



**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, 05 February 2020** 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 8 January 2020 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.

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## **Licensing Committee Sederunt**

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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**, 8 January 2020 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

**Present**

Ronnie McNicol, Todd Ferguson, Robert Barr, John Easdale, Jean McClung, Davina McTiernan, Donald L. Reid and Angela Stephen (Agenda Items 5.1 onwards).

**In Attendance**

B. Ferry and K. Nolan (Policy Officers) (Place) (Agenda Item 6 only); D. Robertson, Civic Licensing Standards Officer, W. O'Brien, Solicitor (Licensing), A. Toal, Administrative Assistant (Licensing) and D. Dunlop, Senior Clerical Assistant (Legal Services) and D. McCaw, Committee Services Officer (Chief Executive's Service).

**Also in Attendance**

Sergeant David Dougan and Dawn Hastings (Police Scotland).

**Chair**

Councillor McNicol in the Chair.

**1. Chair Remarks**

The Chair agreed, in terms of Standing Order 9.4, to vary the order of business to allow consideration of the matter raised under Appendix C of Agenda Item 3 (Civic Government Scotland Act 1982 and other Licensing Statutes: Licensing Matters) immediately after case 3 Window Cleaner's Licence: WCL/004 (New): Eric Paterson, to allow Police Scotland to hear the information held by the Council.

**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 Ordinary Meeting held on 23 October 2019 and the Special Meeting held on 28 October 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 5-7 (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 Late Hours Catering Licence: LHCL/057 (New): Kala Singh**

Councillor Stephen joined the meeting at this point.

The applicant, having been duly cited to attend, was present and accompanied by Mr Mohammed Sharir to assist with translation. 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 objection 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 Barr, seconded by Councillor Ferguson, moved that the Committee refuse the application in terms of Paragraph 5(3)(a)(ii) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the grounds that the applicant is not a fit and proper person to be the holder of a licence. There being no amendment the motion was declared carried.

After the Chair advised the applicant of the decision, the applicant's translator asked how the applicant could appeal. The Solicitor (Licensing) advised him that any appeal would have to be lodged in the Sheriff Court within 28 days, could not be lodged with the Council and that the applicant should take independent advice before proceeding.

## **5.2 Taxi Driver's Licence: TDL/02197 (New): Gareth Wilkinson**

The Committee at its meeting held on 23 October 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.

### **Decision**

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

## **5.3 Window Cleaner's Licence: WCL/004 (New): Eric Paterson**

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 objection in respect of the application. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

### **Decision**

Councillor Easdale, seconded by Councillor McTiernan, 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 three years. There being no amendment, the motion was declared carried.

## **Appendix B: Applications for Licences/Renewal of Licences**

### **5.4 STL/O/261 (Renewal): David Duncan McIntyre**

The Committee 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.

## **5.5 TDL/00321 (Renewal): Thomas Smith**

The Committee 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 possible Revocation or Suspension**

### **5.6 Licenceholder**

The Committee received a briefing from the Solicitor (Licensing).

The Committee agreed that this matter be continued to the meeting to be held in February 2020 to allow the Solicitor (Licensing) to make further inquiries.

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

### **6.1 M.R.**

The Committee at its meeting held on 23 October 2019, agreed on the basis of the information presented, to continue consideration of this matter for further investigation and clarification by Officers.

The Solicitor (Licensing) addressed the Committee setting out the background to the case. The applicant, having been cited to attend, was present.

The Committee heard from officers of the Private Sector Housing section. Thereafter, the applicant addressed the Committee on the issues raised and responded to questions.

### **Decision**

The Committee unanimously agreed to (a) grant the application for Landlord Registration; and (b) remove any Rent Penalty Notice in force at the applicant's properties.

## **7. Urgent Item: Establishment of Member Officer Working Group**

The Committee considered the establishment of a Member Officer Working Group to continue consideration of the draft resolution in terms of the regulation of Public Entertainment Licences.

The Committee agreed (a) to the establishment of a Member Officer Working Group; (b) that the Group comprise Councillors Ronnie McNicol, Donald L. Reid, Davina McTiernan, John Easdale, Angela Stephen, Donald Reid, the Solicitor (Licensing) and the Senior Manager Protective Services; and (c) to note that the Solicitor (Licensing) will make arrangements for an initial meeting.

The meeting ended at 11.40 a.m.



## **NORTH AYRSHIRE COUNCIL**

**5 February 2020**

### **Licensing Committee**

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**Title:** **Civic Government (Scotland) Act 1982 and other Licensing statutes: Licensing Matters**

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**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;

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**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.

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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. 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

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**Hearings (Appendix A)**

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<b>Case 1</b>	<b>Street Trader Operator's Licence</b>	<b>STL/O/261 (Renewal)</b>
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<b>Applicant</b>	David Duncan <b>McIntyre</b>	
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<b>Vehicle</b>	Ford Transit CKZ 6237	
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<b>Case 2</b>	<b>Taxi Driver's Licence</b>	<b>TDL/00321 (Renewal)</b>
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<b>Applicant</b>	Thomas <b>Smith</b>	
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<b>Case 3</b>	<b>Taxi Driver's Licence</b>	<b>TDL/02184</b>
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<b>Licence Holder</b>	Cameron <b>McPhail</b>	
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<b>Case 4</b>	<b>Private Hire Car Operator's Licence</b>	<b>PHCL/373 (New)</b>
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<b>Applicant</b>	William <b>Spiers</b>	
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### Applications for Licences/Renewal of Licences (Appendix B)

Type of Licence/Reference Number	Details of Applicant
<b>LHCL/125 (New)</b>	<b>Qaisar Raza</b>
<b>Premises</b>	BBQ Hut 7 Bridge Street Kilbirnie
<b>PP051/19</b>	<b>Irvine Walker Club</b>
<b>TDL/00893 (Renewal)</b>	<b>William Gillies</b>
<b>TDL/02228 (New)</b>	<b>David J Brown</b>

#### Note

LHCL – Late Hours Catering Licence

PP – Notification of Proposal to hold a Public Procession

TDL –Taxi Driver Licence

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## NORTH AYRSHIRE COUNCIL

5 February 2020

### Licensing Committee

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**Title:** APPENDIX C

**Preliminary Consideration of possible Revocation or Suspension**

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**Purpose:** To advise the Committee of information received about Licence-Holders, and to outline the Committee's powers under Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 11.

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**Recommendation:** That the Committee should consider the information supplied by the Clerk, and decide if Hearings should take place on a later date.

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### 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 and driving of Taxis and Private Hire Cars, Street Trading, and the provision of Public Entertainment. Its functions as Licensing Authority are delegated to the Licensing Committee.

### 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.*

*(3) A Licensing Authority may make an order under Sub-Paragraph (2)(d) above in respect of a contravention of a condition of a Licence notwithstanding that there has been no conviction in that respect."*

2.2. When the Clerk receives information, consisting either of

- (a) reports from the Council's Civic Licensing Standards Officer, other Council officers, or the Police, or
- (b) complaints from members of the public

alleging a possible ground of Revocation or Suspension in relation to a Licence-holder, the Clerk informs the Committee of that information by including it in Appendix C to the Report dealing with Hearings and Applications.

2.3. That information is "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.

2.4. 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).

- 2.5. 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".
- 2.6. The information 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 The present Hearing is only a preliminary consideration of the information. Options at the preliminary consideration stage are:
  - (a) continue the case to a later Meeting, to which both the Licence-holder and the informant 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 informant have been invited to attend, and
  - neither has a right to address the Committee.

although if the informant is the Civic Licensing Standards Officer or another Council officer, he or she may be available to give the Committee further information.

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 (effective 28 days later)
- (c) Immediate Suspension of the Licence
- (d) Suspension of the Licence (effective 28 days later)
- (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**

- 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 There is no statutory obligation to consult here.

Andrew Fraser  
Head of Democratic Services

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

## **Background Papers**

None



## **NORTH AYRSHIRE COUNCIL**

**5 February 2020**

### **Licensing Committee**

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**Title:** **Landlord Registration under the Antisocial Behaviour etc (Scotland) Act 2004, Part 8**

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**Purpose:** To inform the Committee of Landlord Registration matters.

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**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.

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### **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

