



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, 21 August 2019** at **10:00** to consider the undernoted business.

Please note that, whilst the items on this Agenda are public documents, consideration of some reports at the meeting may necessitate the passing of a resolution to exclude from the meeting the press and public in terms of Section 50A(4) of the Local Government (Scotland) Act 1973.

1 Declarations of Interest

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

2 Minutes

The accuracy of the Minutes of the Ordinary Meeting held on 5 June 2019 and the Special Meeting held on 24 June 2019 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

3 Licensing of Sexual Entertainment Venues – Civic Government (Scotland) Act 1982

Submit report by the Head of Democratic Services on the results of a public consultation in respect of the Licensing of Sexual Entertainment Venues (copy enclosed).

4 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).

5 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).

6 Urgent Items

Any other items which the Chair considers to be urgent.

Licensing Committee Sederunt

Ronnie McNicol (Chair)
Todd Ferguson (Vice Chair)
Robert Barr
John Easdale
Scott Gallacher
Jean McClung
Davina McTiernan
Donald L. Reid
Angela Stephen
Vacancy

Chair:

Apologies:

Attending:

IRVINE, 5 June 2019 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Robert Barr, Todd Ferguson, John Easdale, Scott Gallacher, Jean McClung, Donald L. Reid and Angela Stephen.

In Attendance

S. McKenzie, Senior Manager and P. Brennan, Environmental Health Officer (Economy and Communities); W. O'Brien, Solicitor (Licensing), A Toal, Administrative Assistant (Legal Services) and A. Little, Committee Services Officer (Chief Executive's Service).

Also in Attendance

Inspector David Cameron and Sergeant David Dougan (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies

Davina McTiernan.

1. 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.

2. Minutes

The Minutes of the meeting held on 8 May 2019 were confirmed and signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

3. Civic Government (Scotland) Act 1982: Taxi Fare Scales Review

Submitted report by the Head of Democratic Services on the Taxi Fare Scales Review process. A meeting with interested parties was held on 29 March 2019 and the Minute of that meeting was circulated as Appendix A to the report. Appendix B to the report detailed the possible tariff increases previously issued to Elected Members and the attendees at the trade consultation. The Consumer Price Index was outlined in Appendix C to the report and Appendix D detailed the draft taxi fare scales.

The Committee agreed (a) to fix the new scales as detailed in Appendix D to the report; and (b) that the new taxi fare scales become effective from 22 July 2019.

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 Item 5.2 – 6.1 (Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters) on the grounds that they involved the likely disclosure of Exempt Information as defined in Section 50J of, and Schedule 7A to, the Local Government (Scotland) Act 1973.

The 'Exempt Information' concerned is information of the type described in one or more of Paragraphs 3, 6, 14 and 15 of Part 1 of Schedule 7A to the Act:

3. "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."
6. "Information relating to the financial or business affairs of any particular person (other than the authority)."
14. "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."
15. "The identity of a Protected Informant" - where "Protected Informant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance."

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

Submitted report by the Head of Democratic Services on hearings to be determined and applications for the grant or renewal of licences, consents and permits, on hearings and on other matters, under the Civic Government (Scotland) Act 1982 and other Licensing legislation.

Appendix A: Hearings

5.1 Taxi Driver's Licence TDL/01754: Derek J Boyd

The applicant, having been duly cited, was not present. Representatives from Police Scotland were in attendance.

At its meeting on 8 May 2019, the Committee considered a request by Police Scotland and agreed to the suspension of the licence under Paragraph 12 of Schedule 1 of the Civic Government (Scotland) Act 1982. The Committee further agreed to proceed to a Hearing in terms of Paragraph 11 (7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

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 a letter setting out a representation in respect of the application.

Decision

Councillor Ferguson, seconded by Councillor Barr, moved the Committee (a) to hold that the ground of revocation specified in Paragraph 11(2)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982 was established; (b) to revoke the Licence; and (c) to direct under Paragraph 11(10) that the revocation should have immediate effect. There being no amendment, the motion was declared carried.

5.2 Skin Piercing/Tattooing Licence SPTL/053 (New): Gemma Irvine

The applicant, having been duly cited, 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 a letter setting out a representation in respect of the application.

The applicant then 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.

5.3 Public Entertainment Licence PEL/593 (Temp): Kelburn Arts Ltd

The Committee was advised that an amendment to the Public Entertainment Licence application had been received.

In terms of Standing Order 5.7, the Chair adjourned the meeting for a short recess. The meeting reconvened with the same Members and officers present and in attendance.

The applicant, having been duly cited, was present and accompanied by members of Kelburn Arts Ltd Management Team. Representatives from Police Scotland and Environmental Health were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. He advised that an amendment to the application had now been received requesting the numbers permitted to attend the event be increased from 4,999 people to 6,000.

The representatives from Police Scotland then addressed the Committee on a letter setting out a representation in respect of the application. They considered that the request to increase attendees to 6,000 would require further examination.

Representatives from Environmental Health outlined concerns that the event had grown to such an extent that more formal arrangements and procedures required to be put in place to control noise. They considered that a multi-agency meeting should be arranged to consider areas such as Heras fencing, fire safety, attendance levels, stewarding levels, policing and noise levels.

The applicant and his management team then addressed the Committee on the issues raised and responded to questions.

Decision

Councillor Reid, seconded by Councillor McClung moved that the application be continued to a future Special Meeting of the Committee, to allow a multi-agency meeting to be arranged to examine the areas discussed and to report to the Special Meeting on the arrangements that would be put in place for the event. There being no amendment, the motion was declared carried.

Councillor Easdale and Police Scotland representatives left the meeting at this point.

5.4 Public Entertainment Licence PEL/597 (Temp): Peter McNamara

The applicant, having been duly cited, was not present.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant.

Decision

The Committee agreed to continue the application to a future Special Meeting to allow the applicant to attend and respond to questions.

5.5 Private Hire Car Operator's Licence PHCL/369 (New): Kelly Scott

The applicant, having been duly cited, was present.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant.

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

Decision

Councillor Reid, seconded by Councillor Ferguson moved that the Committee treat the proposed vehicle as an exception to the Committee's Vehicle Specification Policy under Section 10(2) of the Civic Government (Scotland) Act 1982, and that power should be delegated to the Clerk to grant the application, subject to the Council's standard conditions in terms of Paragraph 5(1)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982, if satisfied that the proposed vehicle meets the inspection standards under Section 10(2). There being no amendment, the motion was declared carried.

5.6 Street Trader Operator's Licence STL/O/413: Malgorsata Lipinska

The licence holder, having been duly cited, was present and accompanied by a friend.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder.

The licence holder addressed the Committee on the issues raised and responded to questions.

Decision

The Committee unanimously agreed to grant the application, subject to the Council's standard conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.7 Street Trader Operator's Licence STL/O/493 (New): Yvonne Lynch

The Committee was advised that the application had been withdrawn.

Appendix B: Applications for Licences/Renewal of Licences

5.8 Private Hire Car Licence PHCL/370 (New) Edward McCallie and Pauline Alexander

The Committee agreed to treat the proposed vehicle as an exception to the Committee's Vehicle Specification Policy under Section 10(2) of the Civic Government (Scotland) Act 1982, and delegated to the Solicitor (Licensing) to grant the application, subject to the Council's standard conditions in terms of Paragraph 5(1)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982, if satisfied that the proposed vehicle meets the inspection standards under Section 10(2).

5.9 Taxi Driver Licence TDL/00657 (Renewal): Ronald McCulloch

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

5.10 Taxi Driver Licence TDL/01539 (Renewal): Gordon McKenzie

The Committee agreed to grant the application, subject to the Council's standard conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.11 Window Cleaner Licence WCL/089 (Renewal): David Clarkson

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

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

5.12 Taxi Driver Licence TDL/00675: William Hamilton

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.

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

6.1 C.S.

The Solicitor (Licensing) advised on information received in respect of the applicant, which raised the question of whether or not the applicant was a 'fit and proper' person to be entered on the Register.

The Committee agreed to grant the application for Landlord Registration.

7. Urgent Item

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

7.1 Overcrowding of Private Rented Property

The Committee discussed the recent reporting in the press of overcrowding of privately rented property in North Ayrshire.

The Committee agreed that the Solicitor (Licensing) investigate further and if appropriate provide a report to a future meeting of the Committee.

The meeting ended at 12.15 p.m.

Licensing Committee
24 June 2019

IRVINE, 24 June 2019 - At a Special Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Jean McClung, Davina McTiernan and Donald L. Reid.

In Attendance

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

Chair

Councillor McNicol in the Chair.

Apologies

Robert Barr, Todd Ferguson, John Easdale, Scott Gallacher and Angela Stephen.

1. 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.

2. 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 Item 5.2 – 6.1 (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."

3. 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

3.1 Kelburn Arts Ltd - Public Entertainment Licence PEL/593 (Temp)

At its meeting on 5 June 2019, the Committee considered an application for a Public Entertainment Licence and was advised that an amendment to the application had been received for the period Thursday 4 July – Monday 8 July 2019, for the following times:-

Thursday - 6.00 p.m. until 1.00 a.m.
Friday - 9.00 a.m. until 3.00 a.m.
Saturday - 9.00 a.m. until 4.00 a.m.
Sunday - 9.00 a.m. until 3.00 a.m.

The Committee agreed that the application be continued to a future Special Meeting of the Committee, to allow a multi-agency meeting to be arranged to examine the areas discussed and to report to the Special Meeting on the arrangements that would be put in place for the event.

The applicant, having been duly cited, was present and accompanied by members of Kelburn Arts Ltd Management Team.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant and advised that the multi-agency meeting had taken place and all outstanding matters had been resolved.

Decision

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

In terms of Standing Order 5.7, the Chair adjourned the meeting for a short recess. The meeting reconvened with the same Members and officers present and in attendance.

3.2 Lamlash Events - Public Entertainment Licence PEL/585 (Temp) Market Operator's Licence MOL/117 (Temp)

The Committee was advised that the outstanding issues in respect of the temporary Public Entertainment and Market Operator licences could be dealt with by the Solicitor (Licensing) under delegated powers.

Noted.

3.3 Peter McNamara (Sounds on the Sands) - Public Entertainment Licence PEL/597 (Temp)

At its meeting on 5 June 2019, the Committee considered an application for a Public Entertainment Licence for Saturday 3 August 2019 (12.30 p.m. until 10.45 p.m.) and agreed to continue the application to a future Special Meeting to allow the applicant to attend and respond to questions.

The applicant, having been duly cited, was present.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant and advised that the multi-agency meeting had taken place and all outstanding matters had been resolved. The applicant addressed the Committee on the issues raised and responded to questions.

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

The meeting ended at 11.25 a.m.

NORTH AYRSHIRE COUNCIL

21 August 2019

Licensing Committee

Title: **Licensing of Sexual Entertainment Venues – Civic Government (Scotland) Act 1982**

Purpose: To advise the Committee of the results of a public consultation, and to make proposals for further action.

Recommendation:

1. That the Committee should note the results of the public consultation;
2. That the Committee should make a Resolution requiring that Sexual Entertainment Venues hold a Licence in the terms set out in Paragraph 3.1 below.

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, which gives Councils the option of Licensing "Sexual Entertainment Venues" ("SEVs").
- 1.2 The present Report relates to the possibility that the Council might make a Resolution to introduce a system of SEV Licensing, and follows the preliminary consideration of this matter at the Meeting on 8 May 2019.
- 1.3 The public consultation period for consideration of whether or not the Council should introduce a system of SEV licensing has elapsed without comment and it is therefore recommended that the Council introduces such a system for the reasons detailed in this report.
- 1.4 While there have been no written representations to the consultation, it is open to members of the public to make oral representations to the Committee

2. Background

- 2.1 At present lap-dancing clubs do not require to be licensed anywhere in Scotland. There are no lap-dancing clubs in North Ayrshire, or in most of Scotland. There are about 19 clubs in Scotland (mostly in Glasgow, Edinburgh, Dundee and Aberdeen).
- 2.2 These clubs hold a Premises Licence under the Licensing (Scotland) Act 2005. This Act regulates the sale of alcohol and the Licence is granted by a Licensing Board (as opposed to a Licence granted by the Council under the Civic Government (Scotland)

Act 1982). The Court of Session has decided that Licensing Boards are not entitled to place conditions regulating lap-dancing clubs (for example, regulating the working environment in the Premises, requiring CCTV coverage of staff-only areas, and prohibiting physical contact between workers and customers). In the case of *Brightcrew Ltd. v. The City of Glasgow Licensing Board*, [2011] CSIH 46, 2012 SC 67, 2012 SLT 140 the Court of Session decided that the alcohol licensing system was limited to the regulation of the sale of alcohol, and could not be used to regulate SEVs.

2.3 Accordingly the Scottish Parliament amended the 1982 Act so as to permit (but not require) Licensing Authorities to Resolve to adopt a new Licensing system for SEVs. The amendments to the Act affecting SEVs commenced on 26 April 2019.

2.4 The new licensing system does not apply automatically. Individual Councils throughout Scotland have to decide whether or not to apply the new licensing system in their area, even if there is no likelihood of a lap-dancing club being operated in their area. The Committee first considered this matter at its Meeting on 8 May 2019 which was the first Meeting after the legislation commenced (see description of the stages of the process below).

2.5 The SEV legislation is related to the Scottish Government Policies:

'Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls'

'Trafficking and Exploitation Strategy'

2.6 Premises are classed as an SEV where "Sexual Entertainment" is provided before a live audience for the direct or indirect financial benefit of the Organiser. "Sexual Entertainment" is defined by the legislation as any live performance or live "Display of Nudity" provided for the sole or principal purpose of sexual stimulation of members of the audience. "Display of Nudity" is defined in the Act. However, premises where "Sexual Entertainment" is provided on no more than 4 occasions in a 12-month period are not to be treated as SEVs (so would not need a Licence).

2.7 If the Resolution is made, the Council must draft a statement on its Policy on the Licensing of Sexual Entertainment Venues (a "SEV Policy Statement"). To do this, the Council will consult the public and relevant interest groups (including violence against women partnerships). This is separate from the recent Consultation.

2.8 The Council is entitled to set a limit to the number of SEVs throughout North Ayrshire, or in particular localities. In either case the limit could be zero. For example, the Council might:

- prohibit SEVs entirely, throughout North Ayrshire, or

- prohibit SEVs within a set distance of schools, residential areas and places of worship.

This would be done by the SEV Policy Statement. The draft would be considered at a future Meeting of the Committee;

2.9 The process of establishing this type of Licensing involves two meetings of the Licensing Committee. The process is in stages:

- (a) first Committee meeting: preliminary consideration of the question of whether, in principle, the operation of a SEV is something that should be licensed by the Council (held on 8th May 2019);
- (b) public consultation;
- (c) second Committee meeting: to consider the results of the public consultation and decide whether or not to make a Resolution requiring that SEVs should hold a Licence (current stage of the process);

If the Committee decides not to make a Resolution, the process stops there.

If the Committee decides to make a Resolution, the process continues with further stages.

2.10 The further stages are described below. For the purpose of illustration, the timetable has been calculated on the assumption that the Committee approves the Resolution set out in Paragraph 3.1 of this Report. The timetable dates are printed in square brackets (for example "[Friday 21 August 2020]").

The further stages are:

- (d) the Committee states a date when the new Licensing requirement will apply. This must be at least one year after the date the Resolution is made [Friday 21 August 2020];
- (e) The period for drafting the SEV Policy Statement ends about one month before the Resolution's Effective Date, due to the publication requirements of Stages (f) and (g). Assuming that the Committee adopts the earliest possible Effective Date (Friday 21 August 2020), the Committee will have about 11 months to draft the SEV Policy Statement [Friday 24 July 2020];
- (f) at least 28 days before the Resolution takes effect, the Council must publish notice (electronically or in a newspaper) of the Resolution, stating the general effect of the legislation (Section 45B(4) and (5));
- (g) at the same time and in the same manner as the Notice of Resolution is published, the Council must publish the SEV Policy Statement (Section 45C(4));
- (h) Applications for the grant of SEV Licences would be referred to the Licensing Committee, whether or not they appeared to be excluded by the SEV Policy Statement, and delegated powers would not be used to grant a SEV Licence (once granted, delegated powers would be used for renewal of a SEV Licence in the same way that those powers would be used for any other type of Licence).

2.11 The meeting on 21 August 2019 is the second Committee meeting (Stage (c)).

Stage (a) (the preliminary consideration) occurred at the Committee meeting on 8 May 2019, which was the first Meeting after the legislation commenced on 26 April 2019. The Minute of that meeting includes:

"The Committee agreed (a) that North Ayrshire should adopt a scheme of licensing Sexual Entertainment Venues; (b) that public consultation should be put in place; and (c) that an update report on the outcome of the public consultation be provided to a future meeting."

Stage (b) (public consultation) was carried out as follows. A Notice was placed on the Community Planning Partnership page of the Council website. This Notice explained what was happening and provided a response form.

- 2.12 Committee Members' background papers will include copies of any responses received. At the date of drafting this Report there have been no public responses to the public consultation request.

3. Proposals

- 3.1 The Committee should make a Resolution to require that SEVs hold a licence in the following terms:

"The Council resolves that, from and after Friday 21 August 2020, Schedule 2 of the Civic Government (Scotland) Act 1982 (as modified by Section 76 of the Air Weapons and Licensing (Scotland) Act 2015) is to have effect in the Council area in relation to Sexual Entertainment Venues."

4. Implications/Socio-economic Duty

Financial

- 4.1 At the preliminary stage where the Committee is considering a Policy decision, but is not making a decision on a proposal affecting particular premises, there are unlikely to be financial implications for the Council, apart from the costs of establishing a new licensing system. In the future, there are possible financial implications in relation to any decision, if that decision means that the ability of the Applicant or Licence Holder to derive income is limited. If there are any Court Proceedings, the Council may have to meet legal expenses.

Human Resources

- 4.2 None. The Licensing office is not aware of any proposals to establish a SEV in the Council area, and any applications which are made will be accommodated within the existing staffing establishment.

Legal

- 4.3 (a) There are unlikely to be any immediate legal implications of a Policy decision, but if a future Committee decision on a particular proposal is challenged in Court, part of that challenge may relate to the process which the Committee followed in making the Policy decision. A decision to grant or refuse a Licence may lead to an appeal to the Sheriff.

- (b) Before deciding whether or not to make a Resolution, the Council must consider other legislation such as:

- (a) the EU Services Directive,
- (b) the Regulatory Reform (Scotland) Act 2014,
- (c) the European Convention on Human Rights,

and the Scottish Government Guidance quoted below.

In the Clerk's opinion none of that legislation prevents the Council from establishing a Licensing system for SEVs, and it would be consistent with the Scottish Government Guidance to do so.

- (c) Due to the EU Services Directive, Local Authorities should consider whether the decision to licence SEVs is proportionate and justifiable. In the United Kingdom, the "Provision of Services Regulations", S.I. 2009-2999 implement the EU Services Directive ("Directive 2006/123/EC of the European Parliament on Services in the internal market"). For the purposes of the Regulations, the Council is a "Competent Authority" and is therefore prohibited by Regulation 14 from establishing an "Authorisation Scheme" (such as a new Licensing system) unless certain conditions are satisfied:

- "(a) the Authorisation Scheme does not discriminate against a Provider of the Service,*
- (b) the need for an Authorisation Scheme is justified by an overriding reason relating to the public interest, and*
- (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because inspection after commencement of the Service activity would take place too late to be genuinely effective."*

- (d) Condition (a) is satisfied, in that the Licensing system would be open to anyone who met the statutory criteria (the Applicant must be 18 years or older, and must be a United Kingdom national).

- (e) Condition (b) is satisfied:

- If there was a system of SEV Licensing: any Application for a Licence would be referred to the Police, who would have the opportunity to identify the people operating the business, where the funds for it came from, and where the workers in the business came from. If a Licence was granted, the Police and the Council's Civic Licensing Standards Officer would be entitled to enter the premises as of right, but
- If there was no system of SEV Licensing: they could not do these things. This might limit the effectiveness of the Laws about people-trafficking, money-laundering, and Proceeds of Crime. As the premises would be private property, the Police would

only be able to enter if either the owner invited them in, or they had a Warrant or a reasonable belief that offences were or recently had been committed.

- (f) If there was a system of SEV Licensing: the Council could attach conditions to the Licence, for example
- requiring premises to have CCTV coverage of all areas (not just performance areas);
 - requiring records to be kept of the full name, address, date of birth and place of birth of any performer or anyone else working on the Premises (including copies of passports and other identity documents);
 - requiring Premises to provide private spaces for performers to use when not working;
 - requiring Premises to be screened from outside so that no-one outside could see inside.
- (g) If there was no SEV Licensing system:
- there could be no such conditions;
 - there would be no opportunity for the public to make objections or representations about any proposal to establish a SEV nearby;
 - SEVs could be established within the Council area and there would be no opportunity for the Council to consider whether or not the proposal was appropriate for the particular locality. Unlike other Licensing legislation, the SEV legislation permits a Council to decide, in advance of dealing with any Application, that no SEVs will be allowed anywhere in the Council area, or to limit SEVs to certain locations. If North Ayrshire Council did not make a Resolution, it would have no opportunity to express a 'nil limit' in a SEV Policy Statement or to prevent an SEV from operating in a locality which might be thought unsuitable (for example, within a set distance of schools, residential areas and places of worship).
- (h) Condition (c) is satisfied because there is no "less restrictive measure" available to the Council. Either the Council licenses SEVs, or it does not. The new legislation followed an unsuccessful attempt by the City of Glasgow Licensing Board to regulate SEVs using the alcohol licensing system (the Brightcrew case, above). The new legislation was a recognition by the Scottish Parliament that there was no existing system of regulation.
- (i) The EU Services Directive does not prevent the Council from establishing a system of SEV Licensing.
- (j) The Council is a "Regulator" under the Regulatory Reform (Scotland) Act 2014 and therefore has a duty, in exercising its regulatory functions, to contribute to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of those functions to do so (Section 4(1)).

- (k) This does not oblige the Council to grant a Licence:
- where it would otherwise refuse it (for example, because the Applicant is not 'fit and proper' or the Premises are unsuitable for the proposed use);
 - where the proposal contravenes any Policy limiting numbers of SEVs (or prohibiting them altogether).
- (l) The Regulatory Reform (Scotland) Act 2014 does not prevent the Council from establishing a system of SEV Licensing.
- (m) The European Convention on Human Rights protects the rights of SEV operators who have existing businesses. There are in fact no SEVs in North Ayrshire. There are in other parts of Scotland. If the Council there refuses a Licence Application from an existing Organiser, one of the arguments which might be made by the SEV Organiser is that the Council's action has breached the Organiser's right to freedom of possessions (European Convention of Human Rights, Protocol 1, Article 1). It might also be argued that the Council's action had deprived employees of their jobs, by closing their employer's business.
- (n) The Convention right protects existing property rights, but not property rights which do not yet exist. No action by a Council which did not already have SEVs in its area could be said to breach the Convention.
- (o) The Convention does not prevent the Council from establishing a system of SEV Licensing.
- (p) The Scottish Government recognises that there are competing considerations. In exercising functions under the new legislation, the Council is obliged to have regard to the Guidance issued by the Scottish Government in March 2019, which includes:

"19. The Scottish Government accepts the freedom of adults to engage in legal activities and employment. However, it will continue to promote, through all relevant means, gender equality and actions that tackle out-dated attitudes that denigrate or objectify particular groups or individuals.

20. 'Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls' was first published in 2014 and updated in 2016 and again in 2018. It sets out a definition of violence against women and girls which includes 'commercial sexual exploitation, including prostitution, lap dancing, stripping, pornography and human trafficking'.

21. Whilst recognising the conflict between this definition and the licensing of SEV, this guidance will help to ensure that such activities take place in safe and regulated environments. When deciding whether to licence, and whether to limit, SEV in their area, local authorities will need to consider the interaction with their own local policies and strategies, as well as the legal implications around limiting a legitimate business activity to minimise the risk of legal challenge.

22. *Equally Safe's aim is to work collaboratively with key partners across all sectors to prevent and eradicate all forms of violence against women and girls and the attitudes which perpetuate them. Its priorities are: achieving gender equality; intervening early and effectively to prevent violence; and maximising the safety and wellbeing of women, children and young people. 'Equally Safe: A Delivery Plan for Scotland's strategy to prevent and eradicate violence against women and girls' was published in November 2017. It will help to ensure that the ambitions of the Equally Safe Strategy make a tangible difference.*
23. *The 'Trafficking and Exploitation Strategy' required under section 35 of the Human Trafficking and Exploitation (Scotland) Act 2015 was published on 30 May 2017. It sets out the Scottish Government's strategy to work with partners to make Scotland a more hostile place for human trafficking. The aims of the strategy are to identify victims and support them to safety and recovery; identify perpetrators and disrupt their activity; and address the conditions that foster trafficking and exploitation.*
24. *In developing the licensing regime, care has therefore been taken to balance the freedom of individuals to engage in legal employment and activities with the right of local authorities to exercise appropriate control and regulation of SEV that operate within their areas."*

Equality/Socio-economic

4.4 The Equality Act 2010 imposes duties on the Council:

- (a) 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."

- (b) The Council is a "Relevant Authority" for the purposes of Section 149(1) of the Equality Act 2010 ("Public sector equality duty") so:

"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 does not consider that the present proposals will have any significant impacts.

There are no SEVs in North Ayrshire and the Council is not aware of any proposal for a SEV, so the adoption of a Resolution will not prejudice any existing businesses or workers.

Adoption of the proposed Resolution would indicate the Council's recognition of the concerns stated in the two Scottish Government Policies referred to in the Report, and would advance the Council's efforts to

"eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];".

A resolution to license sexual entertainment venues will ensure control over the number of such venues and ensure that any venues are properly regulated and subject to licensing control and conditions. In turn this supports the Scottish Government's Equally Safe Strategy considered under Legal Implications, and will have benefits in terms of the protected characteristic of sex.

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 and the suitability of premises, helps progress towards one of the Priority Outcomes of the North Ayrshire Council Plan 2019-2024: "People and communities are safe".

Community Wealth Building

4.7 There are no Community Wealth Building issues.

5. Consultation

5.1 Consultation has been carried out as described above. If there are Licence Applications later these will be referred to the Committee after appropriate consultation 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

NORTH AYRSHIRE COUNCIL

21 August 2019

Licensing Committee

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

Purpose: To advise the Committee of:

- a) Hearings to be determined;
- b) Applications for the grant or renewal of licences and permits under the Civic Government (Scotland) Act 1982 and other statutes within the Committee's remit;
- c) Preliminary Consideration of possible Revocation or Suspension.

Recommendation:

- 1) That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which any of the matters in this Report are to be considered;
- 2) That the Committee consider and determine the matters before them.

1. Executive Summary

1.1 The Licensing Committee's remit is to exercise the Council's licensing functions. These functions arise under many statutes, mainly the Civic Government (Scotland) Act 1982. Depending on the legislation and the circumstances of each individual case, the Committee is entitled to grant, refuse, renew, vary, suspend and revoke Licences.

2. Background

2.1 The Committee's business under the 1982 Act is as follows:

Appendix A - Licences and Permits where Hearings have been convened

Appendix B - Applications for the grant or renewal of Licences and Permits

Appendix C - Preliminary Consideration of possible Revocation or Suspension

Exempt Information

2.2. The Committee will consider "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. The information is covered by one or more of the following categories of "Exempt Information" under Schedule 7A:

Paragraph 3: "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

Paragraph 6: "Information relating to the financial or business affairs of any particular person (other than the authority)."

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

Paragraph 15: "The identity of a Protected Informant" - where "ProtecteInformant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.

2.3. The details of the cases in the Appendices, with any relevant documents (such as letters from the Police or objectors) are in the background papers given to Committee Members and will be sent to the respective Applicants or Licence-Holders before the Meeting. The Schedules are excluded from the published Agenda under Local Government (Scotland) Act 1973, Section 50B(2) and (5). This has been done as the Clerk considers that the meeting is likely not to be open to the public while those Schedules are being considered, as they contain "Exempt Information".

2.4. The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).

2.5. For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment).

Paragraphs 14 or 15 could apply where it was alleged that there was criminal conduct or anti-social behaviour committed by or against a Licence-Holder or Applicant for a Licence, or where the Committee was told that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).

2.6. Accordingly, if a Resolution is made:

- (a) the publicly-accessible Minutes will exclude so much of the proceedings during which the public were excluded (Section 50C);
- (b) the Minutes will include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).

3. Proposals

3.1 It is proposed that the Committee consider and determine each of the listed cases in accordance with the required procedure.

4. Implications/Socio-economic Duty

Financial

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

Human Resources

4.2 None.

Legal

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

Equality/Socio-economic

4.4 Equality Act 2010 imposes duties on the Council:

Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council
"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

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

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

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];
- (b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;
- (c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it."

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

The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant impacts to be considered

Environmental and Sustainability

4.5 None

Key Priorities

4.6 An effective licensing system, for example monitoring the 'fit and proper' status of licence-holders, the safety of vehicles, and the suitability of premises, helps progress

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

Community Wealth Building

4.7 There are no Community Wealth Building issues.

5. Consultation

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

Andrew Fraser
Head of Democratic Services

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

Background Papers

None

Hearings (Appendix A)		
Case 1	Window Cleaner's Licence	WCL/089 (New)
Applicant	David Clarkson	
Case 2	Taxi Driver's Licence	TDL/00675
Licenceholder	William Hamilton	
Case 3	Taxi Driver's Licence	TDL/01998
Licenceholder	Paul Fleming	
Cases 4	Taxi Driver's Licence	TDL/00657 (Renewal)
Applicant	Ronald McCulloch	
Cases 5	Public Charitable Collection	PCC
Applicant	Homeless Veterans Project	
Cases 6	Public Entertainment Licence	PEL/614 (Temp)
Applicant	Martyn Henderson	
Premises	Kelburn Estate	

Applications for Licences/Renewal of Licences (Appendix B)

Type of Licence/Reference Number	Details of Applicant
PCC	Kilwinning Friends of Ayrshire Hospice
TDL/00792 (Renewal)	George Williams
TDL/02183 (New)	David Keggan
TDL/02179 (New)	Phyllis Middleton

Note

PCC Public Charitable Collection

TDL – Taxi Driver’s Licence

NORTH AYRSHIRE COUNCIL

21 August 2019

Licensing Committee

Title: APPENDIX C

Preliminary Consideration of possible Revocation or Suspension

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.

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

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

21 August 2019

Licensing Committee

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

Purpose: To inform the Committee of Landlord Registration matters.

Recommendation:

1. That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which this Report and its Schedules is to be considered;
2. For each Application or Review Proposal described in the Schedules: That the Committee should consider each case and
 - (a) decide whether or not the Application should be granted, or the Relevant Person should be removed from the Register;
 - (b) if appropriate, decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of any house, or to delegate authority to the Clerk to issue such a Notice.

1. Executive Summary

- 1.1 The Licensing Committee has delegated authority from the Council to administer the Council's functions under the Landlord Registration Scheme regulated by the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8.

2. Background

- 2.1 The persons named in the attached Schedules are Landlords who are either applying for Registration or who are registered. The Clerk has information suggesting that there may be a basis for the Committee concluding that the Landlords are not 'fit and proper', and that either the Application should be refused or the Registration already granted should be removed (each person has one Schedule). The rented houses concerned are listed in the Schedules. The Schedules are marked "Not for Publication".

2.2 The Committee will consider "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. The information is covered by one or more of the following categories of "Exempt Information" under Schedule 7A:

Paragraph 3: "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

Paragraph 6: "Information relating to the financial or business affairs of any particular person (other than the authority)."

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

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

2.3 The Schedules are in the background papers given to Committee Members and will be sent to the respective Landlords before the Meeting. The Schedules are excluded from the published Agenda under Local Government (Scotland) Act 1973, Section 50B(2) and (5). This has been done as the Clerk considers that the meeting is likely not to be open to the public while those Schedules are being considered, as they contain "Exempt Information".

2.4 The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).

2.5 For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment, or where a Landlord lets a house).

Paragraphs 14 or 15 could apply where it was alleged:

- (a) that there was anti-social behaviour committed by the Tenant of a rented house, involving crime or nuisance, or
- (b) that the state of repair of the rented house indicated that the Landlord had defaulted in his/her legal obligations, or

- (c) that the Landlord had defaulted in another obligation applying to Landlords, or
- (d) that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).

2.6. Accordingly, if a Resolution is made:

- (a) the publicly-accessible Minutes will exclude so much of the proceedings during which the public were excluded (Section 50C);
- (b) the Minutes will include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).

3. Proposals

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

4. Implications/Socio-economic Duty

Financial

- 4.1 There are possible financial implications in relation to any Licensing decision. If a RPN is made, the Benefit Authorities will be informed, so that the Landlord will no longer receive Housing Benefit or Universal Credit, if any is claimed for the house.

Human Resources

- 4.2 None.

Legal

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

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

For example:

- (a) the Tenant will continue to have whatever security of tenure he/she already had (and cannot be evicted for non-payment of rent where that non-payment is due to the RPN);
- (b) the Landlord will only be entitled to evict the Tenant if the First-Tier Tribunal grants an Eviction Order;
- (c) the Landlord will continue to have repairing obligations.

If a RPN is revoked by the Sheriff or Tribunal on appeal by the Landlord, the Tenant only has to pay 'arrears' of rent if, and to the extent, ordered. If a RPN is revoked by the Council then 'arrears' are not due (Section 95(3)).

Equality/Socio-economic

- 4.4 Equality Act 2010 imposes duties on the Council:

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

"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

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

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

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];
- (b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;
- (c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it."

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

The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant impacts to be considered.

Environmental and Sustainability

4.5 None

Key Priorities

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

Community Wealth Building

4.7 There are no Community Wealth Building issues.

5. Consultation

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

Andrew Fraser
Head of Democratic Services

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

Background Papers

None

