

Cunninghame House,
Irvine.

8 December 2016

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 14 DECEMBER 2016** at **10.00 a.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

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 (Page)

The accuracy of the Minutes of the meeting held on 23 November 2016 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 (Page)**
Submit report by the Chief Executive on hearings to be determined and applications for the grant or renewal of licences and permits, all in terms of the Civic Government (Scotland) Act 1982 (copy enclosed).
- 4. Public Charitable Collections - Civic Government (Scotland) Act 1982 (Page)**
Submit report by the Chief Executive on the Public Charitable Collection Permissions (copy enclosed).
- 5. Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8 (Page)**
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
John Easdale
Grace McLean
Catherine McMillan
Alan Munro
Donald Reid
Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:

Licensing Committee
23 November 2016

Irvine, 23 November 2016 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Robert Barr, John Bruce, Tom Marshall , Grace McLean, Catherine McMillan and Donald Reid.

In Attendance

W. O'Brien, Solicitor (Licensing) and A. Toal, Administrative Assistant; D. Robertson, Enforcement Officer and A. Little, Committee Services Officer (Chief Executive's Service).

Also In Attendance

Inspector B. Skimming and D. Hastings (Police Scotland).

Chair

Councillor McNicol

Apologies for Absence

John Easdale, Alan Munro and Robert Steel.

1. Declarations of Interest

In terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors, Councillor Barr, due to being related to the applicant, declared an interest in Agenda Item 3, Appendix B, Case 9 (Civic Government (Scotland) Act: Licensing Matters) and took no part in the decision.

2. Minutes

The accuracy of the Minutes of the meeting of the Committee held on 2 November 2016 was confirmed, and the Minutes were 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

Part A: Hearings

Public Charitable Collections

Royal British Legion (Largs Branch)

The applicant, having been duly cited to attend was present. The applicant has applied for a Charitable Collection between 6.00 p.m. and 10.00 p.m. on 1 December 2016, which is outwith the Council policy.

Members asked questions and received clarification from the applicant in respect of the application.

Decision

The Committee unanimously agreed (a) that there were sufficient grounds to treat the case as an exception to the Council's policy on street collections; and (b) to grant the application in terms of Section 119 of the Civic Government (Scotland) Act 1982, subject to the Council's standard conditions.

Scottish Maritime Museum Trust

The applicant, having been duly cited to attend was represented. The applicant has applied for a Charitable Collection between 4.00 p.m. and 10.00 p.m. on 30 November to 3 December 2016, which is outwith the Council policy.

Members asked questions and received clarification from the representative in respect of the application.

Decision

The Committee unanimously agreed (a) that there were sufficient grounds to treat the case as an exception to the Council's policy on street collections; and (b) to grant the application in terms of Section 119 of the Civic Government (Scotland) Act 1982, subject to the Council's standard conditions.

West Kilbride Festival Committee

The applicant, having been duly cited to attend was in attendance. The applicant had applied for a Charitable Collection on 2 December 2016, which is outwith the Council policy. The Committee were advised of the applicant's position.

Decision

The Committee unanimously agreed (a) there were sufficient grounds to treat the case as an exception to the Council's policy on street collections; and (b) to grant the application in terms of Section 119 of the Civic Government (Scotland) Act 1982, subject to the Council's standard conditions.

Taxi Driver's Licences

TDL/00188 (New) John Monaghan

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

The representatives from Police Scotland addressed the Committee on the terms of a letter setting out an objection in relation to the application, as previously intimated in writing to the applicant. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

The applicant and representatives of Police Scotland then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

Councillor McNicol, seconded by Councillor Bruce, moved that the application be granted. There being no amendment, the motion was declared carried.

Accordingly, the Committee agreed to grant the application subject to the 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.

TDL/02006 (New) Anthony Healy

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

The representatives from Police Scotland addressed the Committee on the terms of a letter setting out an objection in relation to the application, as previously intimated in writing to the applicant. The Police requested that they be allowed to supply further information and gave the Committee an indication of its nature. The Committee considered that request and were satisfied that justice could not be done without having regard to that further information. Therefore the Police supplied details of that further information.

Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

The applicant and representatives of Police Scotland then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

Councillor Barr, seconded by Councillor McLean, moved that the application be refused on the basis that the applicant is not a fit and proper person to be the holder of a Taxi Driver's Licence. There being no amendment, the motion was declared carried.

Accordingly, the Committee agreed to refuse the application on the basis that the applicant is not a fit and proper person to be the holder of a Taxi Driver's Licence.

TDL/01418 (Renewal) Mary Myra Craig

The licenceholder, having been duly cited to attend, was not present.

The Committee was advised that DVLA's computer system had not been fully operative and therefore confirmation of the licenceholder's up-to-date driving licence had not been possible. DVLA had now confirmed that the licenceholder had a valid driving licence.

Decision

Councillor McNicol, seconded by Councillor Bruce, moved that the application be granted. There being no amendment, the motion was declared carried.

Accordingly, the Committee agreed to grant the application subject to the 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.

Part B: Applications for Licences/Renewal of Licences

STL/E/274 (New) Sharon Serapiglia

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.

STL/O/445 (New) Alexander Muir

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.

TDL/00190 (New) Raymond Henry Potts

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.

TDL/00192 (New) Thomas Paul Foy

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.

TDL/01168 (Renewal) Paul William McPherson

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.

TDL/01702 (New) Barry Seymour

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 for a period of one year.

TDL/01876 (Renewal) Alessandro Gavazzeni

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.

TDL/01885 (New) Peter Brown

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.

TDL/01921 (New) Kenneth Kilmurry

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.

TDL/02007 (New) Robert James Dickie

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.

TL/047 (Partnership Amendment) Cyril Brown and Ian McKerracher

The Committee unanimously granted consent to the proposed material change in terms of Paragraph 9 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

PART C:

Issues in respect of Existing Licences

TL/037 - Philip Gaw

The Committee was advised of a complaint from a member of the public regarding an allegation relating to a shared taxi between Kilwinning railway Station and two other addresses in Kilwinning. The Enforcement Officer provided additional information in relation to the allegation.

The Committee decided, on the basis of the information presented, not to proceed to a Hearing in terms of Paragraph 11 (7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

STL/O/414 Neil McIntyre

The Committee was advised of a complaint from two members of the public regarding an allegation of vehicle obstruction and damage to a vehicle. The Enforcement Officer provided additional information in relation to the allegation.

The Committee unanimously 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.

4. Caravan Sites and Control of Development Act 1960

Submitted report by the Chief Executive on a request for the variation of Condition 24 for Kames Caravan Site (Licence 08) which required two parking spaces to be provided adjacent to the entrance and within the site.

The Committee agreed to vary Condition 24 for Kames Caravan (Licence 08) to allow each of the five caravans an allocated parking bay next to their caravan.

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

The Solicitor (Licensing) advised the Committee that this report had been withdrawn in the absence of any Landlord Registration matters to be considered.

Noted.

6. Urgent Item

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

6.1 Stevenston Christmas Lights

The Committee was advised of an application from Stevenston Christmas Lights for a Charitable Collection between 5.30 p.m. and 7.00 p.m. on 9 December 2016, which is outwith the Council policy.

Decision

The Committee unanimously agreed (a) that there were sufficient grounds to treat the case as an exception to the Council's policy on street collections; and (b) to grant the application in terms of Section 119 of the Civic Government (Scotland) Act 1982, subject to the Council's standard conditions.

The meeting ended at 11.00 a.m.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

14 December 2016

Licensing Committee

Title:	Civic Government (Scotland) Act 1982: Licensing Matters
Purpose:	To advise the Committee of (a) Hearings to be determined; (b) applications for the grant or renewal of licences and permits; and (c) issues arising in respect of existing licences, all in terms of the Civic Government (Scotland) Act 1982.
Recommendation:	That the Committee considers and determines the matters before it.

1. Executive Summary

- 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. Background

Appendix A:

Licences where Hearings have been convened;

Appendix B:

Applications for the grant or renewal of licences and permits

Appendix C:

Issues in respect of existing licences.

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:	There are possible financial implications in relation to the refusal of any application.
Human Resources:	None
Legal:	There are possible legal implications in relation to the refusal of any application.
Equality:	An "Equality Impact Assessment" is not necessary as the Equality Act 2010 is not a consideration in making a Licensing decision.
Environmental & Sustainability:	None
Key Priorities:	An effective licensing system, e.g. monitoring the 'fit and proper' status of hire-car drivers and the safety of their cars, helps achieve one of the "High Level Outcomes" of the "NAC Community Planning Partnership Single Outcome Agreement 2013-17": "A Safe and Secure North Ayrshire".
Community Benefits:	Not applicable, as the Report does not relate to tendering or procurement exercises.

5. Consultation

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



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	Street Trader Operator's Licence	STL/O/445 (New)
Applicant and Address	Alexander Muir 51 Eglinton Place Kilwinning KA13 6BT	
Hearing 2	Taxi Driver's Licence	TDL/00192 (New)
Applicant and Address	Thomas Foy 26 Davaar Road Saltcoats KA21 6HB	
Hearing 3	Taxi Driver's Licence	TDL/01168 (Renewal)
Applicant and Address	Paul McPherson 10 Birkscairn Place Irvine KA11 1ED	
Hearing 4	Taxi Driver's Licence	TDL/01885 (New)
Applicant and Address	Peter Brown 211 Glasgow Street Ardrossan KA22 8JT	
Hearing 5	Taxi Driver's Licence	TDL/00190 (New)
Applicant and Address	Raymond Henry Potts 20C Wilson Street Beith KA15 2BG	
Hearing 6	Street Trader Employee Licence	STL/E/274 (New)
Applicant and Address	Sharon Serapiglia 75 Dundonald Crescent Auchengate Irvine KA11 5AX	

Hearing 7	Taxi Driver's Licence	TDL/01876 (Renewal)
Applicant and Address	Alessandro Sirio Gavazzeni 132 Frew Terrace Irvine KA12 9EH	
Hearing 8	Taxi Driver's Licence	TDL/01921 (New)
Applicant and Address	Kenneth Kilmurry 202c Livingstone Terrace Irvine KA12 9JT	
Hearing 9	Taxi Driver's Licence	TDL/02007 (New)
Applicant and Address	Robert James Dickie 5 MacAllan Place Lawthorn Irvine KA11 2DN	
Suspension Hearing 10	Street Trader Operator's Licence	STL/O/414
Licenceholder and Address	Neil McIntyre 18 Dalgarven Wynd Kilwinning KA13 6DD	
Hearing 11	Public Entertainment and Indoor Sports Licences	PEL/457 and ISEL/017
Applicant and Address	K A Leisure Ltd Magnum Leisure Centre Harbourside Irvine KA12 8PP	The Portal & Townhouse 66 High Street Irvine KA12 0AZ

Applications for the grant/renewal of licences

TDL/02009 (New) Alan **Frew**
Hill of Fergushill
Kilwinning
KA13 7RN

Issues in respect of Existing Licences

TDL/01780

John **Swindle**
37 The Braes
Saltcoats
KA21 5EP

TDL/01780

NORTH AYRSHIRE COUNCIL

Agenda Item 4

14 December 2016

Licensing Committee

Title:	Public Charitable Collections - Civic Government (Scotland) Act 1982
Purpose:	To advise the Committee of the Law and their existing Policy.
Recommendation:	That the Committee consider whether or not to amend their Policy.

1. Executive Summary

- 1.1. The Council is the Licensing Authority under the Civic Government (Scotland) Act 1982. Apart from providing for the licensing of Taxis, Private Hire Cars and many other activities, the Act also provides for the regulation of Public Charitable Collections. Under Section 119, the Council may grant a "permission" for a collection.
- 1.2. Section 119 will be replaced by provisions of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) ('Public benevolent collections') (see especially Section 86 - 'Local authority consents'). However the new system is not in operation.
- 1.3. Most collectors require to apply to the Council, but a few major national charities have "Exempt Promoter" status, which means that they can collect anywhere in Scotland, but they must give the local Council at least 3 months' notice of their intention to do so.
- 1.4. Permissions are free-of-charge. An Applicant requests a Permission using a Council form which states the date, time and place of the Collection and identifies the charitable cause concerned. The Application is copied to the Police. The common 'fit and proper' test does not apply, but convictions for dishonesty or relating to charitable collections are relevant.

2. Background

2.1. The legislation distinguishes between "House-to-House Collections" and "Street Collections". NAC has Policies for each:

- (a) House-to-House Collections are only permitted in the period Monday - Friday, in the period 9-00 a.m. to 6.00 p.m.;
- (b) Street Collections are only permitted on Saturday, in the period from 9.00 a.m. to 6.00 p.m.;
- (c) neither is permitted on Sunday;
- (d) only one of each is allowed on a particular day in a particular town.

2.2. The reason for these Policies is Section 119(5) and Section 119(6). The latter is:

"A Local Authority may refuse to Grant permission under this section on any of the following grounds—

- (a) that the date, time, frequency or area of the collection would cause undue public inconvenience;*
- (b) that another collection in respect of which permission under this section has been Granted or which is exempt under subsection (11) below is due to take place on the same or a proximate day;*
..."

(the reference to subsection (11) is to "Exempt Promoters").

The Council attaches appropriate conditions under Section 119(5) to regulate the date, time, frequency or area of the collection.

2.3. The Head of Service (Democratic Services) has the following delegation:

"53. Public Charitable Collections under Civic Government (Scotland) Act 1982, Section 119 - authorised in respect of a particular Collection: -

- (a) To permit a temporary departure from Committee Policy as to the dates and hours of a Collection;*
- (b) to permit a Collection in an area notwithstanding that another Permission has been granted or an Exempt Promoter has notified the Council of its intention to collect in the same area; or*

(c) to vary conditions attached to the Permission under Section 119(5).

This authority is to be exercised after consultation with the Convenor, whom failing the Vice-Convenor, whom failing any Member of the Licensing Committee."

(Scheme of Delegation to Officers, approved by Council on 1 April 2015, Part 5, Paragraph 53)

- 2.4. This delegation is intended to be used only on a case-by-case basis and with consultation with the Convenor etc.. Where time permits, cases are referred to the Committee and appear on the Agenda. Since few of these cases are controversial, the Committee may doubt whether the time of either Applicants or Members is well-spent by Committee Hearings.

3. Proposals

- 3.1. The Committee might consider amending their Policy:

- The restriction to 6.00 p.m. for "House-to-house Collections" (Policy (b)) was adopted by the Committee following a complaint from a member of the public who was annoyed at having to answer her door after 8.00 p.m.. The same restriction is imposed on "Street Collections", but the need for it is not great.
- The 'one of each' practice (Policy (d)) is justified by the "undue public inconvenience" consideration, to avoid the public being repeatedly asked to donate in the same area, but it has the consequence that if a collection has already been permitted, a second collection will have to be referred to the Committee (or the Convenor etc.). This is particularly an issue for the Council in the weeks before Christmas.

Exceptions might allow multiple Collections:

- on condition that no-one involved in a Street Collection should collect money within a specified distance of another collector.
- as well as specifying an exempt month, the Committee might approve a list of local events where fundraising is common.

3.2. As an example for discussion, the Policies might be re-stated as:

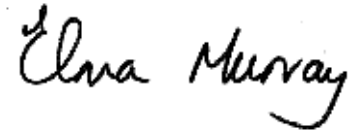
- (a) House-to-House Collections are only permitted in the period Monday - Friday, in the period from 9.00 a.m. to 6-00 p.m.;
- (b) Street Collections are only permitted on Saturday, in the period after 9.00 a.m.;
- (c) neither is permitted on Sunday;
- (d) only one of each is allowed on a particular day in a particular town, but the following Collections are not counted towards the "one of each" total:
 - collections during December, or
 - collections carried out by or for a community group within 14 days before a local event (such as Largs Viking Festival), or
 - collections conducted by Exempt Promoters.

4. Implications

Financial:	Reducing the number of cases referred to the Committee reduces the Committee's caseload. There are possible financial implications in relation to the refusal of any application.
Human Resources:	None.
Legal:	There are possible legal implications in relation to the refusal of any application.
Equality:	An "Equality Impact Assessment" is not necessary as the Equality Act 2010 is only one consideration in making a Licensing decision.
Environmental & Sustainability:	None.
Key Priorities:	Not directly relevant, although extending the Policy and consequently reducing the number of cases called to Committee will save the public time.
Community Benefits:	Not applicable, as the Report does not relate to tendering or procurement exercises.

5. Consultation

- 5.1 There is no obligation to consult when the Committee are deciding on their Policy for future Applications.

A handwritten signature in black ink that reads "Elma Murray". The signature is written in a cursive, flowing style.

ELMA MURRAY
Chief Executive

Reference : GEN38/WOB

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

Background Papers

None.

NORTH AYRSHIRE COUNCIL

Agenda Item 5

14 December 2016

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:	<p>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;</p> <p>For each Application or Review Proposal described in the Schedules: That the Committee should consider each case and:</p> <p>a. decide whether or not the Application should be granted, or the Relevant Person should be removed from the Register;</p> <p>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.</p>

1. Executive Summary

- 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
 - already Registered under the 2004 Act, or
 - are not Registered.

Each person has one Schedule. The rented houses concerned are listed in the Schedules.

Although the scheme under the Antisocial Behaviour etc. (Scotland) Act 2004 is described as "Landlord Registration", it is the fact that living accommodation is occupied that is important, not the question of whether or not a formal Lease has been entered into or rent paid or the occupier has the formal status of "tenant". The Act applies to both (i) a Lease and (ii) an Occupancy Arrangement, and most of the laws relating to rented housing also apply as much to occupiers as tenants.

For convenience, in this Report:

- (a) Applicants seeking Registration, and
 - (b) people who are already Registered ("Registered Persons"), and
 - (c) people who own houses occupied as residences,
- are called "Landlords" and the occupiers are called "Tenants".

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. Background

- 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' or 'RPN') 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:	If a RPN is issued, the Housing Benefit Office will be informed, so that the Landlord will no longer receive Housing Benefit.
Human Resources:	None
Legal:	<p>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 or the First Tier Tribunal.</p> <p>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).</p> <p>For example:</p> <ul style="list-style-type: none"> 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 RPN); 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. <p>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))</p>
Equality:	None
Environmental & Sustainability:	None
Key Priorities:	None
Community Benefits:	<p>Preventing unfit Landlords from operating may contribute to the wellbeing of the community.</p> <p>Preventing Housing Benefit being paid to unregistered Landlords safeguards public funds.</p>

5. Consultation

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



ELMA MURRAY
Chief Executive

Reference : PAT

For further information please contact William O'Brien, Solicitor (Licensing)
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Background Papers

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