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## NORTH AYRSHIRE COUNCIL

10 January 2018

### Licensing Committee

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<b>Title:</b>	Licensing of Window Cleaners - Civic Government (Scotland) Act 1982, Section 43.
<b>Purpose:</b>	To advise the Committee of a representation from Police Scotland
<b>Recommendation:</b>	<ol style="list-style-type: none"><li>1. That the Committee consider whether or not to propose making a Licensing Resolution;</li><li>2. If the Committee decide to propose making a Licensing Resolution, to adopt the timetable suggested at Paragraph 3.4 of this Report for the statutory procedure.</li></ol>

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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 Civic Government (Scotland) Act 1982, 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 is because of a decision by Cunninghame District Council over 30 years ago. When the 1982 Act was commenced the Council resolved to adopt nearly all of the 'optional provisions' - the only exception being window cleaning.

- 1.4 It is possible that an activity might require a Licence in one Council area but the same activity might not need a Licence 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 has received a representation from Chief Inspector Brian Shaw of Police Scotland asking that NAC consider Licensing Window Cleaners. He reports 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 states:

"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."

## **3. Proposals**

- 3.1 The statutory procedure is that the Committee publishes a proposal, there is public consultation, and after considering and representations the Committee makes the Resolution. This process involves two Committee Meetings and two newspaper advertisements.
- 3.2 The Committee is invited to start the process by making a proposal to make Resolution in these terms:

"The Committee proposes to resolve, under Section 9 of the Civic Government (Scotland) Act 1982, that from and after Sunday 23 December 2018, 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."

3.3 The procedure for making a Resolution is set out in Section 9. The effective date of a new Resolution is delayed at least nine months from the date the Committee makes it (unless the Resolution is limiting or rescinding a prior Resolution, when it may take effect the following day).

3.4 If the Licensing Committee adopts the suggested Resolution as a proposal, the timetable might be:

- (a) Wednesday 10 January 2018 - First Committee Meeting: Committee proposes to make a Resolution;
- (b) Wednesday 24 January 2018 - First newspaper advertisement: giving public notice of proposed Resolution, giving 28 days for representations;
- (c) Wednesday 21 February 2018 - representation period expires;
- (d) Wednesday 7 March 2018 - Second Committee Meeting: Committee considers any representations, varies the proposed Resolution to take account of those, and makes the Resolution;
- (e) Wednesday 21 March 2018 - 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 Sunday 23 December 2018;
  - that Window Cleaners working without a Licence would commit a criminal offence;
  - that Licence Application forms can be lodged with the Council after Saturday 7 April 2018 (One month after the Resolution was made);
- (f) Sunday 23 December 2018 - Resolution takes effect. Window Cleaners who operate from and after that date without a Licence face prosecution (the Licence must have been granted; it is not enough for the person to apply);

The dates are approximate, e.g. because different local newspapers have different publication days.

- 3.5. Any Window Cleaner should apply for a Licence as soon as possible after Saturday 7 April 2018. This is because once the Resolution takes effect on 22 December 2018, 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. Therefore 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.
- 3.6. In deciding whether or not to make a Resolution, the Committee should consider North Ayrshire Council's duties as a "Regulator" for the purposes of 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:

(a) Guidance from Scottish Ministers - Section 4(3), and

(b) the Code of Practice issued by Scottish Ministers under Section 5.

On (b), the Code of Practice is "Scottish Regulators' Strategic Code of Practice" (approved 18 February 2015). Paragraph 2 of that Code of Practice 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."*

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

- "transparent" - the regulation is applied by Law and is to be administered by Elected Members sitting on a Committee whose Agenda and Minutes are public (subject to the Law permitting private hearings). The Proposal for the Resolution would be publicised, and the public could make representations.
- "accountable" - any licensing function is subject to judicial control by the Sheriff
- "consistent" - the Resolution would not permit the Council to do anything other than apply the licensing requirement to all Window Cleaners
- "proportionate" - once a need for some degree of regulation is established, there is no middle ground. The Committee either has a Licensing scheme or it does not.
- "Targeted" because it is aimed at a business activity which has the potential to hide criminal conduct.

3.8. If the Resolution is made, the Council will have to:

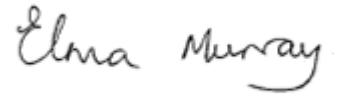
- consider the extent of third-party consultation which would precede determination of an Application;
- decide whether or not public liability insurance is required;
- approve an Application form; and
- decide a Licence fee.

#### 4. Implications

<b>Financial:</b>	<p>The procedure for making a Resolution requires two separate advertisements in locally-circulating newspapers.</p> <p>There are possible financial implications in relation to any Licensing decision.</p> <p>At a later stage the Council will have to set a Licence fee to cover the administrative costs, although that issue does not arise at this preliminary stage.</p>
<b>Human Resources:</b>	None.
<b>Legal:</b>	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>Environmental &amp; Sustainability:</b>	None. See Paragraphs 3.6 and 3.7 about Better Regulation.
<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 No Consultations are appropriate at this stage. If the Committee decides to make a proposed Resolution, that will be advertised in newspapers and there will be a 28-day consultation period.

A handwritten signature in black ink that reads "Elma Murray". The signature is written in a cursive style with a horizontal line underneath the name.

Elma Murray,  
Chief Executive

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

### **Background Papers**

N/A