



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, 23 October 2019** 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 18 September 2019 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

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

Submit report by the Head of Democratic Services on hearings to be determined and applications for 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 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, 18 September 2019 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Todd Ferguson, Scott Gallacher, Davina McTiernan (Agenda Items 5.6 onwards); Donald L. Reid, Jean McClung and Angela Stephen.

Also Present

Ian Clarkson (Agenda Item 5.6 onwards).

In Attendance

David Watts, Senior Architect (Physical Environment) (Agenda Item 7 only) and Mark Henry, Team Leader (Roads) (Place) (Agenda Item 7 only); D. Robertson, Enforcement Officer, W. O'Brien, Solicitor (Licensing) and A. Toal, Administrative Assistant (Licensing) (Legal Services) and D. McCaw, Committee Services Officer (Chief Executive's Service)

Also in Attendance

Inspector Alison Wilson and Sergeant David Dougan (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies

Robert Barr and John Easdale.

1. Chair Remarks

The Chair advised that a Petition and representations in connection with the taxi stance in Irvine would be considered at Agenda Item 7 as a matter of urgency to allow the matter to be progressed without delay.

He further advised that the order of business would be varied to allow consideration of items 5.15 and 7 immediately following item 5.8 on the Agenda.

2. Declarations of Interest

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

3. Minutes

The Minutes of the Meeting held on 21 August 2019 were confirmed and signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

4. 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 Items 5-6 (Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters) 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."

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

Submitted report by the Head of Democratic Services 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

5.1 Taxi Driver's Licence: TDL/00792 (Renewal): George Williams

The Committee at its meeting held on 21 August 2019, 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 Mr. Robert Colhoun. 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 from Police Scotland then addressed the Committee on the terms of a letter setting out their representation in respect of the application. Thereafter the applicant 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

Councillor Ferguson, 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. There being no amendment, the motion was declared carried.

5.2 Taxi Driver's Licence: TDL/02179 (New): Phyllis Middleton

The Committee at its meeting held on 21 August 2019, 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.

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

Decision

Councillor Reid, seconded by Councillor McNicol, moved that the Committee 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 said Schedule, that the applicant is not a fit and proper person to be the holder of a Taxi Drivers Licence. There being no amendment, the motion was declared carried.

5.3 Taxi Driver's Licence: TDL/02183 (New): David Keggan

The Committee at its meeting held on 21 August 2019, 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 from Police Scotland then addressed the Committee on the terms of a letter setting out their representation in respect of the application. Thereafter the applicant 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

Councillor Reid, seconded by Councillor McNicol, moved that the Committee 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 said Schedule, that the applicant is not a fit and proper person to be the holder of a Taxi Drivers Licence.

As an amendment, Councillor Gallacher, seconded by Councillor McClung, 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.

On a division, there voted for the motion 3 and for the amendment 3 and on casting vote of the Chair, the motion was declared carried.

Accordingly, the Committee 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 said Schedule, that the applicant is not a fit and proper person to be the holder of a Taxi Drivers Licence.

5.4 Taxi Operator's Licence: TL/204: Craig Murray

The applicant, having been duly cited to attend, was present and accompanied by David Baird.

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.

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

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.

5.5 Taxi Driver's Licence: TDL/02188: Craig Murray

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. The Committee considered representations from the Chief Constable.

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 for a period of 3 years.

The Chair then adjourned the meeting for a short comfort break. The meeting reconvened thereafter with the same Members present and Councillor McTiernan having joined the Committee for the remainder of the business.

Provost Clarkson joined the meeting at this point.

5.6 Window Cleaner's Licence: WCL/076 (New): Connor Watson

The Committee at its meeting held on 10 April 2019 agreed to continue consideration of this item to a future meeting, no later than 30 October 2019, to allow the applicant to provide further information to the Committee.

The applicant, having been duly cited to attend, was present and accompanied by his mother, Catherine Watson. 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 from Police Scotland then addressed the Committee on the terms of a letter setting out their representation in respect of the application. Thereafter the applicant and his mother addressed the Committee on the issues raised and responded to questions.

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

Decision

Councillor Reid, seconded by Councillor McNicol, moved that the Committee 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) and (d) of the said Schedule, that the applicant had not met the criteria to be the holder of a Window Cleaner's Licence. There being no amendment the motion was declared carried.

Police Scotland representatives left the meeting at this point.

5.7 Taxi Driver's Licence: TDL/00695: Andrew Johnston

The Committee at its meeting held on 21 August 2019, 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 not present or represented.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder. The Enforcement Officer addressed the Committee and responded to questions.

Decision

The Committee agreed to continue consideration to the next meeting in order that the licence holder could be present.

5.8 Taxi Driver's Licence: TDL/01962: Stephen Reid

The Committee at its meeting held on 21 August 2019, 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.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The Enforcement Officer addressed the Committee and responded to questions. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

Decision

Councillor Ferguson, seconded by Councillor Reid moved that a final written warning be issued to the licence holder. There being no amendment, the motion was declared carried.

5.15 Urgent Item: TL/194: Michael Ferguson

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

The Solicitor (Licensing) set out the background to an application for a substitute vehicle onto a Wheelchair Accessible Licence which was outwith the vehicle specification as it did not have a winch fitted.

The Committee unanimously agreed to treat the proposed vehicle as an exception to the Committee's Vehicle Specification Policy under Section 10(2) of the Civic Government (Scotland) Act 1982.

7. Urgent Item: Taxi Stance Provision in Irvine

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

The Committee was advised that a Petition had been received regarding Taxi Stance provision in Irvine.

Mr. Kevin Blades, a Taxi Operator, and Mr. Steven Kelly, representing the Irvine Taxi Owners' Association, addressed the Committee in relation to the concerns raised by the taxi trade in Irvine. The representatives advised that they were looking to open dialogue with the Senior Architect and the Roads Department. The Committee noted the representations made.

The Chair explained to the operators that the road layout was primarily a matter for the Roads Department and that the involvement of the Licensing Committee was limited to Stances. The Provost advised the Trade that the hearing was simply to determine what Trade wanted, and was not to make a decision. The Chair agreed with the Provost's comments.

Mr. Kelly advised that the Trade's concern was the closure of the Bank Street rank, which he said lost the Trade money and inconvenienced the public as some people could not always see the temporary rank. He suggested:

1. that, instead of being in Bank Street, the Stance should start outside the "Carrick" public house, at the corner of High Street and Bank Street, and then run up High Street (with the first car being outside the "Carrick"); and
2. that, in the short term, the Stance could be in the East Road car park, where there were two blocks, one of 20 spaces and one of 10 spaces.

Members asked questions and received clarification in relation to:-

- the Trade proposing that there should be a short-term stance in the East Road car park with at least 20 bays, to be used 24 hours a day, with the public being redirected to the Aldi car park; and
- that the Trade would agree to use of the East Road Car Park after 6 p.m.

The Committee agreed that the comments made by the Trade representatives would be considered by the Senior Architect and the Roads Department.

The Trade representatives then left the meeting.

Appendix B: Applications for Licences/Renewal of Licences

5.9 MDL/057 (Renewal): Jason McKinney

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.10 PHCL/371 (Renewal): Craig Dobbin/Stephen Dobbin

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.11 TDL/02176 (New): Christopher Payne

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.12 TDL/02193 (New): James Graham

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.13 TDL/02194 (New): Iain McIntyre

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.

Appendix C: Preliminary consideration of Revocation or Suspension complaints (Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 11)

5.14 BOL/019: TOA Taxis (North Ayrshire) Ltd / William Bruce

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Hearing.

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

The Committee was advised that there were no Landlord Registration cases to be considered at this time.

The meeting ended at 1.05 p.m.

NORTH AYRSHIRE COUNCIL

23 October 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:

Appendix A - Licences and Permits where Hearings have been convened
Appendix B - Applications for the grant or renewal of Licences and Permits

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 "ProtecteInformant" 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

4.1 There are possible financial implications in relation to any Licensing decision.

Human Resources

4.2 None.

Legal

4.3 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

4.4 Equality Act 2010 imposes duties on the Council:

Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council

"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."

Section 149(1) ("Public sector equality duty"): the Council

"must, in the exercise of its functions, have due regard to the need to—

- (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."

The "Relevant Protected Characteristics" are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

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

Environmental and Sustainability

4.5 None

Key Priorities

4.6 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 of the Priority Outcomes of the North Ayrshire Council Plan 2019-2024:
"North Ayrshire's residents and communities are safe."

Community Wealth Building

4.7 There are no Community Wealth Building issues.

5. Consultation

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

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	Metal Dealer's Licence	MDL/057 (Renewal)
Applicant	Jason McKinney	
Case 2	Taxi Driver's Licence	TDL/02174 (New)
Applicant	John Brien	
Case 3	Taxi Driver's Licence	TDL/02193 (New)
Applicant	James Graham	
Case 4	Booking Office Licence	BOL/010
Licenceholder	TOA Taxis (North Ayrshire) Ltd	
Cases 5	Public Entertainment Licence	PEL/625 (Temp)
Applicant	Juliana Gray	
Premises	Central Avenue Park, Ardrossan	
Cases 6	Private Hire Car Licence	PHCL/371 (New)
Applicants	Craig and Stephen Dobbin	
Case 7	Taxi Driver's Licence	TDL/00695
Licenceholder	Andrew Johnston	
Case 8	Taxi Driver's Licence	TDL/02194 (New)
Applicant	Iain McIntyre	
Case 9	Taxi Driver's Licence	TDL/02176 (New)
Applicant	Christopher Payne	

Applications for Licences/Renewal of Licences (Appendix B)

Type of Licence/Reference Number	Details of Applicant
SHDL/119 (Renewal)	E M Commercials Ltd
TL/099 (Renewal)	Sarah Connolly
TDL/00061 (Renewal)	Peter McGuinness
TDL/02080 (New)	Khalid Mahmood
TDL/02195 (New)	Jarred Raybould
TDL/02197 (New)	Gareth Wilkinson
TDL/02204 (New)	Hayleigh Evans

Note

SHDL – Second Hand Dealers Licence

TL – Taxi Licence

TDL – Taxi Driver's Licence

NORTH AYRSHIRE COUNCIL

23 October 2019

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.

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 registered. 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 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 under a Lease or an Occupier under an Occupancy Arrangement.

4. Implications/Socio-economic Duty

Financial

- 4.1 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

- 4.2 None.

Legal

- 4.3 There are possible legal implications in relation to any licensing decision. Depending on the legislation, there may be a right of appeal.

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)).

For example:

- (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);
- (b) the Landlord will only be entitled to evict the Tenant if the First-Tier Tribunal grants an Eviction Order;
- (c) the Landlord will continue to have repairing obligations.

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)).

Equality/Socio-economic

- 4.4 Equality Act 2010 imposes duties on the Council:

Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council

"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."

Section 149(1) ("Public sector equality duty") the Council

"must, in the exercise of its functions, have due regard to the need to—

- (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."

The "Relevant Protected Characteristics" are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

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.

Environmental and Sustainability

4.5 None

Key Priorities

4.6 An effective licensing system, for example monitoring the 'fit and proper' status of landlords and the suitability of premises, helps progress towards one of the Priority Outcomes of the North Ayrshire Council Plan 2019-2024: "North Ayrshire's residents and communities are safe."

Community Wealth Building

4.7 There are no Community Wealth Building issues.

5. Consultation

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

Andrew Fraser
Head of Democratic Services

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

Background Papers

None

