
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5. Consultation

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

Andrew A 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	Taxi Driver's Licence	TDL/01754
Licenceholder	Derek J Boyd	
Case 2	Skin Piercing/Tattooing Licence	SPTL/053 (New)
Applicant	Gemma Irvine	
Premises	61 East Road Irvine	
Case 3	Public Entertainment Licence	PEL/593 (Temp)
Applicant	Kelburn Arts Ltd Kelburn Estate Fairlie Largs KA28	
Premises	Kelburn Estate	
Cases 4	Public Entertainment Licence	PEL/597 (Temp)
Applicant	Peter McNamara	
Premises	South Beach Crescent Ardrossan	
Cases 5	Private Hire Car Operator's Licence	PHCL/369 (New)
Applicant	Kelly Scott	
Cases 6	Street Trader Operator's Licence	STL/O/413 (Renewal)
Applicant	Malgorzata Lipinska	

Cases 7	Street Trader Operator's Licence	STL/O/493 (New)
Applicant	Yvonne Lynch	

Applications for Licences/Renewal of Licences (Appendix B)

Type of Licence/Reference Number	Details of Applicant
PHCL/370 (New)	Edward McCallie & Pauline Alexander
TDL/00657 (Renewal)	Ronald McCulloch
TDL/01539 (Renewal)	Gordon McKenzie
WCL/089 (Renewal)	David Clarkson

Note

PHCL – Private Hire Car Licence

TDL – Taxi Driver's Licence

WCL – Window Cleaner's Licence

NORTH AYRSHIRE COUNCIL

5 June 2019

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/Socio-economic Duty

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/Socio-economic Duty:	<p>Equality Act 2010 imposes duties on the Council:</p> <p>Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council</p> <p>"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."</p> <p>Section 149(1) ("Public sector equality duty") the Council</p> <p>"must, in the exercise of its functions, have due regard to the need to—</p> <ul style="list-style-type: none"> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act]; (b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it; (c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it." <p>The "Relevant Protected Characteristics" are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.</p> <p>The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant impacts to be considered</p>
Children and Young People:	See "Equality/Socio-economic Duty"
Environmental & Sustainability:	None
Key Priorities:	An effective licensing system, for example monitoring the 'fit and proper' status of licence-holders, the safety of vehicles, and the suitability of premises, helps progress towards one Priority Outcomes of the draft North Ayrshire Council Plan 2019-2024: "North Ayrshire's residents and communities are safe."

Community Benefits:	Not applicable, as the Report does not relate to tendering or procurement exercises.
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5. Consultation

5.1 There is no statutory obligation to consult here.

Andrew A Fraser
Head of Democratic Services

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

Background Papers

None