

EAST AYRSHIRE COUNCIL

**LOCAL GOVERNMENT LICENSING PANEL
7 MAY 2009**

LICENSING ARRANGEMENTS FOR WINDOW CLEANERS

Report by Depute Chief Executive/Executive Director of Corporate Support

1. PURPOSE OF REPORT

- 1.1 To invite the Licensing Panel to finalise future licensing arrangements in respect of window cleaners' in East Ayrshire.

2. BACKGROUND

- 2.1 At a special meeting of the Licensing Panel on 13 November 2008 the panel considered report dated 4 November 2008 (copy attached at Appendix 1) pertaining to the licensed operation of window cleaning activities in East Ayrshire. Specifically, the panel was reminded that window cleaning had been determined to be a licensable activity in East Ayrshire from 1st April 1996 although it was pointed out that of the 32 local authorities in Scotland only some 26 have opted to introduce a licensing regime for window cleaners with neither South nor North Ayrshire Councils currently licensing window cleaning.
- 2.2 Further, the Panel were advised of the existing situation whereby numerous firms of window cleaners who carry out window cleaning activities for commercial properties only are operating without any form of licence which has led to expressions of concern by East Ayrshire based operators as to the equity and propriety of the situation.
- 2.3 It was on this basis that the panel determined to endorse the introduction of a revised licensing policy for window cleaning with the introduction of an additional form of licence to be known as a, "Window Cleaner Business Licence" which would permit the holder to carry out window cleaning activities within East Ayrshire for commercial properties only. In addition, it was also agreed that the Head of Legal, Procurement and Regulatory Services would provide a report setting out detailed proposals for the introduction of such a licence to a future meeting of the panel.

3. THE CURRENT STATUTORY POSITION

- 3.1 In terms of section 43 of the Civic Government (Scotland) Act 1982 licensing authorities have the optional power to licence window cleaners and their employees. As detailed in paragraph 2.1 above, East Ayrshire Council determined to licence such activities from 1st April 1996 with the arrangements introduced at that time still remaining in force.
- 3.2 In 2002 a Task Group was set up by the previous Scottish administration to review all of the licensing provisions contained in the 1982 Act. The Task Group reported in December 2004 and the Scottish Executive responded in

August 2005 indicating that the recommendations would become an issue for a new administration following the 2007 elections. It is only now that the relevant recommendations from the Task Force are being taken forward within the terms of the Criminal Justice and Licensing (Scotland) Bill which was introduced in the Scottish Parliament on 5 March 2009.

- 3.3 The Task Group's report in respect of window cleaning recommended that the current optional licensing arrangements should remain. However it also recommended the drawing up of model conditions of licence to enable licensing authorities to consider the merits of entering into agreements with neighbouring licensing authorities to avoid the need for window cleaners to have to obtain multiple licences when operating in more than one licensing area. This was supplemented by a recommendation that individual licence holders should be required to either have the licence (or a copy) on their person or to display an identification badge depending on whichever provision the licensing authority prefers.
- 3.4 Although the draft Bill proposes the introduction of a range of Civic Government modifications the only proposal which would have any impact on window cleaning activities is that of the requirement for licence holders to have the licence (or a copy) on their person. As this provision is already a condition imposed on licence holders in East Ayrshire, window cleaning licensing policy will remain a matter for individual authorities to determine.

4. FUTURE LICENSING PROPOSALS

- 4.1 In the period following the decision of the Licensing Panel on 13 November 2008 a significant level of detailed information on the national position in relation to window cleaning licences has been provided by The Scottish Licensed Window Cleaners Network (SLWCN). Following further scrutiny and consideration of the existing statutory provisions contained within the 1982 Act, the proposals contained within the 2009 Bill and the evaluation of the information provided by the SLWCN it is suggested that a modification of the proposals contained within the earlier report may be appropriate.
- 4.2 On further consideration, the introduction of the proposed "window cleaners business licence" could well have resulted in contractors based outwith East Ayrshire operating under the auspices of one "business" licence effectively covering numerous employees. This could have created an unfair advantage in favour of such operators to the detriment of local window cleaners operating in both the domestic and commercial sectors who would still have been required to operate within existing licensing arrangements and obtain individual licences for all operators and employees. Accordingly, in an effort to ensure that all window cleaners are subject to the same provisions in East Ayrshire it is now proposed that the existing provisions pertaining to window cleaners be retained but on the basis that they will extend to all operators and employees providing window cleaning services within the East Ayrshire area.
- 4.3 For the avoidance of doubt, the present position is that there are two categories of window cleaning licence – the first being a licence which is required for both a company and/or a single operator and is referred to as

window cleaner licence which is valid for a period of three years. The second is a window cleaner employee licence (valid for either three years or one year) which is required by an individual employee of a window cleaning firm. As explained earlier in this report the anomaly had arisen only in respect of firms based outwith East Ayrshire whose activities are restricted to the commercial sector.

5. FINANCIAL IMPLICATIONS

- 5.1 The proposal to retain existing arrangements but to extend coverage to include all operators and their employees should result in a modest increase in licensing income. It should however be noted that any such increase is likely to be more than offset by expenditure on enhanced enforcement arrangements.

6. LEGAL IMPLICATIONS

- 6.1 As the Council was empowered to determine to licence window cleaning activities in terms of section 43 of the Civic Government (Scotland) Act 1982 as from 1st April 1996 there are no additional legal implications arising from the contents of this report.

7. POLICY IMPLICATIONS

- 7.1 The proposal contained within this report would ensure that the policy of East Ayrshire Council in respect of the licensing of window cleaning activities is robust, equitable and in conformity with the statutory provisions.

8. RECOMMENDATIONS

- 8.1 It is recommended that the Panel agree:-

- (i) to continue existing licensing arrangements for window cleaners in terms of section 43 of the Civic Government (Scotland) Act 1982 and specifically to continue to grant:
 - (a) a licence for companies/individual operators known as a window cleaners licence to be valid for a period of 3 years, and
 - (b) a licence for employees known as a window cleaner employee licence to be valid for an optional period of either 1 or 3 years.
- (ii) to remit to the Head of Legal, Procurement and Regulatory Services to communicate this affirmation of existing policy to all window cleaner operators in East Ayrshire and thereafter ensure the proper enforcement of the policy.

Elizabeth Morton

Depute Chief Executive/Executive Director of Corporate Support

30 April 2009

LIST OF BACKGROUND PAPERS

Nil

Any person wishing further information on this report should telephone David Mitchell, Head of Legal, Procurement and Regulatory Services on Telephone number 01563 576061 or e-mail david.mitchell@east-ayrshire.gov.uk

Implementation Officer: Stuart McCall, Legal and Procurement Services Manager.

APPENDIX I

EAST AYRSHIRE COUNCIL

SPECIAL LOCAL GOVERNMENT LICENSING PANEL 13 NOVEMBER 2008

LICENSING ARRANGEMENTS FOR WINDOW CLEANERS

Report by Executive Director of Corporate Support

1. PURPOSE OF REPORT

- 1.1 To invite the Licensing Panel to consider a review of existing window cleaners' licensing arrangements in East Ayrshire.

2. BACKGROUND

- 2.1 As the Licensing Panel is aware window cleaners by the nature of their activities regularly have unrestricted access to private properties with the consequent opportunity to observe the internal layout of homes and the siting of valuables. As such window cleaners are required to be honest and above reproach.
- 2.2 In an effort to restrict and minimise any illegal activities potentially resulting from window cleaning activities Local Authorities are empowered in terms of section 43 of the Civic Government (Scotland) Act 1982 to licence window cleaners. Window cleaning was determined to be a licensable activity in East Ayrshire from 1st April 1996 although it should be noted that of the 32 local authorities in Scotland only 26 have opted to introduce a licensing regime for window cleaners. Specifically, neither North nor South Ayrshire Councils licence window cleaning.

3. THE CURRENT POSITION IN EAST AYRSHIRE

- 3.1 As indicated in paragraph 2.2 above East Ayrshire Council determined from the outset to licence window cleaning activities in East Ayrshire. The present position is that there are two categories of window cleaning licence the first being a licence which is required for both a company and/or a single operator and is referred to as a window cleaner licence which is valid for a period of three years. The second is a window cleaner employee licence which, as its name suggests, is required by an individual employee of a window cleaning firm. The fees currently payable in respect of both types of licences are:-

- Window cleaner licence - £217 per 3 year licence
- Employee - £109 per 3 year licence
- Employee - £45 per 1 year licence

- 3.2 In terms of process, any applications submitted are passed to Strathclyde Police for comment which allows for the provision of information on any relevant previous convictions pertaining to the applicant. In addition, all applicants are required to obtain and provide evidence of holding public liability insurance for a minimum amount of £500,000. Intimation of application is also made to the Council's Environmental Health service and also to the Council's Civic Government Licensing enforcement officer. Subject to the absence of objections, licences are issued under delegated authority with any contested application being referred to the Licensing Panel for consideration.
- 3.3 Licences issued in East Ayrshire permit holders to carry out window cleaning activities on all types of property within the East Ayrshire local government area only and do not permit any cross border trading activities. In addition, those licensed by other Local Authorities are not regarded as being licensed to carry out any window cleaning activities in East Ayrshire. Enforcement of the East Ayrshire regime is carried out by the Civic Government Licensing Enforcement Officer. When window cleaners are encountered enquiry is made as to their licensed status. If unlicensed, application forms are provided and those involved are advised to desist from window cleaning until such times as licensing formalities can be completed. Final sanction for non compliance lies in the submission of a report to Strathclyde Police and the Procurator Fiscal for consideration of prosecution.

4 PROPOSAL FOR CONSIDERATION

- 4.1 Notwithstanding the above, it has become apparent that there are numerous firms of window cleaners, based outwith the East Ayrshire Local Government Area, who have successfully tendered for and been awarded contracts for window cleaning of commercial properties within the East Ayrshire area. This has, understandably, led to the expression of concerns by East Ayrshire based operators as to the equity and propriety of this situation.
- 4.2 On the basis that the Licensing Panel is of the view that such concerns are justified and reasonable, the Panel are invited to consider the introduction of a third type of window cleaning licence which would permit the holder to carry out window cleaning activities for commercial properties only. The intention would be that any such operator, regardless of local government area home base, would be required to be the holder of such a "Window Cleaner Business" licence.
- 4.3 Subject to the view of the Licensing Panel, it would not be intended to licence individual employees of such commercial property operators as there would be less opportunity for such employees to have access to residential properties which was the rationale for the introduction of the original window cleaners' licensing regime. Any operator holding this type of licence and identified as being engaged in residential window cleaning activities would be the subject of enforcement action.

- 4.4 In addition, and as referred to in paragraph 3.3 above there have been recent issues raised in relation to the general operation of unlicensed window cleaners within East Ayrshire. In this regard, on the basis that the Panel agree to proceed to review window cleaning licensing generally, it is proposed that there be a contemporaneous public information exercise on this matter to heighten public awareness of the licensing position. Such an exercise would be accompanied by an enhanced enforcement campaign to identify unlicensed operators.

5. FINANCIAL IMPLICATIONS

- 5.1 It is proposed that the fee in respect of the type of licence contemplated in this report should be £217 or the equivalent of the other form of East Ayrshire window cleaners' licence which allows both residential and commercial cleaning activities.

6. LEGAL IMPLICATIONS

- 6.1 East Ayrshire Council is entitled to licence all types of window cleaning activity in terms of section 43 of Civic Government (Scotland) Act 1982

7. POLICY IMPLICATIONS

Any decision to amend the existing window cleaners' licensing arrangements is an alteration of current licensing policy within East Ayrshire but is nevertheless a decision which the Licensing Panel is entitled to reach.

8. CONCLUSIONS

- 8.1 East Ayrshire Council's Licensing Panel has an obligation to ensure that the East Ayrshire Civic Government Licensing regime is administered equally, transparently and impartially. It would appear that the current situation in relation to some operators based outside East Ayrshire, carrying out window cleaning activities on commercial properties within East Ayrshire, is causing concern amongst East Ayrshire based operators.

- 8.2 Accordingly the introduction of a third type of window cleaning licence would potentially appear to be justified and ensure that, in exercising its responsibilities in an appropriate manner, the Panel is having regard to the interests of both operators and the general public.

9. RECOMMENDATIONS

- 9.1 It is accordingly requested that the Licensing Panel:-

- (a) consider this report and determine as to whether to endorse the introduction of a new form of window cleaners' licence as detailed within this report.

- (b) On the basis that the Licensing Panel agree to review window cleaners' licensing arrangements, to remit to the Head of Legal, Procurement and Regulatory Services to proceed with a public information exercise on window cleaning licensing arrangements within East Ayrshire; and
- (c) Otherwise note the contents of this report.

Elizabeth Morton
Executive Director of Corporate Support

4 November 2008

LIST OF BACKGROUND PAPERS - NIL

Any person wishing further information on this report should contact Mr David Mitchell, Head of Legal, Procurement and Regulatory Services on telephone number (01563) 576061 or e-mail on david.mitchell@east-ayrshire.gov.uk

Implementation Officer; Stuart McCall, Legal and Procurement Services Manager.