

South Ayrshire Council

**Report by Head of Legal and Regulatory Services
to Regulatory Panel (Licensing)
of 3rd November 2022**

Subject: Civic Government (Scotland) Act 1982 – Electronic Communications

1. Purpose

- 1.1 The purpose of this report is to request that the Panel agrees to determine to accept certain applications, objections, representations and notifications under the Civic Government (Scotland) Act 1982 by means of an electronic communication; and also to determine to give certain types of notices and reasons under the 1982 Act by means of an electronic communication.

2. Recommendation

- 2.1 **It is recommended that the Panel determines to:**

2.1.1 **accept by means of electronic communication,**

- a) **Applications for the grant or renewal of a licence under paragraph 1 of Schedule 1 of the 1982 Act**
- b) **Objections or representations under paragraph 3 of Schedule 1 of the 1982 Act**
- c) **Notifications of a change to a licence under paragraph 9 of Schedule 1 of the 1982 Act.**

2.1.2

- a) **give notices under paragraphs 5,9,10,11 or 12 of Schedule 1 of the 1982 Act, and**
- b) **give reasons under paragraph 17 of Schedule 1 of the 1982 Act by means of an electronic communication, subject to the terms of paragraph 16A(5) of Schedule 1 of the 1982 Act .**

2.1.3 **accept by means of electronic communication,**

- a) **Applications for the grant or renewal of a licence under Schedule 2 of the 1982 Act**
- b) **Objections or representations under paragraph 8 of Schedule 2 of the 1982 Act**
- c) **Notifications of a change to a licence under paragraph 14 of Schedule 2 of the 1982 Act.**

2.1.4

- a) give notices under paragraphs 8,10,13, 14 or 15 of Schedule 2 of the 1982 Act, and
- b) give reasons under paragraph 23 of Schedule 2 of the 1982 Act by means of an electronic communication, subject to the terms of paragraph 22A(5) of Schedule 2 of the 1982 Act ; and

2.1.5

determines that the form of electronic communication by which applications, objections, representations or notifications may be made or given is email; that the electronic address to be used for making or giving applications, objections, representations or notifications is Licensing@south-ayrshire.gov.uk; and that an electronic signature will be sufficient means of authorisation.

3. Background

3.1

The Air Weapons and Licensing (Scotland) Act 2015 included provisions to amend the Civic Government (Scotland) Act 1982. In particular, it added a new paragraph 16A in Schedule 1 to the 1982 Act, and a new paragraph 22A to Schedule 2 to the 1982 Act, both of which relate to electronic communications. Under both paragraphs, licensing authorities are enabled to make a determination to accept certain types of applications, objections, representations and notifications by means of an electronic communication, and also to give certain types of notices and reasons by way of an electronic communication. Where a licensing authority makes such a determination, they must specify the form of communication which may be used, the electronic address to be used, and acceptable means of authentication in addition to an electronic signature.

3.2

Schedule 1 to the 1982 Act sets out the procedural provisions for most of the licensed activities under the Act, including for instance, taxi and private hire driver and operators, second hand dealers, public entertainment and late hours catering. Under paragraph 16A(1) of Schedule 1, a licensing authority may determine to accept the following by means of an electronic communication:

- a) Applications for the grant or renewal of a licence under paragraph 1 of Schedule 1
- b) Objections or representations under paragraph 3 of Schedule 1
- c) Notifications of a change to a licence under paragraph 9 of Schedule 1.

In addition, under paragraph 16A(4), a licensing authority may determine to do the following by way of an electronic communication:

- d) Give notices under paragraphs 5 (grant or refusal); 9 (changes and alterations to licence holder or licensed activity); 10 (variations to licence terms); and 11 and 12 (suspensions and revocations).
- e) Give reasons under paragraph 17.

3.3

Schedule 2 to the 1982 Act sets out the procedural provisions for control of sex shops and sexual entertainment venues. Under paragraph 22A(1) of Schedule 2, a licensing authority may determine to accept the following by means of an electronic communication:

- a) Applications for the grant or renewal of a licence under Schedule 2
- b) Objections or representations under paragraph 8 of Schedule 2
- c) Notifications of a change to a licence under paragraph 14 of Schedule 2.

In addition, under paragraph 22A(4), a licensing authority may determine to do the following by way of an electronic communication:

- d) Give notices under paragraphs 8 (objections and representations); 10 (notification of decisions and reasons); 13 (revocation); 14 (notification of change of circumstances); and 15 (variation of licences).
- e) Give reasons under paragraph 23.

4. Proposals

4.1 The amendments to the 1982 Act as detailed in Section 3 above came into force in November 2016. It is now common practice to receive applications, objections and representations in respect of licensing matters by way of electronic communication, specifically through means of email. However in reviewing matters, it would appear that there has not been a formal request to the Regulatory Panel (Licensing), to make a determination as required under the legislation. It is proposed that, in order to regularise matters, a formal determination is made by the Panel, enabling the licensing authority to accept by means of electronic communication, the types of applications, objections, representations and notifications, and to give the types of notices and reasons, as specified in Section 3.2 and 3.3 of this report.

4.2 It is important to note that, as part of the legislative amendments, a licensing authority can only give a notice or reasons by way of an electronic communication where the recipient has agreed to this, and the communication is sent to an electronic address provided by them for that purpose. This is specified in paragraph 16A(5) of Schedule 1 and paragraph 22A(5) of Schedule 2. The Licensing team will therefore continue to issue notices and reasons in paper form to postal addresses, unless agreed in advance with the recipient.

4.3 It is also a requirement under paragraphs 16A(2) of Schedule 1 and 22A(2) of Schedule 2 of the 1982 Act, that where a licensing authority makes a determination relating to electronic communications, it also specifies the form of electronic communication to be used, the electronic address to be used, and any means of authentication (in addition to an electronic signature) which are acceptable. In this regard, it is proposed that the form of electronic communication by which applications, objections, representations or notifications may be made or given is email. It is further proposed that the electronic address to be used for making or giving applications, objections, representations or notifications is **Licensing@south-ayrshire.gov.uk**, and that an electronic signature will be sufficient means of authorisation.

5. Legal and Procurement Implications

5.1 Approval of the recommendations in this report is consistent with the statutory requirements in the Civic Government (Scotland) Act 1982, as amended by the Air Weapons and Licensing (Scotland) Act 2015.

5.2 There are no procurement implications arising from this report.

6. Financial Implications

6.1 There are no financial implications arising from this report.

7. Human Resources Implications

7.1 Not applicable

8. Risk

8.1 *Risk Implications of Adopting the Recommendations*

8.1.1 There are no risks associated with adopting the recommendations.

8.2 *Risk Implications of Rejecting the Recommendations*

8.2.1 If the recommendations are rejected, there is a risk that a future decision of Regulatory Panel could be challenged if electronic communications were used without a formal determination to do so under the 1982 Act.

9. Equalities

9.1 The proposals in this report have been assessed through the Equality Impact Assessment Scoping process. There are no significant potential positive or negative equality impacts of agreeing the recommendations and therefore an Equalities Impact Assessment is not required. A copy of the Equalities Scoping Assessment is attached as [Appendix 1](#).

10. Sustainable Development Implications

10.1 ***Considering Strategic Environmental Assessment (SEA)*** - This report does not propose or seek approval for a plan, policy, programme or strategy or document otherwise described which could be considered to constitute a plan, programme, policy or strategy.

11. Options Appraisal

11.1 An options appraisal has not been carried out in relation to the subject matter of this report.

12. Link to Council Plan

12.1 The matters referred to in this report contribute to Commitment 6 of the Council Plan: A Better Place to Live/ Enhanced environment through social, cultural and economic activities.

13. Results of Consultation

13.1 There has been no public consultation.

13.2 Consultation has taken place with Councillor Martin Kilbride, Portfolio Holder for Buildings, Housing and Environment Portfolio, and the contents of this report reflect any feedback provided.

Background Papers [Air Weapons and Licensing \(Scotland \)Act 2015](#)

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Date: 13th October 2022

South Ayrshire Council Equality Impact Assessment Scoping

1. Proposal details

Civic Government (Scotland) Act 1982 electronic communications	Lead Officer Karen Briggs
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2. Which communities, groups of people, employees or thematic groups do you think will be, or potentially could be, impacted upon by the implementation of this proposal? Please indicate whether these would be positive or negative impacts

Community, Groups of People or Themes	Negative Impacts	Positive impacts
The whole community of South Ayrshire		X
People from different racial groups, ethnic or national origin.		X
Women and/or men (boys and girls)		X
People with disabilities		X
People from particular age groups for example Older people, children and young people		X
Lesbian, gay, bisexual and heterosexual people		X
People who are proposing to undergo, are undergoing or have undergone a process to change sex		X
Pregnant women and new mothers		X
People who are married or in a civil partnership		X
People who share a particular religion or belief		X
Thematic Groups: Health, Human Rights, Rurality and Deprivation.		X

3. Do you have evidence or reason to believe that the proposal will support the Council to:

General Duty and other Equality Themes	Level of Negative and/or Positive Impact (high, medium or low)
Eliminate discrimination and harassment faced by particular communities or groups	low
Promote equality of opportunity between particular communities or groups	low
Foster good relations between particular communities or groups	low
Promote positive attitudes towards different communities or groups	low
Increase participation of particular communities or groups in public life	low
Improve the health and wellbeing of particular communities or groups	low
Promote the human rights of particular communities or groups	low
Tackle deprivation faced by particular communities or groups	low

4. Summary Assessment

Is a full Equality Impact Assessment required? (A full EIA must be carried out on all high and medium impact proposals)	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Rationale for decision: The report is in connection only with implementing a consultation process which will lead to a further report being prepared for the Leadership Panel which may have substantive proposals which will require to be assessed.		
Signed : Karen Briggs , Service Lead Legal and Licensing		
Date: 13.10.22	Copy to equalities@south-ayrshire.gov.uk	