



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Cunninghame House,
Irvine.

4 June 2015

Licensing Committee

You are requested to attend a Meeting of the above mentioned Committee of North Ayrshire Council to be held in the Council Chambers, Cunninghame House, Irvine on **WEDNESDAY 10 JUNE 2015** at **10.00 a.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

1. Declarations of Interest

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

2. Minutes

The accuracy of the Minutes of the ordinary meeting of the Committee held on 20 May 2015 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

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

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

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

Submit report by the Chief Executive on Landlord Registration matters (copy enclosed).

5. Urgent Items

Any other items which the Chair considers to be urgent.

Licensing Committee

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

Chair:

Attending:

Apologies:

Meeting Ended:

Licensing Committee
20 May 2015

IRVINE, 20 May 2015 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Tom Marshall, Ian Clarkson, Grace McLean, Catherine McMillan and Donald Reid.

In Attendance

W. O'Brien, Solicitor (Licensing), K. Sharkey, Trainee Solicitor, J. Armstrong (Senior Clerical Assistant), A. Toal, Administrative Assistant and D. McCaw, Committee Services Officer (Chief Executive's Service).

Also In Attendance

Inspector Skimming and PC McLean (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies for Absence

Robert Barr, John Bruce and John Easdale.

1. Chair's Remarks

The Chair, in terms of Standing Order 9.3, agreed to vary the order of business to allow consideration of Agenda Item 5 (Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8) to take place immediately after consideration of Agenda Item 3 (Civic Government (Scotland) Act 1982: Licensing Matters) (Part A: Hearings).

2. Declarations of Interest

In terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors, Councillor Reid, due to his association as organiser of the event, declared a non-pecuniary interest in Agenda Item 4.1 (Public Charitable Collection PCC Kilwinning Community Events).

3. Minutes

The accuracy of the Minutes of the Ordinary Meeting of the Committee held on 25 March 2015 was confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

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

Submitted report by the Chief Executive on (a) Hearings to be determined; (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.

Part A: Hearings

4.1 Public Charitable Collection PCC: Kilwinning Community Events

The Committee considered an application for a Public Charitable Collection under Section 119 of the Civic Government (Scotland) Act 1982.

The Committee noted that the application was outside the Council's policy that street collections should not be permitted on a Thursday after 6pm. The Committee considered whether or not the particular case could be treated as an exception to the Policy.

The applicant, having been duly cited to attend, was present.

Decision

The Committee unanimously agreed, having regard to the information presented, (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 under Section 119(5) of the Civic Government (Scotland) Act 1982 on Thursday 5 November 2015 from 5pm to 8.30pm, subject to the Council's usual conditions.

4.2 Public Charitable Collection PCC: North Ayrshire Cancer Care MacMillan Nurses

The Committee considered an application for a Public Charitable Collection under Section 119 of the Civic Government (Scotland) Act 1982.

The Committee noted that the application was outside the Council's policy that street collections should not be permitted on a Sunday. The Committee considered whether or not the particular case could be treated as an exception to the Policy.

The applicant, having been duly cited to attend, was present.

Decision

The Committee unanimously agreed, having regard to the information presented, (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 under Section 119(5) of the Civic Government (Scotland) Act 1982 on Sunday 24 May 2015, subject to the Council's usual conditions.

4.3 Public Charitable Collection PCC: Royal British Legion Largs Branch

The Committee considered an application for a Public Charitable Collection under Section 119 of the Civic Government (Scotland) Act 1982.

The Committee noted that the application was outside the Council's policy that street collections should not be permitted on Sunday. The Committee considered whether or not the particular case could be treated as an exception to the Policy.

The applicant, having been duly cited to attend, was present.

Decision

The Committee unanimously agreed, having regard to the information presented, (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 under Section 119(5) of the Civic Government (Scotland) Act 1982 on (i) Saturday 29 and Sunday 30 August; and (ii) Saturday 5 and Sunday 6 September 2015, subject to the Council's usual conditions.

4.4 Public Charitable Collection PCC: Royal British Legion Largs Branch

The Committee considered an application for a Public Charitable Collection under Section 119 of the Civic Government (Scotland) Act 1982.

The Committee noted that the application was outside the Council's policy that street collections should not be permitted on Sunday. The Committee considered whether or not the particular case could be treated as an exception to the Policy.

The applicant, having been duly cited to attend, was present.

Decision

The Committee unanimously agreed, having regard to the information presented, (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 under Section 119(5) of the Civic Government (Scotland) Act 1982 on Saturday 4 and Sunday 5 July 2015, subject to the Council's usual conditions.

4.5 Taxi Driver's Licence TDL/01470 (Renewal) (1 year) - Kerr Chapman

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licenceholder. The representatives of Police Scotland then addressed the Committee setting out an observation in relation to the application.

Decision

The Committee unanimously agreed to refuse the application in terms of Paragraph 5(1)(c) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the grounds set out in Paragraph 5(3)(a)(ii) of the Schedule, that the applicant is not a fit and proper person to be the holder of a Taxi Driver's Licence.

4.6 Taxi Driver's Licence TDL/01885 (1 year) - Peter Brown

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee on the terms of a letter setting out an observation in relation to the application. Thereafter, the applicant addressed the Committee on the issues raised and responded to questions.

Decision

Councillor Reid, seconded by Councillor Clarkson, moved that the Committee grant the application for the period of 1 year.

As an amendment, Councillor Marshall, seconded by Councillor McLean, moved that the application be refused.

On a division, there voted for the amendment 3 and for the motion 3. On the casting vote of the Chair, the amendment was declared carried.

Accordingly, the Committee agreed to refuse the application in terms of Paragraph 5(1)(c) of Schedule 1 of the Civic Government (Scotland) Act 1982, on the grounds set out in Paragraph 5(3)(a)(ii) of the said Schedule, that the applicant is not a fit and proper person to be the holder of a Taxi Driver's Licence.

4.7 Taxi Driver's Licence TDL/01957 (1 year) - Matthew Lamont

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee on the terms of a letter setting out an observation in relation to the application. Thereafter, the applicant addressed the Committee on the issues raised and responded to questions.

Decision

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.

5. Exclusion of the Public

The Committee resolved in terms of Section 50A(4) of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public on the grounds indicated in terms of Paragraph 14 and 15 of Part 1 of Schedule 7A of the Act.

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

6.1 Application for Landlord Registration: Hugh Begbie

The Committee considered (a) an application for Registration; and (b) an application under Section 95 for revocation of the Notice issued earlier under Section 94 (commonly described as a 'Rent Penalty Notice') which had been continued from the meeting on 25 March 2015.

The applicant was not present. A written update was provided by the Development Officer (Housing).

The Committee unanimously agreed (a) to grant the Application for Registration; and (b) under Section 95(2), to revoke the Notice previously made under Section 94 (the Rent Penalty Notice).

6.2 Application for Landlord Registration: Alistair Mills

The Committee considered (a) an application for Registration; and (b) an application under Section 95 for revocation of the Notice issued earlier under Section 94 (commonly described as a 'Rent Penalty Notice').

The applicant was present. A written update was provided by the Development Officer (Housing).

The Committee unanimously agreed (a) to continue consideration of (i) the application for Registration; and (ii) the application for revocation of the Notice issued earlier under Section 94 (commonly described as a 'Rent Penalty Notice') to the next meeting on 10 June 2015; and (b) to receive a further update report from the Development Officer (Housing) to that meeting.

6.3 Application for Landlord Registration: Steven Riley

The Committee considered an application for Registration under Section 84.

The applicant and his legal representative were present.

The Committee considered that information under category (e) was relevant as to whether the applicant was a fit and proper person in terms of Section 85(4). The applicant and his legal representative indicated that they were willing to address each item listed under category (e) and proceeded to address the Committee on the issues raised and responded to questions.

The applicant and his legal representative then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

The Committee unanimously agreed to grant the Application for Registration.

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

Part B: Applications for Licences and Renewal of Licences

7.1 SHDL/176 (Renewal) Duskview Sales Ltd

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

7.2 TDL/00380 (New) David MacKie MacLeod

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.

7.3 TDL/00937 (New) Carolyn Ann Wright

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.

7.4 TDL/01295 (New) Paul Cumming

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

7.5 TDL/01963 (New) Ryan Kerr

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

7.6 TDL/01965 (New) Rashid Kamran

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

7.7 TDL/01968 (New) Alasdair Drummond

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

7.8 TDL/01969 (New) Colette McCreadie

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

Part C: Issues in Respect of Existing Licences

7.9 Street Trader Employee's Licence STL/E/260 - David Hastings

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

7.10 Taxi Driver's Licence TDL/00905 - Suzann McLaughlin

The Committee agreed, on the basis of the information presented, to issue a warning letter to the licenceholder on this occasion.

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

Submitted report by the Chief Executive on the continuation of the statutory process in connection with the Taxi Fare Review.

At its meeting held on 4 March 2015, the Committee approved the timetable for the conduct of the Taxi Fare Review. The timetable included the convening of a consultation meeting between the Committee and representatives from the taxi trade. This meeting took place on 21 April 2015. A possible draft tariff was attached as an appendix to the report.

The next stage in the review process is to advertise the proposed draft tariff for public consultation and for the Committee to consider any representations received and fix the new scale at its meeting on 12 August 2015.

The Committee agreed to (a) approve in draft the scale detailed below:-

"North Ayrshire Council

Maximum Taxi Fares effective from Monday 2 November 2015

Proposed new scale - as proposed by the Licensing Committee at their Meeting on 22 May 2015 under Section 17(4A)(b) of the Civic Government (Scotland) Act 1982.

Tariff 1 (Day)

All journeys starting or ending in the period 06.00 a.m. to 24.00 p.m. (midnight) (except where Tariffs 2 or 3 apply):

Initial Charge - For a distance not exceeding 1,320 yards ($\frac{3}{4}$ of a mile) (or waiting time not exceeding 10 minutes) - £2.60.

Additional Charge: Each additional $\frac{1}{17}$ of a mile (about 104 yards) or additional waiting time of up to 25 seconds - 10p.

Tariff 2 (Nights and Sundays)

All journeys (except where Tariff 3 applies):

- starting or ending in the period 24.00 p.m. (midnight) to 06.00 a.m., or
- starting or ending at any time on Sundays

Charges (Initial and Additional): Tariff 1 plus 10 per cent

The Tariff 2 charge applies as soon as the journey starts, and it does not change if part of the journey is inside the Night Period or Sunday and part outside.

Tariff 3 (Festive Periods)

All journeys starting or ending in the periods:

- between 21.00 on 24 December and 6.00 a.m. on 27 December
- between 21.00 on 31 December and 6.00 a.m. on 2 January

Double Tariff 1 Charges (Initial and Additional).

Extra Charges

1. If the vehicle starts by carrying more than 4 passengers, the charge is charged as Tariff 1, 2 or 3 (as appropriate) but with 50% added (Tariffs 4, 5 or 6). The higher Tariff applies until the hire ends, whether or not any of the passengers leave the vehicle earlier.
2. Soiling Charge - £35.

Notes

1. The fare scale applies only to journeys which end within North Ayrshire. Fares for journeys beyond the Council area should be agreed between the passenger and the driver before the start of the journey.
2. Luggage shall be carried free if it is of a size which can reasonably be accommodated in the car.
3. The metered charge is the maximum which can be charged. The driver can always charge less."

and (b) authorise the Chief Executive to advertise the draft scale for public consultation.

9. Urgent Items

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.

9.1 Pending Private Hire Car Operator's Licence - William Taylor

The applicant, having been duly cited to attend, was present.

The Solicitor (Licensing) provided information on a request in respect of the applicant's licensed private hire vehicle to (a) allow the display of a tartan livery strip; and (b) grant an exemption to the policy regarding the display of the North Ayrshire Council door crest, on the vehicle. Thereafter, the applicant addressed the Committee on the issues raised and responded to questions.

Decision

The Committee unanimously agreed to grant the request for (a) for the display of the tartan livery strip on the applicant's Private Hire Car vehicle; and (b) an exemption from Council policy regarding the display of the North Ayrshire Council door crests on the vehicle.

9.2 Matthew Jackson: Vehicle Specification in relation to Hybrid Electrical Vehicles

The Committee was advised of a request from Matthew Jackson, Sustainable Transport Officer to amend the vehicle specification to allow hybrid electrical vehicles on the fleet.

The Committee unanimously agreed (a) to amend the vehicle specification to allow hybrid electrical vehicles on the fleet; and (b) that the Chief Executive provide a report to the meeting on 10 June 2015 reviewing the current vehicle specification.

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

At its meeting held on 4 March 2015, the Committee agreed to (a) support the proposal to revoke the appointment of the Taxi Stance near the putting green at Invercloy, Isle of Arran; and (b) instruct the Solicitor (Licensing) to commence the statutory procedure for intimating the proposal.

The Committee, being satisfied that the statutory procedure had been completed, (a) revoked the appointment of the Taxi Stance near the putting green at Invercloy, Isle of Arran; and (b) requested the Chief Executive to make appropriate alterations to signs and road markings.

The meeting ended at 1.20 p.m.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

10 June 2015

Licensing Committee

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

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

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

1. Introduction

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

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

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

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

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

2. Current Position

Appendix A:

Licences where Hearings have been convened; and

Appendix B:

Applications for the grant or renewal of licences and permits.

3. Proposals

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

4. Implications

Financial Implications

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

Human Resource Implications

4.2 None

Legal Implications

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

Equality Implications

4.4 None

Environmental and Sustainability Implications

4.5 None

Implications for Key Priorities

4.6 None

5. Consultations

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

6. Conclusion

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

A handwritten signature in black ink, reading 'Elma Murray'.

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	Public Entertainment Licence	PEL/241 (New)
Applicant and Address	Irvine Bay Events James Watson 8H Barassie Bank Lane Troon KA10 6RW	
Premises	Nobel Business Park Ardeer Stevenston	
Hearing 2	Public Entertainment Licence	PEL/246 (Temp)
Applicant and Address	Ardrossan Whitlees Community Centre Juliana Gray 25 Harvey Gardens Ardrossan KA22 8LG	
Premises	Whitlees Community Centre 1 Carrick Place Ardrossan	
Date of Event	11.00am - 5.00pm Sunday 28th June 2015	
Hearing 3	Public Entertainment Licence	PEL/251 (Temp)
Applicant and Address	Kelburn Productions Ltd David Boyle Kelburn Fairlie KA29 0BE	
Premises	Kelburn Country Centre Fairlie	
Date of Event	Thursday 2nd July 2015 6.00pm - 1.00am Friday 3rd July 2015 noon - 3.00am Saturday 4th July 2015 9.00am - 4.00am Sunday 5th July 2015 9.00am - 3.00am Monday 6th July 2015 noon - 8.00pm	

Hearing 4	Second Hand Dealer's Licence	SHDL/176 (Renewal)
Licenceholder and Address	Duskview Sales Ltd Colin Jackson Duskview Cottage 3 Dunlop Road Barrmill KA15 1HN	
Premises	Duskview Garage Dunlop Road Barrmill	
Hearing 5	Taxi Driver's Licence	TDL/01295 (New)
Applicant and Address	Paul Cumming 25 McMillan Crescent Beith KA15 1BP	
Hearing 5	Taxi Driver's Licence	TDL/01963 (New)
Applicant and Address	Ryan Kerr 58 Overtoun Road Springside KA11 3BJ	
Hearing 6	Taxi Driver's Licence	TDL/01968 (New)
Applicant and Address	Alasdair Drummond 9 Milgarholm Avenue Irvine KA12 0EP	
Hearing 7	Taxi Driver's Licence	TDL/01969 (New)
Applicant and Address	Colette McCreadie 44 Hillpark Rise Kilwinning KA13 6QR	
Hearing 8	Taxi Driver's Licence	TDL/01965 (New)
Applicant and Address	Rashid Kamran 35A Witch Road Kilmarnock KA3 1EP	
Hearing 9	Public Charitable Collection	PCC (street)
Applicant and Address	Animal Support and Rescue 7 Laverock Avenue Hamilton ML3 7DD	
Date of Collection	1st - 4th July 2015	

Hearing 10	Public Charitable Collection	PCC (street)
Applicant and Address	Prince and Princess of Wales Hospice Paul McFarlane 4 Castleton Drive Newton Mearns Glasgow G77 5JU	
Date of Collection	20th and 21st July 2015	
Hearing 11	Public Charitable Collection	PCC (street)
Applicant and Address	South Ayrshire Autistic Society Sharon Stobbs 21 Ellisland Place Ayr KA7 3EG	
Date of Collection	Sunday 26th July 2015	

Applications for Licences/Renewal of Licences		
Type of Licence/Reference Number	Details of Applicant	Comments
TDL/01702	Barry Seymour 35 Anderson Drive Irvine KA12 9HY	Police observation received

NORTH AYRSHIRE COUNCIL

Agenda Item 4

10 June 2015

Licensing Committee

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

Purpose: To inform the Committee of Landlord Registration matters.

Recommendation:

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

1. Introduction

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

Exempt Information

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

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

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

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

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

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

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

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

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

- (a) that there was anti-social behaviour committed by the Tenant of a rented house, involving crime or nuisance, or
- (b) that the state of repair of the rented house indicated that the Landlord had defaulted in his legal obligations, or
- (c) that the Landlord had defaulted in another obligation applying to Landlords, or
- (d) that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).

- 1.11. Accordingly, if a Resolution is made the publicly-accessible Minutes:

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

- 1.12. Although the Schedules have not been published, in each case the individual Landlords have been given appropriate copies and notice of the Committee Meeting.

The Landlord Registration Scheme

- 1.13. The general rule is that a person wishing to let out a house must be Registered with the Council. Registration lasts 3 years. A person must re-apply within that time to remain Registered - Registration is not automatically renewed. The requirement to be Registered is subject to many exceptions, e.g. lets to family-members do not require Registration.
- 1.14. The Act specifies conditions which Landlords must meet. One of these conditions is that the Landlord is a 'fit and proper person' (Section 84(3)(c)). The considerations which are relevant to this question are set out by the Act.
- 1.15. Once a Landlord has been Registered, the Council is entitled to review the Registration. If not satisfied that the 'fit and proper' condition for Registration is met, the Council is obliged to remove Registration (Section 89).
- 1.16. If a Landlord rents a house without being Registered, or if Registration is removed, two things can happen:
 - (a) the Council may issue a Notice under Section 94 (often called a 'Rent Penalty Notice' or 'RPN'), meaning:
 - (i) the Tenant ceases to be liable for rent (but otherwise the Lease continues, so the Tenant remains in occupation and cannot be evicted for non-payment, and the Landlord remains responsible for repairs); and
 - (ii) any Housing Benefit stops being paid.
 - (b) the Landlord can be prosecuted for a criminal offence under Section 93(1). The penalty is a fine up to £50,000.

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

2. Current Position

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

3. Proposals

- 3.1. The Committee should consider each case and decide whether or not to grant the Application, or remove the Registration.
- 3.2. If the Committee decide to refuse an Application, or to remove a Registration, and if they are satisfied that the house is presently occupied by a Tenant, they should then decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice' 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 Implications

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

Human Resource Implications

- 4.2 None

Legal Implications

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

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

For example:

- (a) the Tenant will continue to have whatever security of tenure he already had (he cannot be evicted for non-payment of rent where that non-payment is due to the 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.

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 Implications

4.4 None

Environmental and Sustainability Implications

4.5 None

Implications for Key Priorities

4.6 None

Community Benefit Implications

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

5. Consultations

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

6. Conclusion

6.1 The Committee is invited to take the actions recommended.

A handwritten signature in black ink, reading 'Elma Murray' in a cursive style.

ELMA MURRAY
Chief Executive

Reference : PAT

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

Background Papers

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