

Regulatory Committee

1.15pm, Monday, 11 March 2019

Air Weapons and Licensing (Scotland) Act 2015 – Repeal of Theatres Act 1968

Item number	7.1
Executive/routine	
Wards	
Council Commitments	

1. Recommendations

- 1.1 It is recommended that the Regulatory Committee:
 - 1.1.1 Notes the proposed approach and time line for inclusion of theatres within the Public Entertainment Resolution;
 - 1.1.2 Notes that this provides an opportunity to review existing policy and terms of the current Public Entertainment resolution; and
 - 1.1.3 directs that the statutory procedure for making a variation to the City of Edinburgh Public Entertainment Resolution 2014 should be commenced immediately.

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Air Weapons and Licensing (Scotland) Act 2015 – Repeal of Theatres Act 1968

2. Executive Summary

- 2.1 This report provides the Committee with an update on the implementation and changes to the licensing regime as a result of the Air Weapons and Licensing (Scotland) Act 2015. It is anticipated that the Theatres Act 1968 will be repealed early in 2021 and the current exemption within the Civic Government (Scotland) Act 1982 will be removed, thereby enabling a local authority to resolve under section 9 of the 1982 Act to license theatres under its public entertainment licensing regime.
- 2.2 It is proposed to carry out a wider review of the current Public Entertainment resolution in addition to including theatres. The Resolution was last updated in March 2014.

3. Background

- 3.1 The Theatres Act 1968 ('the 1968 Act') provides a licensing regime for premises which are used for the public performance of plays. Section 41 of the Civic Government (Scotland) Act 1982 ('the 1982 Act') (Appendix 1) provides a discretionary licensing regime for places of public entertainment, and the definition of "place of public entertainment" in section 41(2) specifically excludes premises which are licensed under the 1968 Act. Prior to the commencement of section 74 of the Air Weapons and Licensing (Scotland) 2015 Act ('the 2015 Act'), theatres are required to be licensed under the 1968 Act and were therefore exempt from the licensing regime under the 1982 Act.
- 3.2 Section 74 of the 2015 Act amends the 1968 Act to repeal the theatre licensing regime under that Act. Section 74 also amends section 41 of the 1982 Act to remove the exemption of theatres from the definition of "place of public entertainment." A local authority could thereafter resolve under section 9 of the 1982 Act to license theatres under its public entertainment licensing regime.
- 3.3 Where a local authority passes a resolution to license theatres there is a required period of at least nine months between the date the resolution is passed and the date it comes into effect. As theatres must currently be licensed under the Theatres Act 1968, it is intended that the commencement of section 74 will be in two parts. The amendments to section 41 of the 1982 Act will be brought into force first, with

the repeal of the 1968 licensing regime expected in January 2021. This is to provide local authorities time to make a resolution to license theatres under the public entertainment licensing regime, and to have that regime in place by the time mandatory theatre licensing comes to an end, should they choose to do so. This should also give theatres requiring a licence sufficient time to apply and secure a licence under the new scheme, before the existing scheme is repealed.

- 3.4 The licensing of places of public entertainment is governed by section 41 of the Civic Government (Scotland) Act 1982 ('the 1982 Act'). A public entertainment licence is required for the use of premises as a place of public entertainment. The 1982 Act defines "place of public entertainment" as:

"any place where on payment of money or money's worth, members of the public are admitted or may use any facilities for the purposes of entertainment or recreation..."

The Council's Public Entertainment Resolution 2014 sets out a list of premises which are required to be licensed (Appendix 2).

- 3.5 The current public entertainment resolution took effect on 7 March 2014 following previous changes to policy. It is intended to take the opportunity to review previous changes and address any perceived short comings as part of a wider consultation process.

4. Main report

- 4.1 The purpose for regulating this type of activity is not to restrict trade or competition but to help prevent crime, ensure public safety and protect the environment. In addition, every person who applies for a licence is assessed to see if they are 'fit and proper' to have a licence.
- 4.2 Council Officers understand that a commencement order may be laid shortly, and that the indicated timeline for consideration of legislation at a local level in respect of theatres being included within the 1982 Act is April 2019, with the 1968 Act finally being repealed in early 2021.
- 4.3 Should theatres no longer be included within the Public Entertainment resolution, premises would no longer be licensed unless the Council takes steps to address this. As a 'festival city', it is considered essential to ensure a continuity of approach and maintain theatres within a licensing system, while not disrupting normal operations.
- 4.4 It is proposed to start a consultation exercise in April 2019 with a view to adopting theatres within the Public Entertainment resolution. A full time line for this process is included at Appendix 3.
- 4.5 Following previous changes to policy, the current public entertainment resolution took effect on 7 March 2014. It is proposed to take the opportunity to consider whether a full review of the resolution is necessary to ensure that it remains fit for purpose.

5. Next Steps

- 5.1 The steps for varying the resolution are specified in Section 9 of the 1982 Act. This would allow the Council to add or delete certain events from the requirement to obtain a licence. These include formal publication of proposal to vary, followed by a 28 day public consultation period. After consideration of the outcome of the consultation, the Council may then make a new resolution, which would not take effect until the expiry of a period of nine months. The nine months is a statutory period intended in the main to allow businesses or persons affected by any new licence requirement time to prepare.
- 5.2 The nine month period does not apply if the variation is confined to reducing the scope of the resolution, but any such variation would still require to be prepared, publicised and consulted upon.
- 5.3 Council Officers understand that whilst a commencement order may be laid shortly, this would be subject to Parliamentary process and accordingly if there is a delay it could affect the indicated timeline for consideration of legislation at a local level. Any changes would be notified to committee and the time line amended.

6. Financial impact

- 6.1 The loss in licence fee income created by the repeal of the Theatres Act 1968 would be offset by the inclusion of theatres within the Public Entertainment Licensing regime.
- 6.2 The Council's scale of fees for licensing applications was approved with effect from 1 April 2018. Any costs implementing policy changes will be contained within the current ring-fenced income generated from licence application fees.

7. Stakeholder/Community Impact

- 7.1 The development of policy in respect of the licensing of theatres is part of a wider place-making role for the Council. It is essential that all the strategic aims of the Council are considered and that the revised conditions are consistent with these.
- 7.2 There is a requirement to carry out a statutory consultation as part of the resolution process and the timeline is outlined in Appendix 3.
- 7.3 The contents and recommendations neither contribute to, nor detract from, the delivery of the three Public Sector Equality Duties.
- 7.4 The contents and recommendations described in this report do not deliver any outcomes relating to the ten areas of rights, nor do they enhance or infringe them.

8. Background reading/external references

- 8.1 [Item 5 – Regulatory Committee 27 January 2012 - Public Entertainment licensing - Amendments](#)
- 8.2 [Item 7 – Regulatory Committee 9 March 2012 - Public Entertainment licensing - Interim Fee Proposals](#)
- 8.3 [Item 5 - Public Entertainment Licensing - Public Consultation on the amendments to the Consultation - Regulatory Committee 20 April 2012](#)
- 8.4 [Item 5.1 – Public Entertainment Licensing – Recommendations of Member Officer Working Group – Regulatory Committee 16 November 2012](#)
- 8.5 [Item 7.1 Regulatory Committee 3 May 2013 - Public Entertainment Licensing – Public Consultation on Amendments to the Resolution](#)
- 8.6 [Item 7.1 Regulatory Committee 15 Nov 2013 - Proposed Changes to Public Entertainment Resolution](#)
- 8.7 [Item 7.3 Regulatory Committee 3 February 2014 - Review of Public Entertainment Licensing](#)

9. Appendices

- 9.1 Appendix 1 – Civic Government (Scotland) Act 1982
- 9.2 Appendix 2 - The City of Edinburgh Public Entertainment Resolution 2014
- 9.3 Appendix 3 - Implementation timeline

Appendix 1 – Civic Government (Scotland) Act 1982

Section 9 - Application of sections 10 to 27 and 38 to 44.

- (1) Sections 10 to 27 (except section 20), any regulations made under the said section 20, and sections 38 to 43 (except section 41A) of this Act and any order made under section 44(1)(a) of this Act (which sections regulations and order are in this section called the “optional provisions”) shall have effect in the area of a licensing authority only if and insofar as the authority have so resolved in accordance with subsections (2) to (8) below.
- (2) A licensing authority may, in accordance with this section, resolve that, as from a day specified in the resolution (which must not be before the expiration of the period of nine months beginning with the day on which the resolution was made) any activity provision for the licensing and regulation of which is made by the optional provisions shall require to be licensed in accordance with the provisions of this Act relating to that activity and shall be regulated by those provisions.
- (3) Subject to subsections (4) and (5) below, a resolution under this section may be made—
 - (a) in relation to all or any of the activities referred to in subsection (2) above;
 - (b) in relation to the whole or any part of the area of the licensing authority;
 - (c) in relation to—
 - (i) all classes of an activity referred to in any of the optional provisions; or
 - (ii) all such classes subject to exceptions; or
 - (iii) any particular such class or classes.
- (4) A licensing authority may not make a resolution under this section relating to any of the activities provision for the licensing and regulation of which is made in sections 10 to 23 of this Act (that is to say the operation of a vehicle as a taxi, the operation of a vehicle as a hire car, the driving of a taxi and the driving of a hire car) unless it relates to all these activities.
- (5) A resolution made under this section by the licensing authority relating to—
 - (a) the activity provision for the licensing and regulation of which is made in sections 24 to 27 of this Act (that is to say the carrying on of business as a second-hand dealer) shall specify the particular class or classes of that activity which shall thereby fall to be licensed and regulated;
 - (b) the activity provision for the licensing of which is made in section 41 of this Act (that is to say the use of premises as a place of public entertainment) shall specify the place or places, or class or classes thereof, which shall thereby fall to be licensed.
- (6) A licensing authority shall not make a resolution under this section unless they have—
 - (a) published in a newspaper or newspapers circulating in their area the terms of the proposed resolution together with a notice stating—

- (i) that they intend to make the resolution; and
 - (ii) that representations about the resolution may be made in writing to the authority within 28 days of the first publication of the notice; and
 - (b) considered any representations so made.
- (7) A licensing authority, before proceeding to make a resolution under this section, may make such modifications to the proposed resolution as they think fit in the light of representations made to them about it provided such modifications do not extend its scope.
- (8) The licensing authority shall, as soon as they have made a resolution under subsection (2) above, publish in a newspaper or newspapers circulating in their area—
- (a) the terms of the resolution so made; together with
 - (b) a notice stating—
 - (i) that with effect from the date specified as that on which the resolution comes into effect it will be an offence under section 7(1) of this Act to do without a licence whatever the resolution specifies as being an activity requiring to be licensed; and
 - (ii) that applications for licences in respect of the activity will be considered by the authority after the expiry of one month after the date of the making of the resolution.
- (9) A resolution under this section may be varied or rescinded by a subsequent resolution made in like manner except that, in relation to the time when it takes effect, a resolution under this subsection—
- (a) varying a resolution under this section so as to reduce its scope; or
 - (b) rescinding a resolution under this section
- shall take effect on such date as may be specified in it being any date subsequent to the making of the resolution.
- (10) Anything which must or may be done under or by virtue of Part I or this Part of this Act may, at any time after the making by the licensing authority of the resolution, be done so far as may be necessary or expedient for the purpose of giving full effect to the resolution at or after the time it takes effect but no application for a licence in respect of an activity requiring to be licensed in consequence of the re

41 Public entertainment licences.

- (1) A licence, to be known as a “public entertainment licence”, shall be required for the use of premises as a place of public entertainment.
- (2) In this section, “place of public entertainment” means any place where members of the public are admitted or may use any facilities for the purposes of entertainment or recreation but does not include—
 - (a) an athletic or sports ground while being used as such;
 - (aa) premises in respect of which a licence is required under section 41A of this Act while such premises are being used for the purposes mentioned in that section;
 - (b) an educational establishment while being used as such;
 - (c) premises belonging to or occupied by any religious body while being used wholly or mainly for purposes connected with that body;
 - (d) premises licensed under the Theatres Act 1968 or section 1 of the Cinemas Act 1985 ;
 - (e) premises in respect of which there is a club gaming permit (within the meaning of section 271 of the Gambling Act 2005 (c.19)) or a prize gaming permit (within the meaning of section 289 of that Act of 2005);
 - (f) premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect] in which public entertainment is being provided during licensed hours within the meaning of that Act;
 - (g) premises in which machines for entertainment or amusement are being provided incidentally to the main purpose or use of the premises where that main purpose or use is not as a place of public entertainment. or
 - (h) such other premises as the Scottish Ministers may by order made by statutory instrument specify.
- (2A) A statutory instrument containing an order made under subsection (2)(h) is subject to annulment in pursuance of a resolution of the Scottish Parliament.]
- (3) Without prejudice to section 3B of and paragraph 5 of Schedule 1 to this Act, a licensing authority may attach conditions to a public entertainment licence—
 - (a) restricting the use of the premises to a specified kind or specified kinds of entertainment or recreation;
 - (b) limiting the number of persons to be admitted to the premises;
 - (c) fixing the days and times when the premises may be open for the purposes of the entertainment or recreation.
- (4) In this section, “educational establishment” has the meaning given by paragraphs (i) and (ii) of the definition of that expression in section 135(1) of the Education (Scotland) Act 1980 but includes a university and a theological college.

Appendix 2 - THE CITY OF EDINBURGH PUBLIC ENTERTAINMENT RESOLUTION

**THE CITY OF EDINBURGH COUNCIL
CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (“the Act”)**

THE CITY OF EDINBURGH PUBLIC ENTERTAINMENT RESOLUTION Number 1 of 2014

The City of Edinburgh Council, in exercise of its powers in terms of sections 9 and 41 of the Act, hereby makes the following resolution:-

- (1) Section 41 of the Act relating to Public Entertainment shall continue to have effect throughout the Council’s area.
- (2) Subject to the terms of the Act, a Public Entertainment licence shall be required for the use of the premises specified in (3) below as places of Public Entertainment as from 7 March 2014.
- (3) Subject to paragraphs (4) and (5) below, the premises in the Council’s area which require to be licensed under the Resolution are as follows:

- (a) Billiard, snooker and pool halls
- (b) Premises used for circuses
- (c) Premises used for firework displays
- (d) Premises used as sun-tan centres
- (e) Premises used for laser displays and games
- (f) Premises used for performing animals
- (g) Premises used for video machine arcades, Amusement Devices (including rides or machines or other such equipment including stalls, tents, booths or structures), which are installed or erected and operated for or in connection with the amusement or entertainment to the public, including without prejudice to the foregoing generality bouncy castles, carousels and bungee jumping and bungee running equipment
- (h) Premises used for paintball games
- (i) Premises used for the performance of music (whether live, recorded or amplified), any other concert venue, any rave or dance event and theatrical performances
- (j) Premises used for go-carting, off road driving courses or similar or any facility where the operator provides access to vehicles for entertainment purposes. Does not include the provision of vehicles as part of learner driver tuition.
- (k) Premises used for exhibitions
- (l) Premises used as gymnasiums

(4) BUT excluding the following places where **(a) where members of the public are admitted or may use any facilities for the purposes of entertainment or recreation without payment of money or money’s worth and (b) the capacity does not exceed 500 persons:**

- (a) premises used for functions held by charitable, religious, youth, sporting, community, political or similar organisations;
- (b) premises used for exhibitions of art work;
- (c) premises in which live music is being provided incidentally to the main purpose or use of the premises where that main purpose or use is not as a place of public entertainment.

(5) and additionally **excluding the following places where (a) members of the public are admitted or may use any facilities for the purposes of entertainment and (b) the capacity does not exceed 250 persons:**

- (a) Premises used for functions or events by any charity, religious, community or political group or any similar non-commercial organisation.

Appendix 3 - Implementation timeline

