



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Cunninghame House,
Irvine.

19 March 2015

Licensing Committee

You are requested to attend a Meeting of the above mentioned Committee of North Ayrshire Council to be held in the Council Chambers, Cunninghame House, Irvine on **WEDNESDAY 25 MARCH 2015** at **10.00 a.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

1. Declarations of Interest

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

2. Minutes

The accuracy of the Minutes of the ordinary meeting of the Committee held on 4 March 2015 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: Licensing Matters**
Submit report by the Chief Executive on (a) Hearings to be determined; and (b) applications for the grant or renewal of licences and permits, all in terms of the Civic Government (Scotland) Act 1982 (copy enclosed).
- 4. Internal Audit: Reporting of Licence Enforcement**
Submit report by the Chief Executive on the current position (copy enclosed).
- 5. Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8**
Submit report by the Chief Executive on Landlord Registration matters (copy enclosed).
- 6. Urgent Items**
Any other items which the Chair considers to be urgent.

Licensing Committee

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

Chair:

Attending:

Apologies:

Meeting Ended:

Licensing Committee
4 March 2015

IRVINE, 4 March 2015 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

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

In Attendance

J. Wallace, Investigation Officer (Place); and W. O'Brien, Solicitor (Licensing), K. Sharkey, Trainee Solicitor, A. Toal Administrative Assistant and M. Anderson, Acting Committee and Member Services Manager (Chief Executive's Service).

Also In Attendance

Inspector Skimming and Sgt. McIntosh (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies for Absence

Tom Marshall and John Easdale.

1. Chair's Remarks

The Chair, in terms of Standing Order 9.3, agreed to vary the order of business to allow consideration of Agenda Item 7 (Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8) to take place immediately after consideration of Agenda Item 3 (Civic Government (Scotland) Act 1982: Licensing Matters) (Part A: Hearings).

2. Declarations of Interest

There were no declarations of interest by Members in terms of Standing Order 16 and Section 5 of the Councillors Code of Conduct.

3. Minutes

The accuracy of the Minutes of the Ordinary Meeting of the Committee held on 21 January 2015 was 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: Licensing Matters

Submitted report by the Chief Executive on (a) Hearings to be determined, and (b) applications for the grant or renewal of licences and permits, all in terms of the Civic Government (Scotland) Act 1982.

Part A: Hearings

4.1 House in Multiple Occupation HMO/016 - Melissa Brown

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.

After discussion, Councillor Barr, seconded by Councillor Bruce, moved to continue consideration of this matter to the next meeting, to allow officers to submit information establishing whether the applicant is registered as a landlord for all other properties rented out by her.

As an amendment, Councillor McMillan, seconded by Councillor Reid, moved that the application be granted for a period of 2 years.

On a division, there voted for the amendment 2 and for the motion 5 and the motion was declared carried.

Decision

Accordingly, the Committee agreed to continue consideration of this matter to the next meeting, to allow officers to submit information establishing whether the applicant is registered as a landlord for all other properties rented out by her.

4.2 Taxi Driver's Licence TDL/01889 : David Clarkson

The applicant, having been duly cited to attend, was present. Representatives from Police Scotland were in attendance.

The representatives of Police Scotland addressed the Committee on the terms of a letter setting out an observation in relation to the applicant. Thereafter, the applicant addressed the Committee on the issues raised and responded to questions.

The Solicitor (Licensing) advised that the licence had, in fact, expired and there was no requirement, therefore, for the suspension hearing to proceed further.

Decision

The Committee agreed to note that the licence had expired and there was no requirement, therefore, for the suspension hearing to proceed further.

5. Exclusion of the Public

The Committee resolved in terms of Section 50A(4) of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public for the Agenda Item 7 only (Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8 on the grounds indicated in terms of Paragraph 14 and 15 of Part 1 of Schedule 7A of the Act.

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

Submitted report by the Chief Executive which provided information on matters raised in respect of two jointly registered Registered Landlords.

There were circulated at the meeting schedules containing information pertaining to one of the 14 properties registered which suggested that there may be a basis for the Committee to conclude that the Landlords are not 'fit and proper' in terms of landlord registration.

The complainant and her husband, the Registered Landlords and the Investigation Officer (Anti Social Behaviour Investigation Team) were in attendance.

The complainant addressed the Committee in respect of her complaint and responded to questions. The Registered Landlords then addressed the Committee and responded to questions. Thereafter, the Investigation Officer addressed the Committee on the issues raised and responded to questions.

The complainant, the Registered Landlords and the Investigation Officer (Anti Social Behaviour Investigation Team) then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

The Committee then deliberated in private for a period of five minutes. The Committee then rescinded the Resolution earlier made under Section 50A(4). All parties rejoined the meeting.

The Committee requested, and received, confirmation that the Registered Landlords have recently purchased a 15th property, for which registration has not yet been sought.

Decision

The Committee agreed to (a) continue consideration of this matter to the next meeting; and (b) give further considerations to the questions (i) of whether or not the Registered Persons should be removed from the Register of Landlords and (ii) issuing a Notice Section 94 (commonly known as a 'Rent Penalty Notice') in respect of each property occupied by Tenants of the landlords (or, where appropriate, delegating authority to the Clerk to issue such a Notice).

7. Civic Government (Scotland) Act 1982: Licensing Matters

Part B: Applications for Licences and Renewal of Licences

7.1 MOL/058 Continental Market Ltd : Dockhead Street, Saltcoats

The Committee agreed, on the basis of the information presented, to (a) proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982; and (b) receive comments on the application from Police Scotland, Environmental Health, Building Standards and Roads.

7.2 MOL/057 Continental Market Ltd : Brodick, Isle of Arran

The Committee agreed, on the basis of the information presented, to (a) proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982; and (b) receive comments on the application from Police Scotland, Environmental Health, Building Standards and Roads.

7.3 MOL/059 Continental Market Ltd : Bridgegate, Irvine

The Committee agreed, on the basis of the information presented, to (a) proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982; and (b) receive comments on the application from Police Scotland, Environmental Health, Building Standards and Roads.

7.4 Taxi Driver's Licence TDL/01785 : Alan Boyle

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

8. Civic Government (Scotland) Act 1982: Taxi Stance at Invercloy, Isle of Arran

Submitted report by the Chief Executive on the background and legal powers in connection with the possible revocation of the appointment of the Taxi Stance near the putting green at Invercloy, Isle of Arran.

The Committee agreed to (a) support the proposal to revoke the appointment of the Taxi Stance near the putting green at Invercloy, Isle of Arran; and (b) instruct the Solicitor (Licensing) to commence the statutory procedure for intimating the proposal.

9. Review and Fixing of Taxi Scales (Civic Government (Scotland) Act 1982, Sections 17 to 18A)

Submitted report by the Chief Executive on the initial steps in the consultation procedure for the Taxi Fare Review for 2015.

The Committee agreed (a) to approve the proposed timetable for the Review and Fixing process, as set out in the appendix to the report; and (b) that it be remitted to the Solicitor (Licensing) to (i) set a date and time for the Trade Consultation meeting with Taxi Operators; and (ii) advise Members of the Committee of the arrangements, should they wish to attend.

10. Caravan Sites and Control of Development Act 1960

Submitted report by the Chief Executive on a request for the Variation of Conditions of two Site Licences at Crosbie Towers CS, West Kilbride and Seaview CS, Ardrossan Road, Seamill.

The applicant was neither present nor represented. The Committee was satisfied that the applicant had been duly cited and proceeded to determine the case in his absence.

The Committee agreed to vary the conditions of the two Site Licences at Crosbie Towers CS, West Kilbride and Seaview CS, Ardrossan Road, Seamill, to allow occupancy for 11 months of the year.

The meeting ended at 1.40 p.m.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

25 March 2015

Licensing Committee

Subject: **Civic Government (Scotland) Act 1982: Licensing Matters**

Purpose: To advise the Committee of (a) Hearings to be determined; and (b) applications for the grant or renewal of licences and permits, all in terms of the Civic Government (Scotland) Act 1982.

Recommendation: That the Committee considers and determines the matters before it.

1. Introduction

- 1.1 In terms of the Civic Government (Scotland) Act 1982, the Council, as Licensing Authority, requires to determine issues in respect of the grant, renewal or suspension of licences.
- 1.2. A meeting of a local authority is open to the public except to the extent that they are excluded (whether during the whole or part of the proceedings) under:
 - (a) the rule about 'confidential information' (as defined) or
 - (b) by Resolution.

(Local Government (Scotland) Act 1973, Section 50A, and especially Subsection 50A(4)).
- 1.3. Under the Resolution procedure, the Committee is entitled to resolve to exclude from the Meeting the press and the public for any one or more items of business on the grounds that otherwise "Exempt Information" of any type described in Part 1 of Schedule 7A to the Act might be disclosed.
- 1.4. The types of "Exempt Information" which may arise during Committee business include those described in Paragraphs 14 and 15 of that Schedule:

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

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

1.5. Such a Resolution, once made, continues until the end of the Meeting unless the Committee earlier Resolves to revoke it.

2. Current Position

Appendix A:

Licences where Hearings have been convened; and

Appendix B:

Applications for the grant or renewal of licences and permits.

3. Proposals

3.1 It is proposed that the Committee considers and determines each of the listed cases in accordance with the required procedures.

4. Implications

Financial Implications

4.1 There are possible financial implications in relation to the refusal of any application.

Human Resource Implications

4.2 None

Legal Implications

4.3 There are possible legal implications in relation to the refusal of any application.

Equality Implications

4.4 None

Environmental and Sustainability Implications

4.5 None

Implications for Key Priorities

4.6 None

Community Benefit Implications

4.7 None

5. Consultations

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

6. Conclusion

6.1 The Committee is requested to consider and dispose of the matters before it.



ELMA MURRAY
Chief Executive

Reference : PAT

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

Background Papers

None

Hearings		
Hearing 1	House in Multiple Occupation	HMO/016 (New)
Applicant and Address	Melissa Brown 62 Garnock View Kilwinning KA13 7AF	Continued from previous meeting
Premises	Flat 100 1 Seagate Irvine KA12 8RH	
Hearing 2	Market Operator's Licence	MOL/057(New)
Applicant and Address	Continental Market Ltd 47 Petrel Way Dumfermline KY11 8GY	Various representations received
Premises	Brodick Isle of Arran KA27 8AP	
Hearing 3	Market Operator's Licence	MOL/058(New)
Applicant and Address	Continental Market Ltd 47 Petrel Way Dumfermline KY11 8GY	Various representations received
Premises	Dockhead Street Saltcoats	
Hearing 4	Market Operator's Licence	MOL/059(New)
Applicant and Address	Continental Market Ltd 47 Petrel Way Dumfermline KY11 8GY	Various representations received
Premises	Bridgewater Irvine	

Hearing 5	Public Entertainment Licence	PEL/239(New)
Applicant and Address	Kelburn Productions Ltd Kelburn Estate Fairlie KA29 0BE	
Premises	Kelburn Estate Fairlie KA29 0BE	

Applications for Licences/Renewal of Licences		
Type of Licence/Reference Number	Details of Applicant	Comments
BOL/015 (New) Premises	Kevin Blades 15 Dale Crescent Irvine KA12 0RU 15 Dale Crescent Irvine KA12 0RU	Police comments received
TDL/01885 (New)	Peter Brown 211 Glasgow Street Ardrossan KA22 8JT	Police objection received
TDL/01957 (New)	Mathew Lamont 29 Old Caley Road Irvine KA12 0BF	Police observation received
TDL/01959 (New)	Robert Motherwell 39 Harbour Point Saltcoats KA21 5EQ	Previous convictions declared

NORTH AYRSHIRE COUNCIL

Agenda Item 4

25 March 2015

Licensing Committee

Subject: Internal Audit : Reporting of Licence Enforcement

Purpose: To inform the Committee of the current position

Recommendation: That the Committee should note this Report

1. Introduction

- 1.1 The NAC Internal Audit Section periodically reviews all aspects of NAC activity.

2. Current Position

- 2.1 In 2013-2014 the Internal Audit Section carried out a routine review of the Licensing Section, and reported to the Scrutiny and Petitions Committee.

- 2.2 That Committee made a number of recommendations, including:

"that the Head of Democratic and Administration Services be requested to report to the Licensing Committee on

(i) the Internal Audit report on Licensing; and

(ii) the Committee's recommendation that regular reports on compliance inspections be presented to future meetings of the Licensing Committee;"

- 2.3. In compliance with Recommendation (i), the Actions required by Internal Audit were:

[a] Written procedures for processing and granting each type of licence should be produced and held on file. Procedural documents should provide a step-by-step guide of the processes, such as receipt of an application, consultation process, processing application, recording application, receipting payment of application, approval of application and granting of licence.

- [b] Written procedures for Licensing Standard Officer's Inspection should be produced and held on file. Procedural document should provide a step-by-step guide of the processes, such as risk assessing licensed premises, work plan, carrying out inspections, documenting inspections, acting on results of inspections, follow-up visits etc..
- [c] Written procedures for Enforcement Office visits/checks/inspections should be produced and held on file. Procedural document should provide a step-by-step guide of the processes, such as proactive/reactive approach, work plan, carrying out inspections, documenting inspections, acting on results of inspections, follow-up visits etc..
- [d] The Licensing Board's Scheme of Delegation should be updated to accurately reflect which staff have been delegated powers to grant licences.
- [e] The Licensing Committee's Scheme of Delegation should be updated accurately to reflect which staff have been delegated powers to grant licences.
- [f] The Licensing Standards Officer's masterfile should be held electronically and dates of visits should be updated on a regular basis.
- [g] Licensing Standards Officer's inspection information should be recorded on the Northgate Licensing System.
- [h] The Enforcement Officer should maintain records of visits/checks/inspections carried out. Files should record details of date, licensees, location, checks carried out, results of checks, any action required etc..
- [i] The Enforcement Officer should prepare a workplan, detailing a structured approach to inspections to be carried out (based on risk assessment of licenses). This work plan should be agreed with Licensing management and should be updated regularly to record progress.
- [j] Standard inspection records or checklists should be prepared for each type of licence. This should be in duplicate form, should quote the appropriate legislation and the Enforcement Officer's powers and should be used to record dates, times, location, licensee, checks carried out, results of checks action required.
- [k] The Enforcement Officer should advise office-based staff of his intended route when he leaves the office and should also advise them of an estimated time of arrival back at the office.

[l] Details of inspections should be recorded on the Northgate Licensing System.

[m] Licensing management should liaise with Northgate to ensure that the users' permissions are set appropriately and that administrator permissions are only granted where absolutely necessary.

[n] The Licensing Standards Officer's electronic inspection files should be removed from the C Drive and relocated onto one of the Council's network.

[o] Filing cabinets should be locked overnight.

2.4 All these actions have since been completed, except for [e], relating to the Licensing Committee's Scheme of Delegation. The Committee approved a scheme in 2011 and the Head of Democratic Services is preparing a new one.

2.5. In compliance with Recommendation (ii), the Council's Enforcement Officer has, since the Internal Audit review, collected statistics of his enforcement activity. The greater part of his work is not strictly-speaking 'enforcement', in that many situations of breach of legislation or NAC Conditions are resolved by advice and discussion, and do not proceed to a formal report to the Committee suggesting that a Licence be suspended.

2.6. Since the Officer has been absent from work, a report has not been prepared on this occasion as it would be incomplete, but future reports will be presented to the Committee for their information.

3. Proposals

3.1 No action is required by the Licensing Committee and members are merely asked to note this report.

4. Implications

Financial Implications

4.1 None as far as the Council is concerned.

Human Resource Implications

4.2 None.

Legal Implications

4.3 None.

Equality Implications

- 4.4 None.

Environmental Implications

- 4.5 None.

Implications for Key Priorities

- 4.6 Reporting of officers' activity increases accountability to Elected Members and assists them in monitoring that activity. It is consistent with Core Objective 4 of the Council Plan 2012-2017: "Operating more efficiently and effectively".

5. Consultations

- 5.1 No consultations are appropriate.

6. Conclusion

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



ELMA MURRAY
Chief Executive

Reference : GEN10

For further information please contact William O'Brien, Solicitor (Licensing) on 01294-324345.

Background Papers

None

NORTH AYRSHIRE COUNCIL

Agenda Item 5

25 March 2015

Licensing Committee

Subject: **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 refusing or removing, decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of any house referred to in the Application or Registration, or to delegate authority to the Clerk to issue such a Notice.

1. Introduction

- 1.1. The Licensing Committee have delegated authority from the Council to administer the Council's functions under the Landlord Registration Scheme regulated by the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8.
- 1.2. The persons named in the attached Schedules are either Applicants for Registration, or are already Registered, under the 2004 Act (each person has one Schedule). The rented houses concerned are listed in the Schedules.

In this Report, both

- (a) Applicants seeking Registration, and
- (b) people who are already Registered ("Registered Persons"),

are called "Landlords".

Exempt Information

- 1.3. Landlord Registration cases are referred to the Committee using two documents:
 - (a) this Report, and
 - (b) one or more Schedules.
- 1.4. This is done because the Committee may consider that the cases involve "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A, so that information about the cases should not be disclosed to the public. The Committee are entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).
- 1.5. Since the Committee have frequently made the necessary Resolution in the past, it is permissible for future Schedules to be withheld from publication. Although a Committee's Agenda and connected Reports are generally to be made public (Section 50B(1)), publication of the Schedules to this Report (but not the Report itself) has been withheld under Section 50B(2), as the proper officer has the opinion that they relate to items during consideration of which the Meeting is likely not to be open to the public, i.e. that the Committee are likely to make a Resolution to exclude the public during consideration of the Schedules.
- 1.6. Accordingly, individual cases do not appear on the public agenda. The Report operates as a 'front page', and only appears once, regardless of how many individual cases are being referred to the Committee. The Report is general and sets out the legal structure. The Schedules detail the alleged facts of the particular cases and how the legislation appears to apply.

1.7. Depending on the circumstances of the individual case, the Schedules contain:

- (a) information about the Landlord's criminal convictions or their prosecution; and/or
- (b) information that suggests that he is not a 'fit and proper' person by reason of his conduct in relation to alleged Anti-Social Behaviour; and/or
- (c) information that suggests that he is not a 'fit and proper' person by reason of his breach of the legal obligations on Landlords; and/or
- (d) information about conduct involving nuisance or crime (whether or not there have been any criminal Court proceedings).

1.8. The information is covered by one or other or both of the following categories of "Exempt Information" under Schedule 7A:

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

Paragraph 15: *"The identity of a Protected Informant."*

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

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

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

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

1.10. For example, Paragraph 15 would apply where it was alleged:

- (a) that there was anti-social behaviour committed by the Tenant of a rented house, involving crime or nuisance, or

- (b) that the state of repair of the rented house indicated that the Landlord had defaulted in his legal obligations, or
 - (c) that the Landlord had defaulted in another obligation applying to Landlords, or
 - (d) that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).
- 1.11. Accordingly, if a Resolution is made the publicly-accessible Minutes:
- (a) must exclude so much of the proceedings during which the public were excluded (Section 50C); but
 - (b) shall include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).
- 1.12. Although the Schedules have not been published, in each case the individual Landlords have been given appropriate copies and notice of the Committee Meeting.

The Landlord Registration Scheme

- 1.13. The general rule is that a person wishing to let out a house must be Registered with the Council. Registration lasts 3 years. A person must re-apply within that time to remain Registered - Registration is not automatically renewed. The requirement to be Registered is subject to many exceptions, e.g. lets to family-members do not require Registration.
- 1.14. The Act specifies conditions which Landlords must meet. One of these conditions is that the Landlord is a 'fit and proper person' (Section 84(3)(c)). The considerations which are relevant to this question are set out by the Act.
- 1.15. Once a Landlord has been Registered, the Council is entitled to review the Registration. If not satisfied that the 'fit and proper' condition for Registration is met, the Council is obliged to remove Registration (Section 89).
- 1.16. If a Landlord rents a house without being Registered, or if Registration is removed, two things can happen:
- (a) the Council may issue a Notice under Section 94 (often called a 'Rent Penalty Notice' or 'RPN'), meaning:

- (i) the Tenant ceases to be liable for rent (but otherwise the Lease continues, so the Tenant remains in occupation and cannot be evicted for non-payment, and the Landlord remains responsible for repairs); and
 - (ii) any Housing Benefit stops being paid.
- (b) the Landlord can be prosecuted for a criminal offence under Section 93(1). The penalty is a fine up to £50,000.

In addition, if Registration is removed, the Landlord can be prosecuted if he tries to obtain a new Tenant, e.g. by advertising the house for letting, or discussing terms with a prospective Tenant: Section 93(2). The penalty is a fine up to £50,000.

2. Current Position

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

3. Proposals

- 3.1. The Committee should consider each case and decide whether or not to grant the Application, or remove the Registration.
- 3.2. If the Committee decide to refuse an Application, or to remove a Registration, and if they are satisfied that the house is presently occupied by a Tenant, they should then decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of any house referred to in the Application or Registration.
- 3.3. If they are not so satisfied, they may delegate authority to the Clerk to issue a RPN if and when the Clerk is so satisfied. Given that there would be nothing to stop the Landlord receiving Housing Benefit even if he was unregistered, the Committee may wish to delegate authority to the Clerk to issue a RPN if the Clerk later receives information that any house which is currently covered by the Registration is occupied by a Tenant.

4. Implications

Financial Implications

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

Human Resource Implications

- 4.2 None.

Legal Implications

- 4.3 Where the Council makes any decision to refuse or revoke Registration, to make a RPN, or to refuse to recall a RPN, the Landlord may appeal to the Sheriff.

If the Council issues a RPN, only the Tenant's liability to pay rent will cease. The other rights and obligations of the Lease will be unaffected: Section 94(3) & (8).

For example:

- (a) the Tenant will continue to have whatever security of tenure he already had (he cannot be evicted for non-payment of rent where that non-payment is due to the Notice);
- (b) the Landlord will only be entitled to evict the Tenant if the Sheriff grants a Decree;
- (c) the Landlord continues to have repairing obligations.

Equality Implications

- 4.4 None.

Environmental Implications

- 4.5 None.

Implications for Key Priorities

- 4.6 None.

Community Benefit Implications

- 4.7. Preventing unfit Landlords from operating may contribute to the wellbeing of the community. Preventing Housing Benefit being paid to unregistered Landlords safeguards public funds.

5. Consultations

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

6. Conclusion

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



ELMA MURRAY
Chief Executive

Reference : GEN09

For further information please contact William O'Brien, Solicitor (Licensing) on 01294-324345.

Background Papers

Schedules (not to be published - Local Government (Scotland) Act 1973, Section 50B(2))