

Cunninghame House,  
Irvine.

5 January 2017

## **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 11 JANUARY 2017** 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 14 December 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 15)**  
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. Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8 (Page 25)**  
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.

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## Licensing Committee

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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  
14 December 2016

**IRVINE, 14 December 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, Tom Marshall, Catherine McMillan and Donald Reid.

**In Attendance**

W. O'Brien, Solicitor (Licensing), K. Sharkey, Solicitor (Contracts and Licensing), D. Robertson, Enforcement Officer and A. Toal, Administrative Assistant; E. Anderson, Team Manager (Private Sector Housing) and B. Ferry, Policy Officer (Private Sector) (Place); and M. Anderson, Committee Services Team Leader (Chief Executive's Service).

**Also In Attendance**

Inspector B. Skimming, Detective Sergeant E. Bell, Sergeant G. Griffiths and Police Constable A. Kerr (Police Scotland).

**Chair**

Councillor McNicol in the Chair.

**Apologies for Absence**

Grace McLean, Alan Munro and Robert Steel.

**1. Declarations of Interest**

In terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors, Councillor Barr, as a relative of the applicant, declared an interest in Hearing 8 (Kilmurry) under Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters), left the meeting for that item of business and took no part in the decision thereon.

**2. Order of Business**

The Chair, in terms of Standing Order 9.3, agreed to vary the order of business to allow consideration of Hearing 7 prior to Hearing 6, and Hearing 11 prior to Hearing 10, all under Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters).

The Chair further agreed that two further cases be considered as urgent items in terms Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters) immediately following consideration of Appendix C of that Item, and that Agenda Item 5 (Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8) be considered prior to Agenda Item 4 (Public Charitable Collections - Civic Government (Scotland) Act 1982).

### **3. Minutes**

The accuracy of the Minutes of the meeting of the Committee held on 23 November 2016 was confirmed, and the Minutes were signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

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

#### **Part A: Hearings**

#### **5.1 Street Trader Operator's Licence: STL/O/445 (New) - Alexander Muir**

The Committee, at its meeting on 23 November 2016, agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The applicant, having been duly cited to attend, was not present or represented. Representatives of Police Scotland were in attendance.

The Committee considered the background information provided, including the terms of a letter from Police Scotland setting out an objection in relation to the application.

#### **Decision**

Councillor Reid, seconded by Councillor Barr, moved that the application be refused in terms of Paragraph 5(1)(c) of Schedule 1 to the Civic Government (Scotland) Act 1982 on the ground that the applicant was not a fit and proper person (Paragraph 5(3)(a)(ii)). There being no amendment, the motion was declared carried.

#### **5.2 Taxi Driver's Licence: TDL/00192 (New) - Thomas Foy**

The Committee, at its meeting on 23 November 2016, agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

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

Members asked questions and received clarification from the applicant and representatives of Police Scotland. The applicant also provided confirmation of his new address.

## **Decision**

Councillor Easdale, seconded by Councillor McMillan, moved that the application be granted in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year. There being no amendment, the motion was declared carried.

### **5.3 Taxi Driver's Licence: TDL/01168 (Renewal) - Paul McPherson**

The Committee, at its meeting on 23 November 2016, 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 licence holder, having been duly cited to attend, was not present or represented. Representatives of Police Scotland were in attendance.

The Committee was advised of the content of a written submission provided by the applicant in his absence. The representatives of Police Scotland addressed the Committee on the terms of a letter setting out an observation in relation to the application.

## **Decision**

Councillor Easdale, seconded by Councillor McMillan, moved that the application be granted in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

As an amendment, Councillor Marshall, seconded by Councillor Barr, moved that the application be refused in terms of Paragraph 5(1)(c) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the ground that the applicant was not a fit and proper person (Paragraph 5(3)(a)(ii)).

On a division, there voted for the amendment 3 and for the motion 2 and 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 ground that the applicant was not a fit and proper person (Paragraph 5(3)(a)(ii)).

### **5.4 Taxi Driver's Licence: TDL/01885 (New) - Peter Brown**

The Committee, at its meeting on 23 November 2016, agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The applicant, having been duly cited to attend, was present. Representatives of 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 objection in relation to the application and made reference to a second letter containing details of 'protected' convictions in terms of the Rehabilitation of Offenders Act 1974 (Exclusions and Exemptions) (Scotland) Amended Order 2015.

Members asked questions and received clarification from the applicant, representatives of Police Scotland and the Solicitor (Licensing). In response to questions, the applicant circulated written medical evidence in respect of his application, together with information on his current employment and qualifications.

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

## **Decision**

Councillor Easdale, seconded by Councillor Reid, moved that the application be granted in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

As an amendment, Councillor McMillan, seconded by Councillor Barr, moved that the application be refused in terms of Paragraph 5(1)(c) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the ground that the applicant was not a fit and proper person (Paragraph 5(3)(a)(ii)).

On a division, there voted for the amendment 3 and for the motion 3 and, 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 ground that the applicant was not a fit and proper person (Paragraph 5(3)(a)(ii)).

Councillor Bruce joined the meeting at this point.

## **5.5 Taxi Driver's Licence: TDL/00190 (New) - Raymond Henry Potts**

The Committee, at its meeting on 23 November 2016, agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The applicant, having been duly cited to attend, was present and accompanied by his partner. Representatives of Police Scotland were also in attendance.

The representatives of Police Scotland addressed the Committee on the terms of a letter setting out an objection in relation to the application.



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

## **Decision**

Councillor Easdale, seconded by Councillor Marshall, moved that the application be granted in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year. There being no amendment, the motion was declared carried.

### **5.6 Taxi Driver's Licence: TDL/01876 (Renewal) - Alessandro Sirio Gavazzeni**

The Committee, at its meeting on 23 November 2016, 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 licence holder, having been duly cited to attend, was not present or represented. Representatives of Police Scotland were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder. The Committee was also advised of the content of a written submission provided by the licence holder, which confirmed the licence holder's new address.

## **Decision**

The Committee unanimously agreed to grant the application be granted in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The representatives of Police Scotland withdrew from the meeting at this point.

### **5.7 Street Trader Employee Licence: STLE/274 (New) - Sharon Serapiglia**

The Committee, at its meeting on 23 November 2016, agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

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

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

Members asked questions and received clarification from the applicant, her representative and the Solicitor (Licensing).

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

## **Decision**

Councillor Easdale, seconded by Councillor Marshall, moved that the application be granted in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982. There being no amendment, the motion was declared carried.

Councillor Barr withdrew from the meeting at this point.

### **5.8 Taxi Driver's Licence: TDL/01921 (New) - Kenneth Kilmurry**

The Committee, at its meeting on 23 November 2016, agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

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

Members asked questions and received clarification from the applicant.

## **Decision**

Councillor Bruce, seconded by Councillor Easdale, moved that the application be granted in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year. There being no amendment, the motion was declared carried.

Councillor Barr rejoined the meeting at this point.

### **5.9 Taxi Driver's Licence: TDL/02007 (New) - Robert James Dickie**

The Committee, at its meeting on 23 November 2016, agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

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

Members asked questions and received clarification from the applicant.

## **Decision**

Councillor Barr, seconded by Councillor McMillan, moved that the application be granted in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year. There being no amendment, the motion was declared carried.

### **5.10 Public Entertainment and Indoor Sports Licences: PEL/457 and ISEL/017 - KA Leisure Limited**

The applicant, having been duly cited to attend, was represented by an officer from KA Leisure Limited.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant and made reference to a proposed condition in respect of publicly accessible toilet provision.

Members asked questions and received clarification from the applicant and the Solicitor (Licensing). Discussion took place on the possibility of the applicant making application for a variation to extend the operation of the licence to 1.00 a.m.

## **Decision**

The Committee unanimously agreed to grant the applications, subject to a condition that "no part of the premises (comprising the Town House and Portal Sports Centre together) shall be open to the public at any time where there is not adequate toilet provision which is easily accessible by all users of that part." There being no amendment, the motion was declared carried.

### **5.11 Street Trader Operator's Licence: STL/O/414 - Neil McIntyre**

The Committee, at its meeting on 23 November 2016, agreed, on the basis of the information presented, to proceed to a Suspension Hearing in terms of Paragraph 11(7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The licence holder, having been duly cited to attend, was present and represented. Two complainers 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 Enforcement Officer addressed the Committee on the issues raised in a memorandum, statements from the complainers and a statement from the licence holder. The complainers and the licence holder also addressed the Committee on the issues raised.

Members asked questions and received clarification from the officers, licence holder and complainers.

The licence holder and complainers then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

## **Decision**

Councillor Easdale, seconded by Councillor Bruce, moved the Committee (a) find that the ground of Suspension stated in Paragraph 11(2)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 (that the holder of the licence is not or is no longer a fit and proper person to hold the licence) was establishment, and that the Licence STL/O/414 should be suspended; (b) fix the period of Suspension as one calendar month, in terms of Paragraph 11(11); and (c) agree that, given the circumstances of the case, the Suspension should take immediate effect, in terms of Paragraph 11(10). There being no amendment, the motion was declared carried.

In terms of Standing Order 5.7, the Chair adjourned the meeting for a short comfort break. The meeting reconvened with the same Members and officers present and in attendance, with the exception of Councillor Easdale and the Enforcement Officer, who left the meeting at this point.

## **Part B: Applications for the Grant/Renewal of Licences**

### **5.12 Taxi Driver's Licence: TDL/02009 (New) - Alan Frew**

The Committee unanimously agreed to grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

## **Part C: Issues in Respect of Existing Licences**

### **5.13 Taxi Driver's Licence: TDL/01780 - John Swindle**

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. Urgent Items**

### **6.1 Public Charitable Collection: Irvine Meadow Football Club**

The Committee was advised that the applicant has applied for a Charitable Collection on Wednesday 28 December 2016, which is outwith the Council policy.

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

### **6.2 Taxi Driver's 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.

## **7. Landlord Registration under the Anti Social Behaviour etc. (Scotland) Act 2004, Part 8**

### **7.1 W.B.**

The registered person, having been cited to attend, was not present or represented.

The Team Manager (Private Sector Housing) and B. Ferry, Policy Officer (Private Sector) addressed the Committee on the issues raised.

Members asked questions and received clarification from the officers.

## **Decision**

The Committee unanimously agreed (a) under Section 89 to remove the Registered Persons from the Register; (b) to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of the property; and (c) to delegate to the Clerk, the Solicitor (Licensing) or any Solicitor engaged in Landlord Registration to revoke the Rent Penalty Notice should the required repairs be undertaken.

### **8. Public Charitable Collections - Civic Government (Scotland) Act 1982**

Submitted report by the Chief Executive on the law and current policy in terms of Public Charitable Collections.

The Committee was invited to consider reviewing the Police. Section 3.2 of the report provided suggestions as to how the policy might be amended.

The Committee agreed to amend the Policy on Public Charitable Collections to read as follows:-

"(a) House-to-House Collections are only permitted in the period Monday-Friday, in the period from 9.00 a.m. to 7.30 p.m.;

(b) Street Collections are only permitted on Saturday, in the period from 9.00 a.m. to 6.00 p.m.;

(c) neither is permitted on a Sunday;

(d) only one of each is allowed on a particular day in a particular town, but the following Collections are not counted towards the 'one of each' total:-

- collections during December, or
- collections carried out by or for a community group within 14 days before a local event (such as Largs Viking Festival), or
- collections conducted by Exempt Promoters."

The Meeting ended at 1.25 p.m.



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## **NORTH AYRSHIRE COUNCIL**

### **Agenda Item 3**

**11 January 2017**

#### **Licensing Committee**

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

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

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

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#### **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

<b>Financial:</b>	There are possible financial implications in relation to the refusal of any application.
<b>Human Resources:</b>	None
<b>Legal:</b>	There are possible legal implications in relation to the refusal of any application.
<b>Equality:</b>	An "Equality Impact Assessment" is not necessary as the Equality Act 2010 is not a consideration in making a Licensing decision.
<b>Environmental &amp; Sustainability:</b>	None
<b>Key Priorities:</b>	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".
<b>Community Benefits:</b>	Not applicable, as the Report does not relate to tendering or procurement exercises.

#### 5. Consultation

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



ELMA MURRAY  
Chief Executive

Reference : PAT

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

#### Background Papers

None



## Hearings

<b>Hearing 1</b>	<b>Taxi Driver's Licence</b>	<b>TDL/00233 (New)</b>
Applicant and Address	Piotr <b>Stachowski</b> 131 Livingston Terrace Irvine KA12 9ER	
<b>Hearing 2</b>	<b>Taxi Driver's Licence</b>	<b>TDL/00238 (New)</b>
Applicant and Address	Bryan John <b>Lindsay</b> 66D Gottries Road Irvine KA12 8EP	
<b>Hearing 3</b>	<b>Taxi Driver's Licence</b>	<b>TDL/00675 (New)</b>
	William <b>Hamilton</b> 32 F4 Canal Street Saltcoats KA21 5HZ	
<b>Suspension Hearing 4</b>	<b>Taxi Driver's Licence</b>	<b>TDL/01780</b>
Licenceholder and Address	John <b>Swindle</b> 29 The Braes Saltcoats KA21 5EP	
<b>Hearing 5</b>	<b>Public Entertainment and Indoor Sports Licence</b>	<b>PEL/457 and ISEL/017</b>
Licenceholder and Address	<b>K A Leisure Ltd</b> Magnum Leisure Centre Harbourside Irvine KA12 8PP	The Portal & Townhouse 66 High Street Irvine KA12 0AZ



**Applications for the grant/renewal of licences**

**TDL/00240 (New)** Christopher John **Kyle**  
30 Fleming Crescent  
Saltcoats  
KA21 6EG

**TDL/02011 (New)** Kevin James **Marting**  
7 Arran Court  
Stevenston  
KA20 3JF



**Issues in respect of Existing Licence**

**TDL/01649**

Thomas **Bagan**  
68 Peden Avenue  
Dalry  
KA24 4BD





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## **NORTH AYRSHIRE COUNCIL**

### **Agenda Item 4**

**11 January 2017**

#### **Licensing Committee**

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<b>Title:</b>	<b>Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8</b>
<b>Purpose:</b>	To inform the Committee of Landlord Registration matters.
<b>Recommendation:</b>	<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"><li>a. decide whether or not the Application should be granted, or the Relevant Person should be removed from the Register;</li><li>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.</li></ul>

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#### **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

<b>Financial:</b>	If a RPN is issued, the Housing Benefit Office will be informed, so that the Landlord will no longer receive Housing Benefit.
<b>Human Resources:</b>	None
<b>Legal:</b>	<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) &amp; (8).</p> <p>For example:</p> <ul style="list-style-type: none"> <li>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);</li> <li>b. the Landlord will only be entitled to evict the Tenant if the Sheriff grants a Decree;</li> <li>c. the Landlord continues to have repairing obligations.</li> </ul> <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>
<b>Equality:</b>	None
<b>Environmental &amp; Sustainability:</b>	None
<b>Key Priorities:</b>	None
<b>Community Benefits:</b>	<p>Preventing unfit Landlords from operating may contribute to the wellbeing of the community.</p> <p>Preventing Housing Benefit being paid to unregistered Landlords safeguards public funds.</p>

## **5. Consultation**

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



ELMA MURRAY  
Chief Executive

Reference : PAT

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

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