

Cunninghame House,
Irvine.

17 November 2016

Licensing Committee

You are requested to attend a Meeting of the above mentioned Committee of North Ayrshire Council to be held in the Council Chambers, Cunninghame House, Irvine on **WEDNESDAY 23 NOVEMBER 2016** at **10.00 a.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

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

1. Declarations of Interest

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

2. Minutes (Page 5)

The accuracy of the Minutes of the meeting held on 2 November 2016 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

- 3. Civic Government (Scotland) Act 1982: Licensing Matters (Page 13)**
Submit report by the Chief Executive on hearings to be determined and applications for the grant or renewal of licences and permits, all in terms of the Civic Government (Scotland) Act 1982 (copy enclosed).
- 4. Caravan Sites and Control of Development Act 1960 (Page 23)**
Submit report by the Chief Executive on a request for the Variation of Conditions for Kames Caravan Site (Licence 08) (copy enclosed)
- 5. Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8 (Page 27)**
Submit report by the Chief Executive on Landlord Registration matters (copy enclosed).
- 6. Urgent items**
Any other items which the Chair considers to be urgent.

Licensing Committee

Sederunt: Ronnie McNicol (Chair)
Tom Marshall (Vice Chair)
Robert Barr
John Bruce
John Easdale
Grace McLean
Catherine McMillan
Alan Munro
Donald Reid
Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:

Licensing Committee
2 November 2016

Irvine, 2 November 2016 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Robert Barr, John Bruce, John Easdale, Grace McLean, Catherine McMillan, Donald Reid and Robert Steel.

In Attendance

W. O'Brien, Solicitor (Licensing) and A. Toal, Administrative Assistant; P. Kelly, Team Manager (Anti-Social Behaviour and Community Safety), E. Anderson, Team Manager (Private Sector Housing) and J. Wallace, Policy Officer (Private Sector Team); and M. Anderson, Committee Services Team Leader (Chief Executive's Service).

Also In Attendance

Inspector B. Skimming Sergeant G. Griffiths (Police Scotland).

Chair

Councillor Bruce in the Chair (Agenda Item 3, Hearings 1-3 and Urgent Hearing) and Councillor McNicol in the Chair (remaining Agenda Items).

Apologies for Absence

Tom Marshall and Alan Munro.

1. Declarations of Interest

In terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors, Councillor McNicol, due to his involvement with the groups in question, declared an indirect, non-pecuniary interest in Hearings 1 (North Ayrshire Citizens Advice Service) and 3 (Saltcoats Community Action Group) under Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters) and left the meeting for those items of business.

Councillor Easdale, as a Council representative on the Board of Ayrshire Citizen's Advice Service, declared an indirect, non-pecuniary interest in Hearing 1 under Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters) and took no part in the decision thereon.

Councillor Reid, due to his previous involvement with the group, declared an indirect, non-pecuniary interest in Hearing 1 and left the meeting for that item of business. Councillor Reid, as the applicant, also declared an interest in the Urgent Item (Kilwinning Community Events) which was considered under Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters), and took no part in the decision thereon.

2. Appointment of the Chair

In light of the Chair's declaration of interest in respect of Hearings 1 and 3 under Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters), nominations were invited to assume the Chair during consideration of Hearings 1-3 and an Urgent Item.

Councillor Barr, seconded by Councillor McLean, moved that Councillor Bruce be appointed as Chair. There being no amendment, the motion was declared carried.

3. Minutes

The accuracy of the Minutes of the meeting of the Committee held on 28 September 2016 was confirmed, and the Minutes were signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

4. Exclusion of 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 the following items of business 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 that described in Section 7A, Paragraph 6 ("Information relating to the financial business affairs of any particular person (other than the authority)") and Paragraph 14 ("Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime").

5. Chair's Remarks

The Chair agreed that a further hearing in terms Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters) be considered as a matter of urgency to allow the matter to be actioned without delay.

The Chair, in terms of Standing Order 9.3, also agreed to vary the order of business to allow consideration of Hearings 1 and 2 to be combined and the Urgent Item considered immediately following Hearing 2.

Councillors McNicol and Reid left the meeting at this point and Councillor Bruce assumed the Chair.

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

Part A: Hearings

6.1 Public Charitable Collections: North Ayrshire Citizens Advice Service and Promotion Kilwinning

The applicants, having been duly cited to attend, were present. Both applicants have applied for a Charitable Collection on Saturday 19 November 2016, which is outwith the Council policy. Promoting Kilwinning advised on an amendment to end time on their application to change from 6.00 p.m. to 7.00 p.m.

Members asked questions and received clarification from the applicants in respect of the applications.

The applicants then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

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

6.2 Urgent Item: Kilwinning Community Events

The applicant, having been duly cited to attend, was present. The applicant has applied for a Charitable Collection between 5.30 p.m. and 8.00 p.m. on 4 November 2016, which is outwith the Council policy.

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

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

Decision

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

Councillor Reid rejoined the meeting at this point.

6.3 Public Charitable Collection: Saltcoats Community Action Group

The applicant, having been duly cited to attend, was present. The applicant has applied for a Charitable Collection on 20 November 2016, which is outwith the Council policy.

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

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

Decision

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

Councillor Bruce then vacated the Chair. Councillor McNicol, rejoining the meeting at this point, resumed the Chair.

6.4 Street Trader Operator's Licence: STL/O/261 (Renewal Pending) - David Duncan McIntyre

The licence-holder, having been duly cited to attend, was present. Representatives of Police Scotland were also in attendance.

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

Members asked questions and received clarification from the licence-holder, representatives of Police Scotland and the Solicitor (Licensing).

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

Decision

Councillor Reid, seconded by Councillor Easdale, moved that the application for renewal be granted and that no further action be taken in terms of suspension on the licence. There being no amendment, the motion was declared carried.

Accordingly, the Committee agreed to (a) grant the application in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982; and (b) not to suspend the licence.

6.5 Taxi Driver's Licence TDL/01274 - Cameron Phillips

The licence-holder, having been duly cited to attend, was present, represented by a solicitor and accompanied by a family member. Representatives of Police Scotland were also in attendance. Representatives of Police Scotland were also in attendance.

The Solicitor (Licensing) set out the background to the Suspension Hearing as previously intimated in writing to the licence-holder. The representatives of Police Scotland then addressed the Committee on the terms of a letter setting out alleged grounds for suspension. The licence-holder's solicitor addressed the Committee with regard to CCTV footage of an incident, which was shown to Members of the Committee.

Members asked questions and received clarification from the licence-holder, his solicitor, representatives of Police (Scotland) and the Solicitor (Licensing).

The licence-holder, his solicitor and family member, and representatives of Police Scotland then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

Councillor Bruce, seconded by Councillor McLean, moved that the Committee continue consideration of this matter pending the outcome of legal proceedings.

As an amendment, Councillor Reid, seconded by Councillor McMillan, moved that the licence be suspended under Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982.

On a division, there voted for the amendment 2 and for the motion 6, and the motion was declared carried.

Accordingly, the Committee agreed to continue consideration of the matter to a future meeting, pending the outcome of legal proceedings.

6.6 Taxi Operator's Licence TL/400 (New) - Thomas Coombe

The Solicitor (Licensing) advised that this application had been withdrawn by the applicant.

Noted.

Part B: Applications for Licences/Renewal of Licences

6.7 TDL/02006 (New) - Anthony Healy

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.

The Committee adjourned for a short comfort break at 11.40 a.m., reconvening at 11.50 a.m.

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

7.1 R. Mc

The registered person, having been cited to attend, was present.

The Team Manager (Private Sector Housing) and the registered person addressed the Committee on the issues raised.

Members asked questions and received clarification from the registered person and from officers.

Decision

Councillor Reid, seconded by Councillor Bruce, moved that no further action be taken with regard to this matter. There being no amendment, the motion was declared carried.

Accordingly, the Committee agreed to take no further action with regard to this matter.

7.2 M.N.

The applicant, having been cited to attend, was not present.

The Team Manager (Anti-Social Behaviour and Community Safety) addressed the Committee on the issues raised.

The Committee unanimously agreed to consider the application in the applicant's absence.

Members asked questions and received clarification from officers.

Decision

Councillor Reid, seconded by Councillor Easdale, moved that the Committee continue consideration of the Application for Registration under Section 83 but serve a Rent Penalty Notice under Section 94 in respect of the house which was the main subject of discussion.

As an amendment, Councillor McLean, seconded by Councillor McMillan, moved that the Committee agree to refuse to enter the applicant in the register and issue a Rent Penalty Notice in respect of all of the houses occupied by a tenant.

On a division, there voted for the amendment 2 and for the motion 5, and the motion was declared carried.

Accordingly, the Committee agreed (a) to continue consideration of the Application for Registration under Section 83, and (b) to serve a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of the house which was the main subject of discussion (there were no Notices served in respect of the other houses included in the Application).

7.3 L.C.

The registered person, having been cited to attend, was not present, but was represented by his agents.

The Team Manager (Private Sector Housing) and the registered person's agents addressed the Committee on the issues raised.

Decision

The Committee unanimously agreed to take no further action with regard to this matter.

The meeting ended at 12.40 p.m.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

23 November 2016

Licensing Committee

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

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

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

1. Executive Summary

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

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

- 1.4. The types of "Exempt Information" which may arise during Committee business include those described in Paragraphs 14 and 15 of that Schedule:
 14. "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."
 15. "The identity of a Protected Informant" (where "Protected Informant" is defined in Part III to mean a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.)
- 1.5. Such a Resolution, once made, continues until the end of the Meeting unless the Committee earlier Resolves to revoke it.

2. Background

Appendix A:

Licences where Hearings have been convened;

Appendix B:

Applications for the grant or renewal of licences and permits

Appendix C:

Issues in respect of existing licences.

3. Proposals

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

4. Implications

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

5. Consultation

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



ELMA MURRAY
Chief Executive

Reference :

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

Background Papers

None

Hearings		
Hearing 1	Public Charitable Collection	
Applicant and Address	Royal British Legion (Largs Branch) Stuart Rumble 2C Kelvon Street Largs KA30 9BA	
Hearing 2	Public Charitable Collection	
Applicant and Address	Scottish Maritime Museum Trust Fiona Carmichael 6 Gottries Road Irvine KA12 8QE	
Hearing 3	Public Charitable Collection	
Applicant and Address	West Kilbride Festival Committee Mary Cahill 1 Woodside West Kilbride KA23 9JB	
Hearing 4	Taxi Driver's Licence	TDL/00188 (New)
Applicant and Address	John Monaghan 55B New Street Stevenston KA20 3HD	
Hearing 5	Taxi Driver's Licence	TDL/02006 (New)
Applicant and Address	Anthony Nealy 1/L 97 Nelson Street Largs KA30 9JF	
Hearing 6	Taxi Driver's Licence	TDL/01418 (Renewal)
Applicant and Address	Mary Myra Craig 18 Millburn Terrace Girdle Toll Irvine KA11 2BL	

Applications for the grant/renewal of licences	
STL/E/274 (New)	Sharon Serapiglia 75 Dundonald Crescent Auchengate Irvine KA11 5AX
STL/O/445 (New)	Alexander Muir 51 Eglinton Place Kilwinning KA13 6BT
TDL/00190 (New)	Raymond Henry Potts 20C Wilson Street Beith KA15 2BG
TDL/00192 (New)	Thomas Paul Foy 26 Davaar Road Saltcoats KA21 6HB
TDL/01168 (Renewal)	Paul William McPherson 10 Birkscairn Place Irvine KA11 1ED
TDL/01702 (New)	Barry Seymour 57 Lamont Drive Irvine KA12 8HD
TDL/01876 (Renewal)	Alessandro Gavazzeni 132 Frew Terrace Irvine KA12 9EH
TDL/01885 (New)	Peter Brown 211 Glasgow Street Ardrossan KA22 8JT
TDL/01921 (New)	Kenneth Kilmurry 202C Livingstone Terrace Irvine KA12 9JT
TDL/02007 (New)	Robert James Dickie 5 MacAllan Place Lawthorn

	Irvine KA11 2DN
TL/047 (Partnership Amendment)	Cyril Brown 76 Scott Road Irvine KA12 8EY and Ian McKerracher 15 Turnberry Wynd Irvine KA11 4DP

Issues in respect of Existing Licences		
Taxi Licence (Operator)	Philip Gaw 10 Park View Ardrossan KA22 7BU	TL/037
Street Trader's Licence (Operator)	Neil McIntyre 18 Dalgarven Wynd Kilwinning	STL/O/414

NORTH AYRSHIRE COUNCIL

Agenda Item 4

23 November 2016

Licensing Committee

Title: **Caravan Sites and Control of Development Act 1960**

Purpose: To advise the Committee of a request for the Variation of Conditions for Kames Caravan Site (Licence 08).

Recommendation: That the Committee determine the Application.

1. Executive Summary

- 1.1 The Council as Local Authority regulates Caravan Sites under the Caravan Sites and Control of Development Act 1960 (as amended). At present a Site Licence is perpetual, there is no 'fit and proper' test, and the Licence is free of charge. The system will be substantially changed by the Housing (Scotland) Act 2014, which has not yet been commenced by Order. The 2014 Act introduces a new type of Licence, which will last three years and be renewable. The 2014 Act applies a 'fit and proper' test to the Applicant, and the Licence will have a fee.
- 1.2 Under the 1960 Act, the Local Authority is entitled to attach conditions to Site Licences (Section 5). The Council has power to alter conditions attached to Site Licences (Section 8). Breach of conditions is a criminal offence (Section 9).
- 1.3 In making and varying Conditions, the Council is obliged to have regard to any standards set by the Minister (Section 5(6) and 8(4)). Such standards are contained in Scottish Development Department Circular 17-1990, which describes "Model Standards". The Circular states separate Model Standards for:
 - (a) Residential Sites
 - (b) Holiday Sites
 - (c) Touring Caravan Sites

1.4 This distinction is reflected in the Licences granted:

- (a) Residential Sites: "sites in regular, year-round use and occupied by caravans permanently placed on the site throughout the year";
- (b) Holiday Sites: "(i) sites open only for the summer months and perhaps also for part of the spring and autumn seasons; and (ii) those sites open during the winter for holiday purposes; on which (in either case) caravans are, for the most part, permanently placed throughout the season";
- (c) Touring Caravan Sites: "caravans which are not permanently placed on the site throughout the year or the holiday season".

2. Background

2.1 In 1982 Cunninghame District Council granted a Site Licence for Kames Caravan site, Millport (NAC ref. C08). The Licence Conditions include

"two parking spaces shall be provided adjacent to the entrance and within the site to the satisfaction of the District Council's Planning Department." (Condition 24).

That Licence was transferred to George Gourlay in 1999, who has now requested a Variation of that Site Licence so as to allow each of the five caravans an allocated parking bay next to their caravan.

2.2 Section 8(1) of the 1960 Act is:

"The conditions attached to a Site Licence may be altered at any time (whether by the variation or cancellation of existing conditions, or by the addition of new conditions, or by a combination of any such methods) by the local authority, but before exercising their powers under this subsection the local authority shall afford to the holder of the licence an opportunity of making representations."

3. Proposals

3.1 The Committee should consider any representations made by the Licence Holder and determine the Application.

- 3.2 The Committee are obliged to have regard to the Model Standards set by the S.D.D.. The relevant part of the Model Standards is

"Car Parking

One car only may be parked between adjoining caravans provided that the doors to the caravan are not obstructed. Suitably surfaced parking spaces should be provided where necessary to meet the additional requirements of the occupants and their visitors. ..." (Model Standard 10).

Before the Committee decide to permit parking between caravans, they should be satisfied that this would not obstruct access to caravans. The proposal here is to park in the spaces between the narrow side of one caravan and the facing narrow side of the next.

- 3.3 Unlike other licensing systems, with a proposal to vary a Site Licence there is no publication or requirement for third-party consultation. The Council have advised the Scottish Fire and Rescue Service of the variation proposal. They have contacted the Applicant concerning his duties under the Fire (Scotland) Act 2005 and would expect to deal with the situation under that legislation, as opposed to the legislation under which the Site Licence was granted.
- 3.4 If the Licence Variation is granted, the Licence Holder can only use the site so far as consistent with the conditions of Planning Permission, so the Licence Holder may require to apply also for Variation to the Planning Authority.

4. Implications

Financial:	None
Human Resources:	None
Legal:	When the Council makes a decision about a proposal to alter the conditions, the Licence Holder may appeal to the Sheriff within 28 days.
Equality:	None
Environmental & Sustainability:	None
Key Priorities:	None
Community Benefits:	None

5. Consultation

5.1 No consultations are appropriate.

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

ELMA MURRAY
Chief Executive

Reference : WOB/PAT

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

Background Papers

None

NORTH AYRSHIRE COUNCIL

Agenda Item 5

23 November 2016

Licensing Committee

Title:	Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8.
Purpose:	To inform the Committee of Landlord Registration matters.
Recommendation:	<p>That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which this Report and its Schedules is to be considered;</p> <p>For each Application or Review Proposal described in the Schedules: That the Committee should consider each case and:</p> <ul style="list-style-type: none">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 have delegated authority from the Council to administer the Council's functions under the Landlord Registration Scheme regulated by the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8.
- 1.2 The persons named in the attached Schedules are either:
 - Applicants for Registration, or
 - already Registered under the 2004 Act, or
 - are not Registered.

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

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

For convenience, in this Report:

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

Exempt Information

- 1.3 Landlord Registration cases are referred to the Committee using two documents:
 - (a) this Report, and
 - (b) one or more Schedules.
- 1.4 This is done because the Committee may consider that the cases involve "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A, so that information about the cases should not be disclosed to the public. The Committee are entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).
- 1.5 Since the Committee have frequently made the necessary Resolution in the past, it is permissible for future Schedules to be withheld from publication. Although a Committee's Agenda and connected Reports are generally to be made public (Section 50B(1)), publication of the Schedules to this Report (but not the Report itself) has been withheld under Section 50B(2), as the proper officer has the opinion that they relate to items during consideration of which the Meeting is likely not to be open to the public, i.e. that the Committee are likely to make a Resolution to exclude the public during consideration of the Schedules.

- 1.6. Accordingly, individual cases do not appear on the public agenda. The Report operates as a 'front page', and only appears once, regardless of how many individual cases are being referred to the Committee. The Report is general and sets out the legal structure. The Schedules detail the alleged facts of the particular cases and how the legislation appears to apply.
- 1.7. Depending on the circumstances of the individual case, the Schedules contain:
- (a) information about the Landlord's criminal convictions or their prosecution; and/or
 - (b) information that suggests that he is not a 'fit and proper' person by reason of his conduct in relation to alleged Anti-Social Behaviour; and/or
 - (c) information that suggests that he is not a 'fit and proper' person by reason of his breach of the legal obligations on Landlords; and/or
 - (d) information about conduct involving nuisance or crime (whether or not there have been any criminal Court proceedings).
- 1.8. The information is covered by one or other or both of the following categories of "Exempt Information" under Schedule 7A:
- Paragraph 14: "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."
- Paragraph 15: "The identity of a Protected Informant."
- 1.9. "Protected informant" is defined in Part III of the Schedule and means:
- "a person giving the Local Authority information which tends to show that—
- (a) a criminal offence,
 - (b) a breach of statutory duty,
 - (c) a breach of planning control, within the meaning of section 123(1) of the Town and Country Planning (Scotland) Act 1997, or
 - (d) a nuisance,
- has been, is being or is about to be committed".

- 1.10. For example, Paragraph 15 would apply where it was alleged:
- (a) that there was anti-social behaviour committed by the Tenant of a rented house, involving crime or nuisance, or
 - (b) that the state of repair of the rented house indicated that the Landlord had defaulted in his legal obligations, or
 - (c) that the Landlord had defaulted in another obligation applying to Landlords, or
 - (d) that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).
- 1.11. Accordingly, if a Resolution is made the publicly-accessible Minutes:
- (a) must exclude so much of the proceedings during which the public were excluded (Section 50C); but
 - (b) shall include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).
- 1.12. Although the Schedules have not been published, in each case the individual Landlords have been given appropriate copies and notice of the Committee Meeting.

The Landlord Registration Scheme

- 1.13. The general rule is that a person wishing to let out a house must be Registered with the Council. Registration lasts 3 years. A person must re-apply within that time to remain Registered - Registration is not automatically renewed. The requirement to be Registered is subject to many exceptions, e.g. lets to family-members do not require Registration.
- 1.14. The Act specifies conditions which Landlords must meet. One of these conditions is that the Landlord is a 'fit and proper person' (Section 84(3)(c)). The considerations which are relevant to this question are set out by the Act.
- 1.15. Once a Landlord has been Registered, the Council is entitled to review the Registration. If not satisfied that the 'fit and proper' condition for Registration is met, the Council is obliged to remove Registration (Section 89).

1.16. If a Landlord rents a house without being Registered, or if Registration is removed, two things can happen:

- (a) the Council may issue a Notice under Section 94 (often called a 'Rent Penalty Notice' or 'RPN'), meaning:
 - (i) the Tenant ceases to be liable for rent (but otherwise the Lease continues, so the Tenant remains in occupation and cannot be evicted for non-payment, and the Landlord remains responsible for repairs); and
 - (ii) any Housing Benefit stops being paid.
- (b) the Landlord can be prosecuted for a criminal offence under Section 93(1). The penalty is a fine up to £50,000.

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

2. Background

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

3. Proposals

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

4. Implications

Financial:	If a RPN is issued, the Housing Benefit Office will be informed, so that the Landlord will no longer receive Housing Benefit.
Human Resources:	None
Legal:	<p>Where the Council makes any decision to refuse or revoke Registration, to make a RPN, or to refuse to recall a RPN, the Landlord may appeal to the Sheriff or the First Tier Tribunal.</p> <p>If the Council issues a RPN, only the Tenant's liability to pay rent will cease. The other rights and obligations of the Lease will be unaffected: Section 94(3) & (8).</p> <p>For example:</p> <ul style="list-style-type: none"> (a) the Tenant will continue to have whatever security of tenure he already had (he cannot be evicted for non-payment of rent where that non-payment is due to the RPN); (b) the Landlord will only be entitled to evict the Tenant if the Sheriff grants a Decree; (c) the Landlord continues to have repairing obligations. <p>If a RPN is revoked by the Sheriff or Tribunal on appeal by the Landlord, the Tenant only has to pay 'arrears' of rent if, and to the extent, ordered. If a RPN is revoked by the Council then 'arrears' are not due (Section 95(3)).</p>
Equality:	None
Environmental & Sustainability:	None
Key Priorities:	None
Community Benefits:	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. Consultation

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



ELMA MURRAY
Chief Executive

Reference : WO'B/PAT

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

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