

Notice of meeting and agenda

Regulatory Committee

10.00 am Monday, 1st May, 2023

Dean of Guild Court Room - City Chambers

This is a public meeting and members of the public are welcome to attend or watch the webcast live on the Council's website.

The law allows the Council to consider some issues in private. Any items under "Private Business" will not be published, although the decisions will be recorded in the minute.

Contacts

Email: rachel.gentleman@edinburgh.gov.uk / Lesley.birrell@edinburgh.gov.uk

1. Order of Business

- 1.1 Including any notices of motion and any other items of business submitted as urgent for consideration at the meeting.

2. Declaration of Interests

- 2.1 Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

3. Deputations

- 3.1 If any.

4. Minutes

- | | | |
|-----|--|---------|
| 4.1 | Minute of the Regulatory Committee of 6 February 2023 – submitted for approval as a correct record | 7 - 12 |
| 4.2 | Minute of the Regulatory Committee of 13 March 2023 – submitted for approval as a correct record | 13 - 14 |

5. Rolling Actions Log

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6. Business Bulletin

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7. Executive Decisions

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7.3	Short Term Let Licensing Policy – Minor Updates – Report by the Executive Director of Place	63 - 66
7.4	Licensing Policy Development – Street Trading Update – Report by the Executive Director of Place	67 - 94
7.5	Food Health and Safety Business Plan 2023/24 – Report by the Executive Director of Place	95 - 120

8. Routine Decisions

8.1	Trusted Trader Scheme Annual Report – Report by the Executive Director of Place	121 - 126
8.2	Changes to Legislation on the Sale and Use of Fireworks in Scotland - referral from the Culture and Communities Committee	127 - 144

9. Motions

- 9.1 Motion by Councillor Ross – Hire Trade Age Policy
- “Committee notes:
1. The previous representations it has received from representatives of the taxi and private hire car trades concerning the high demand for, and low supply of, second-hand Euro 6 standard taxis and the high cost of new and second-hand electric vehicles.
 2. There were 259 Euro 5 taxis and 268 Euro 5 PHCs in Edinburgh, representing respectively 20% and 13% of the total numbers, along with 761 Euro 6 taxis and 1,227 Euro 6 PHCs, representing respectively 60% and 59%, as recorded

in the report presented to committee in November 2022.

3. Euro 5 taxis, that have been retrofitted via a Clean Vehicle Retrofit Accreditation Scheme (CVRAS) approved by the Energy Saving Trust, will be able to enter Edinburgh's Low Emission Zone without penalty when enforcement starts on 1 June 2024, as outlined in the Business Bulletin presented to committee in February 2023.
4. Euro 6 vehicles will start being impacted by the 10-year age limitation in 2024.
5. There are a number of issues, in addition to those listed above, which are likely to have an impact on the number of taxis and PHCs in the next few years, such as the availability of vehicles capable of carrying wheelchair passengers.

Committee therefore agrees:

6. For the temporary period only from 1 May 2023 to 30 April 2024 inclusive ("the relevant period"), to amend standard condition 256 of the Council's standard conditions for the holders of existing taxi licences to permit the use of Euro 6 vehicles, and CVRAS retrofitted Euro 5 vehicles, less than 15 years old to be licensed as taxis. Accordingly, such a licensed vehicle submitted for test during the relevant period in respect of renewal of a taxi licence prior to the 14th anniversary of its registration may continue to operate as a taxi.
7. For the temporary period only from 1 May 2023 to 30 April 2024 inclusive, ("the relevant period") to amend standard condition 303 of the Council's standard conditions for existing PHC licences to permit the use of Euro 6 vehicles, less than 15 years old to be licensed as private hire cars (PHCs). Accordingly, a licensed vehicle submitted for test during the relevant period in respect of renewal of a PHC licence prior to the 14th anniversary of its registration may continue to operate as a PHC.
8. That there will be no change to the requirement to meet the relevant Euro Standard, notwithstanding the temporary amendment to conditions outlined above.
9. To ask officers to engage with the hire car trade to discuss these issues along with possible solutions and any possible

licensing responses and to bring a report to committee in four cycles.

10. To ask the Convener to write to the Scottish Government to seek engagement on vehicle age and emission issues as they apply to the hire car trade.”

Nick Smith

Service Director, Legal and Assurance

Committee Members

Councillor Neil Ross (Convener), Councillor Jack Caldwell, Councillor James Dalgleish, Councillor Denis Dixon, Councillor Catherine Fullerton, Councillor Martha Mattos Coelho, Councillor Joanna Mowat and Councillor Susan Rae and a Labour Group vacancy.

Information about the Regulatory Committee

The Regulatory Committee consists of 9 Councillors and is appointed by the City of Edinburgh Council.

This meeting of the Regulatory Committee is being held in the City Chambers, High Street, Edinburgh and virtually by Microsoft Teams.

Further information

If you have any questions about the agenda or meeting arrangements, please contact Lesley Birrell, Committee Services, City of Edinburgh Council, Business Centre 2.1, Waverley Court, 4 East Market Street, Edinburgh EH8 8BG, email Lesley.birrell@edinburgh.gov.uk .

A copy of the agenda and papers for this meeting will be available for inspection prior to the meeting at the main reception office, City Chambers, High Street, Edinburgh.

The agenda, minutes and public reports for this meeting and all the main Council committees can be viewed online by going to the Council's online [Committee Library](#).

Live and archived webcasts for this meeting and all main Council committees can be viewed online by going to the Council's [Webcast Portal](#).

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Minutes

Regulatory Committee

10.00am, Monday 6 February 2023

Present

Councillors Neil Ross (Convener), Caldwell, Dalglish, Fullerton, Mattos Coelho, Meagher (substituting for the Labour Group Vacancy), Mowat and Rae.

1. Minutes

Decision

To approve the minute of the Regulatory Committee of 21 November 2022 as a correct record.

2. Rolling Actions Log

The Rolling Actions Log for February 2023 was presented.

Decision

- 1) To agree to close the following actions:
 - Action 2(3) – Licensing Service Update and Draft Regulatory Committee Work Programme
 - Action 3 – Assessment of Overprovision of Private Hire Cars within the City of Edinburgh
 - Action 5 – Survey of Demand for Taxis within the City of Edinburgh
 - Action 6 – Response to Motion by Councillor Younie – Sexual Entertainment Venues
- 2) To note the remaining outstanding actions.
(Reference – Rolling Actions Log, submitted.)

3. Regulatory Committee Business Bulletin

The Regulatory Committee Business Bulletin for February 2023 was presented.

Decision

- 1) To note the Business Bulletin.
- 2) To hold a briefing session or workshop for members regarding the LEZ and options for taxis and PHC vehicles, including CVRAS retrofits.

(Reference – Business Bulletin, submitted.)

4. Response to Motion by Councillor Younie – Sexual Entertainment Venues

4.1 Deputation – United Sex Workers (United Voices of the World)

The deputation made the following key points:

- The nil cap had been a struggle for many of the United Sex Workers members.
- It was frustrating that a decision on the nil cap had taken so much time.
- It was extremely important to remind Committee that pushing sex work underground forced women into poverty and made them unsafe and that the nil cap was violence against women.
- That statistics showed that the nil cap did not protect women and that research showed that it did not push women out of the industry but pushed unemployment, poor working conditions and unsafe environments.
- That women had interests outside the strip club and it was important not to dehumanize sex workers.

4.2 Report by the Executive Director of Place

The report presented information on the issues raised in the adjusted motion by Councillor Younie, which was approved at full Council on the 27 October 2022. This included the risk of Sexual Entertainment being driven underground in the event that the four existing Sexual Entertainment Venues premises closed. The report acknowledged members debated the merits of the 'nil cap' at the Regulatory Committee meeting of the 31 March 2022. It also set out clear advice about the necessary steps in the events that the Committee decided to review the numbers limitation or any other aspect of policy.

Motion

- 1) To note the advice provided in the report by the Executive Director of Place.
- 2) To instruct officers to prepare for a statutory twelve week consultation to review the Licensing Policy on Sexual Entertainment Venues, in particular, the provision for a 'nil cap'. The consultation would be launched only after the court decision had been published and considered by elected members and officers at a subsequent meeting of the Regulatory Committee.
 - Moved by Councillor Caldwell, seconded by Councillor Ross

Amendment

- 1) To note the advice provided in the report.
- 2) To agree to take no further action until the outcome of the Judicial Review was known.
- 3) To discharge the motion from the Council meeting on 27 October 2022.
 - Moved by Councillor Mowat, seconded by Councillor Meagher

Voting

The voting was as follows:

For the motion - 6 votes

For the amendment - 3 votes

(For the Motion: Councillors Caldwell, Dixon, Fullerton, Mattos Coelho, Rae and Ross.

For the Amendment: Councillors Dalglish, Meagher and Mowat.)

Decision

To approve the motion by Councillor Caldwell.

(References – Act of Council No 15 of 27 October 2022; Regulatory Committee of 13 March 2022 (item 2); report by the Executive Director of Place, submitted.)

5. Taxi and Private Hire Car (PHC) Training Update

An update was provided on the Taxi and Private Hire Car Driver Training Foundation Course and the proposals to commence the three-day course for existing drivers.

Decision

- 1) To note the report by the Executive Director of Place.
- 2) To agree that the next stage of driver training would commence as set out in the revised timeline in paragraph 4.15 of the report.

(Reference – Report by the Executive Director of Place, submitted.)

6. Taxi Fares Review 2023

The report presented the outcome of the statutory review of fares which had been undertaken.

Decision

- 1) To note the attached report from Jacobs at Appendix 2 of the report by the Executive Director of Place, and, in particular, the recommendations following consultation with representatives of the taxi trade.
- 2) To note that feedback was sought from the representatives of the taxi trade on the recommendations of initial Jacob's report and, where possible, this had been incorporated in that report.
- 3) To note that officers were recommending that Committee agreed to consult on an updated fare scale reflecting the following amendments to the current fare scale:
 - 3.1) Apply a 20% increase to Tariffs 1 and 2.
 - 3.2) Apply a 15% increase to Tariffs 3 and 4.
- 4) To approve the advertisement of a proposed fare scale with the above changed, for reasons set out in the report, as required in terms of section 17 of the Civic

Government (Scotland) Act 1982 ('the Act'). This would be published in local newspaper publications within the Council area in the manner required under section 17(4A)(c) of ('the Act'), including the date on which the fare scale was planned to take effect. Any representation(s) received as a result of the consultation would be reported back to Committee.

- 5) To request an update in the Business Bulletin on the Council's powers in relation to card readers for payments in taxis.

(Reference – Report by the Executive Director of Place, submitted.)

7. Taxi Stance Appointment – Haymarket Station

Committee was asked to note that, in order to satisfy the first part of the two part process of appointing a taxi stance, the Roads Authority had implemented a Traffic Regulation Order to facilitate the appointment of two authorised taxi stance at Haymarket Station and Morrison Street (Feeder Rank for Haymarket Station) as shown on Appendix 1 of the report by the Executive Director of Place.

Approval was also sought to carry out the statutory consultation required prior to formally appoint the taxi stance, as required by the Civic Government (Scotland) Act 1982 (the 1982 'Act') to satisfy the second part of the process.

Decision

- 1) To note the contents of the report by the Executive Director of Place.
- 2) To agree that officers would carry out the second stage of the statutory consultation on the proposed taxi stance.
- 3) To note that a report would be brought back for a decision if representations or objections were received.

(Reference – Report by the Executive Director of Place, submitted.)

8. Consultation Conclusion: Demand for Taxis within the City of Edinburgh

At its meeting on 21 November 2022, the Regulatory Committee considered a report on the provision of Private Hire Cares (PHCs) within the city, and to identify the impact of recent policy changes on the licensed fleet as a whole. Committee agreed that officers would invite final comments from interested parties on the survey and its conclusions; and to report results back to Committee.

Decision

- 1) To note the survey results and the Jacobs report at Appendix 1 of the report by the Executive Director of Place.
- 2) To note that the licensed hire trade had been subject to unprecedented challenges since Committee decided to assess whether there was overprovision in the Private Hire Car (PHC) market.

- 3) To note the Jacobs' conclusion that there was a lack of evidence of overprovision of PHC and the recommendation that this was reviewed in 12 months.
- 4) To note the feedback from stakeholder consultation following the November 2022 Committee.
- 5) To agree not to introduce an overprovision policy for PHC's at this time.

(Reference – Report by the Executive Director of Place, submitted.)

9. Houses in Multiple Occupation (HMO) – Raising Standards Motion Update

An update was presented on work carried out in response to a motion by Councillor Neil Ross (item 11.3) on Raising Houses of Multiple Occupation (HMO) Standards.

The report provided Committee with the results of a public consultation on whether conditions 011 and 012 of the HMO standard licence conditions should be amended, and a draft Best Practice Guide for HMO licence holders and agents was presented for consideration and subsequent public consultation.

Decision

- 1) To note the results of the consultation on Houses of Multiple Occupation (HMO) licence conditions 011 and 012.
- 2) To agree to amend HMO condition 011 to state that: “An emergency contact telephone number for the licence holder and/or management shall be available and notified to the Council, on an annual basis, for 24-hour contact purposes for emergencies or antisocial behaviour from the property”.
- 3) To amend HMO condition 012 to state that: “The licence holder shall give a neighbour notification to every occupier in the same building as the licence holder's premises, and any adjoining premises within 28 days of the licence holder's receipt of the licence document, and thereafter on an annual basis. This will advise of the name of the licence holder or managing agent, a contact address, daytime telephone number and an emergency contact number”.
- 4) To agree to consult on the terms of a proposed Best Practice Guide (Appendix 4 of the report by the Executive Director of Place) for HMO licence holders and agents.
- 5) To agree that the consultation on the Best Practice Guide should include provisions designed to encourage:
 - 5.1) improved neighbour notification of HMO licence applications, whether new or renewals.
 - 5.2) enhanced contact details being provided to neighbouring residents on an annual basis by including the names of both the landlord and the agent, if there is one, and the telephone number and email address of a named individual.

- 5.3) better compliance with Council Waste policies by subcontractors acting on behalf of a landlord or agent to make appropriate arrangements with the Council or other collecting contractor for the disposal and/or uplift of any building materials, bulky items or other refuse which are inappropriate for residential waste streams.

(Reference – Report by the Executive Director of Place, submitted)

10. Licence Income from Fees 2019/20, 2020/21, 2021/22

High level information was presented on the income collected from licensing fees during the last three financial years. Details were provided of income from the three main licence categories and a breakdown of the main expenditure.

Decision

To note the report.

(Reference – Report by the Executive Director of Place, submitted.)

11. Motion by Councillor Ross – Delay in Start Date for Short Term Lets Licensing

The following motion by Councillor Ross was submitted in terms of Standing Order 17.1:

“Committee:

- 1) Welcomes the improvements to accommodation safety standards for visitors and the better control of noise and anti-social behaviour for residents which arise from the licensing of short term lets (STL) by the Council in line with residents’ feedback to STL consultations.
- 2) Regrets the Scottish Government’s intention to impose a six-month delay to the start date for STL licensing for existing landlords from 1st April to 1st October 2023.

Requests a report to the meeting of this Committee prior to the summer recess in 2023 to consider the implications of the intended delay in the start date for the licensing of existing hosts being imposed on the Council by the Scottish Government.”

Decision

To approve the motion by Councillor Ross.

Minutes

Regulatory Committee

1.00pm, Monday 13 March 2023

Present

Councillors Ross (Convener), Caldwell, Dalglish, Fullerton, Mattos Coelho, Mowat and Rae.

1. Sexual Entertainment Venues (SEVs): Update Following Judicial Review

The Air Weapons and Licensing (Scotland) Act 2015 added new sections to the Civic Government (Scotland) Act 1982, enabling local authorities to introduce a discretionary licensing system for sexual Entertainment Venues (SEVs). The Council resolved to license SEVs in terms of section 45B and Schedule 2 of the 1982 Act on 31 March 2022 with an implementation date of 1 April 2023.

The report updated the Committee in respect of a Judicial Review of the SEV licensing policy and proposed that the date on which the licensing scheme was to take effect should be changed from 1 April 2023 to 31 December 2023.

Decision

- 1) To note the outcome of the Judicial Review.
- 2) To agree to amend the date of implementation of the resolution in terms of which the Council resolved to adopt a scheme to license Sexual Entertainment Venues to 31 December 2023.

(Reference – Report by the Executive Director of Place, submitted)

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Rolling Actions Log

Regulatory Committee

1 May 2023

No	Date	Report Title	Action	Action Owner	Expected completion date	Actual completion date	Comments
1	18.01.21	Licensing Policy Development – Street Trading Update	To agree that the Convener would write to the Executive Director of Place to request a short-term plan which would consider opportunities for street trading, including the use of vacant properties, and to consider a longer term plan to facilitate street trading.	Convener/ Executive Director of Place	May 2023	May 2023	Recommended for Closure Report on agenda for this meeting.
2	27.06.2022	Licensing Service Update and Draft Regulatory Committee Work Programme	<ol style="list-style-type: none"> 1) That the following items would be added to the Committee’s workplan: <ol style="list-style-type: none"> a) to conduct a review of the Council’s policy on parades and processions; b) to review the operation of the Scheme of Delegation 	Executive Director of Place	June 2023		

No	Date	Report Title	Action	Action Owner	Expected completion date	Actual completion date	Comments
			as it applies to licensing matters.				
			2) That the Executive Director of Place will report back to Committee in one year with an update on progress.	Executive Director of Place	June 2023		
			3) To include details of the backlogs in application processing across the main licensing categories at each meeting of the Committee via the Business Bulletin.	Executive Director of Place	Ongoing		Closed February 2023 Now included in business bulletin
3	21.11.2022	Age Limitation and Emissions Standards for Taxis and Private Hire Cars – Update	1) To circulate a briefing note containing information on whether retrofits to Euro 5 vehicles allowed entry into the Low Emission Zone, and the age limitations of vehicles in other local authorities in Scotland, to members.	Executive Director of Place	February 2023	February 2023	Recommended for closure Briefing note circulated February 2023.

No	Date	Report Title	Action	Action Owner	Expected completion date	Actual completion date	Comments
			2) To provide information to a future Regulatory Committee meeting on routes available to approve vehicles for admission into the Low Emission Zone.	Executive Director of Place	April 2023	March 2023	Recommended for closure A briefing note was provided for members in March 2023.
			3) To request officers review whether changes may be required in the wording of taxi conditions, and elsewhere, to accommodate the conversion of the engines of taxi and Private Hire Cars to electric.				
4	06.02.2023	Business Bulletin	To hold a briefing session or workshop for members regarding the LEZ and options for taxis and PHC vehicles, including CVRAS retrofits.	Executive Director of Place	April 2023	April 2023	Recommended for closure Briefing session arranged for 21 April 2023.

No	Date	Report Title	Action	Action Owner	Expected completion date	Actual completion date	Comments
5	06.02.2023	Response to Motion by Councillor Younie - Sexual Entertainment Venues	To instruct officers to prepare for a statutory twelve week consultation to review the Licensing Policy on Sexual Entertainment Venues, in particular, the provision for a 'nil cap'. This consultation would be launched only after the court decision had been published and considered by elected members and officers at a subsequent meeting of the Regulatory Committee.	Executive Director of Place	July 2023		
6	06.02.2023	Taxi Fares Review 2023	To request an update in the Business Bulletin on the Council's powers in relation to card readers for payments in taxis.	Executive Director of Place	May 2023	May 2023	Recommended for closure An update for members is included in the Business Bulletin for this meeting.
7	06.02.2023	Motion by Councillor Neil Ross – Delay in Start Date for	To request a report to the meeting of this committee prior to the summer recess in 2023 to consider the implications of the	Executive Director of Place	August 2023		<u>Update May 2023</u> An update for members was included in the

No	Date	Report Title	Action	Action Owner	Expected completion date	Actual completion date	Comments
		Short Term Lets Licensing	intended delay in the start date for the licensing of existing hosts being imposed on the Council by the Scottish Government. (Full text available on agenda.)				Business Bulletin for this meeting. A further report will be brought to Committee in August 2023.

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Business Bulletin


Regulatory Committee

10.00am, Monday, 1 May 2023

Dean of Guild Court Room, City Chambers, High Street, Edinburgh



Regulatory Committee

Convener:	Members:	Contact:
<p data-bbox="156 338 448 416">Convener Councillor Neil Ross</p> 	<p data-bbox="635 338 1062 669">Councillor Jack Caldwell Councillor James Dalgleish Councillor Denis Dixon Councillor Martha Mattos-Coelho Councillor Joanna Mowat Councillor Susan Rae Councillor Catherine Fullerton</p>	<p data-bbox="1145 338 1437 416">Matthew Brass Committee Services</p>

Recent News	Background	Contact
LICENSING		
<p>Licensing workload</p> <p>The Licensing Service issues 20,000 licences per year. Performance is measured by monitoring the number of applications in progress during the consideration and consultation stages. The annual target is for 'in progress' applications to represent just under 20% of the total applications in the system at any time, which equates to roughly 3,855 applications.</p> <p>It had been anticipated that it would take until 1 April 2023 to resolve the backlog accumulated during lockdown. At the time of writing, the position is, in fact, much healthier. There are currently 4,623 applications in the system, of which 1,331 are part of the 'backlog' (received more than 12 weeks ago). This compares to the lockdown peak when there were approximately 16,000 applications in progress.</p>	<p>The Committee has asked for ongoing updates on this topic.</p>	<p>Catherine Scanlin Licensing Manager 0131 529 4208</p>
<p>Short Term Lets</p> <p>On 1 March 2023, the Scottish Parliament approved an amendment to the existing short term let legislation, which extends the application deadline for existing hosts. This means that existing hosts and operators now have until 1 October 2023 to apply for a licence in order to continue operating whilst their application is considered. Existing hosts and operators are classed as those who operated their property as a short term let prior to 1 October 2022.</p>	<p>On 1 October 2022 the licensing scheme for short term lets opened in Edinburgh. The Regulatory Committee approved a Short Term Lets Licensing Policy on 29 September 2022</p>	<p>Andrew Mitchell Head of Regulatory Services 0131 529 4208</p>
<p>Card payments in taxis</p> <p>At a previous Hire Car Trade meeting, a request was made for the Council to consider making card payment devices in licensed vehicles mandatory. Having taken advice from colleagues in Legal Services, Committee is advised that it is likely that making acceptance of card payments in taxis mandatory would be considered to be <i>ultra vires</i> (unlawful). Any such mandatory requirement would go beyond what is required to ensure that a vehicle is fit for purpose in terms of section 10 of the 1982 Act and seeks to direct how drivers carry out their business once licensed.</p>	<p>At its meeting on 6 February 2023 the Committee asked for an update on the Council's powers in relation to card readers for payments in taxis.</p>	<p>Catherine Scanlin Licensing Manager Tel: 0131 529 4208</p>

<p>Officers are aware that such a requirement exists, for example, in London. It should be noted, that distinct legislation applies in London and comparisons are therefore of limited value.</p>																																												
<p>Driver Skills Development Programme: Foundation Course</p> <p>To date, 25 training courses have been delivered to over 798 new taxi and private hire car drivers entering the trade. The courses have been well received. Due to significant demand, additional courses in March and May are being offered and bookings for June are already being made.</p> <p>The course is providing invaluable support to new drivers entering the trade, while raising standards within the sector.</p> <p>The course is designed to be a precursor to rolling out full training to all drivers in 2023 to raise standards and improve quality of service.</p> <table border="1" data-bbox="145 786 997 1279"> <thead> <tr> <th></th> <th>No. courses</th> <th>No. participants</th> <th>First time passes</th> <th>Resits</th> <th>Resit passes</th> <th>Total passes</th> </tr> </thead> <tbody> <tr> <td>2020</td> <td>1</td> <td>7</td> <td>7</td> <td>0</td> <td>0</td> <td>7</td> </tr> <tr> <td>2021</td> <td>8</td> <td>134</td> <td>116</td> <td>5</td> <td>2</td> <td>118</td> </tr> <tr> <td>2022</td> <td>12</td> <td>510</td> <td>453</td> <td>47</td> <td>28</td> <td>481</td> </tr> <tr> <td>2023</td> <td>3</td> <td>147</td> <td>137</td> <td>20</td> <td>15</td> <td>152</td> </tr> <tr> <td>Total</td> <td>24</td> <td>798</td> <td>713</td> <td>72</td> <td>45</td> <td>758</td> </tr> </tbody> </table>		No. courses	No. participants	First time passes	Resits	Resit passes	Total passes	2020	1	7	7	0	0	7	2021	8	134	116	5	2	118	2022	12	510	453	47	28	481	2023	3	147	137	20	15	152	Total	24	798	713	72	45	758	<p>The Foundation Course for new taxi and PHC drivers was approved by the Regulatory Committee on 2 November 2020.-</p> <p>Coronavirus (COVID-19) – Contingencies Measures – Update report</p> <p>The online training is delivered in real time and allows participants to learn in a safe and convenient setting. The course provides opportunities for all to participate in group tasks and discussions.</p>	<p>Catherine Scanlin Licensing Manager 0131 529 4208</p>
	No. courses	No. participants	First time passes	Resits	Resit passes	Total passes																																						
2020	1	7	7	0	0	7																																						
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2023	3	147	137	20	15	152																																						
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<p>Licensing Forum</p> <p>The Council received a letter from the Minister for Community Safety with the Scottish Government encouraging all local authorities to support and promote a Licensing Forum in each Council area. The letter is attached for information.</p> <p>Additionally, a representative of Social Work has now joined the Licensing Forum. The membership now stands at 18 of the statutory maximum membership of 21.</p>	<p>Licensing (Scotland) Act 2005 requires a local Licensing Authority to establish a Licensing Forum.</p>	<p>Isla Burton Trading Standards Officer 0131 529 4208</p>																																										

TRADING STANDARDS		
<p>Call blockers</p> <p>The Trading Standards team currently fits call blocking devices for residents who are believed to be at risk of financial harm through telephone scams, identified through complaints or partner agency referrals. The team had fitted limited numbers of these devices since 2014 (81 in total) resulting in an estimated £1.83m in prevention based outcomes.</p> <p>Further funding for these devices has since come from the City of Edinburgh Community Safety Partnership Fund and Scottish Government.</p> <p>240 of the devices were issued to Edinburgh residents throughout March/April 2023, representing an estimated preventative value of at least £6m.</p>	<p>A call blocker prevents unwanted scam and nuisance phone calls from reaching landline phones. An infographic providing further details is attached below.</p>	<p>Tom Veitch</p> <p>Trading Standards and Licensing Enforcement Manager</p> <p>0131 469 3871</p>
<p>Vapes</p> <p>Vaping devices continue to present challenges for the Trading Standards team. The team has received 81 complaints about age restricted sales since April 2022, the majority of which have been about vapes. Gathering evidence of such illegal sales activity is time consuming and results are unpredictable. Where complaints are received, the Trading Standards team regularly engages with retailers, alongside partners such as Police Scotland, providing guidance and/or warnings. Where appropriate, this is followed up with test purchase activity.</p> <p>Further significant challenges remain with respect to the devices themselves. The Medicine & Healthcare Regulatory Authority (MHRA) is currently managing recalls of devices which are technically non-compliant. The Trading Standards team is about to begin a project focussing on devices which should not be present on the UK market at all due to various factors including lack of registration with MHRA.</p>		<p>Tom Veitch</p> <p>Trading Standards and Licensing Enforcement Manager</p> <p>0131 469 3871</p>

T: 0300 244 4000
E: scottish.ministers@gov.scot

To: Licensing Boards and Local Authorities

Our ref: A42549332

6 March 2023

Dear Licensing Board/ Local Authority

I am writing to you regarding Local Licensing Forums (“Forums”), and to seek your assistance to ensure that Forums are active and functioning successfully within your local authority area.

As you will be aware, The Licensing (Scotland) Act 2005 (“the 2005 Act”) requires every council in Scotland to establish a Forum. If the area of a council is divided into separate licensing divisions, then a council can also choose to establish separate Forums for each division. This means that there should in theory be between 32 – 40 Forums currently operating in Scotland. Forums have a vital role to play in local licensing arrangements and the development of local licensing policies.

Specifically, the law states the Forum’s role is to:

- Review: “keeping under review the operation of this Act [the 2005 Act] in the Forum’s area, and, in particular, the exercise by the relevant licensing board or boards of their functions”, and
- Advise: “giving such advice and making such recommendations to that... board in relation to those matters as the Forum considers appropriate.”

The law requires all Forums to have a membership of between 5 and 21 people, and they must include at least one Licensing Standards Officer (LSO) and at least one person from the health board.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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www.gov.scot

The law also sets out the main categories of members which the council must reach and engage in the process of setting up/maintaining a Forum: Licence holders; police; health, education or social work; young people; and residents. Forums have the flexibility to decide at a local level how many representatives there should be for each of the different interests, although all the interests are equally important.

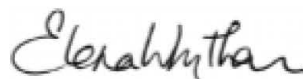
Last year my officials, in conjunction with Alcohol Focus Scotland, carried out a survey of Forums to identify current levels of Forum activity. In addition, the survey asked about what was working well with Forums and how they could be better supported or improved. I recognise that Forums will have faced challenges as a result of the COVID-19 pandemic, however I was concerned to discover that responses were received from only 14 Forums. Of further concern was the fact that the consultation responses that were received indicated that just 54% of those Forums were currently active. Every council has a legal requirement to establish, support and sustain a Forum for their area. An effective Forum has a vital role to play in local licensing arrangements, representing different communities of interest and ensuring that a breadth of views are considered, debated and inputted to Licensing Boards. A copy of the Forum Survey report is attached as a separate **Annex** to this letter.

On 13 January 2023 the Scottish Government published updated '[Licensing \(Scotland\) Act 2005 Section 142 Guidance for Licensing Boards](#)'. The purpose of the statutory guidance is to assist Licensing Boards in carrying out their functions under the 2005 Act. I would specifically highlight Chapter 6 of the statutory guidance, which concerns Forums. Information in that Chapter will be useful to councils, and as background information for members of the Licensing Board to be aware of.

We recognise the importance of working collaboratively to collectively consider and address the issues aired in the survey. My officials are planning to run a half day training/awareness raising session in the spring that will see a number of speakers showcasing examples of good practice, sharing their insights on the benefits of a strong working relationship between the Licensing Board and the Forum, look at any gaps in training provision, and also create the conditions and opportunity to build a stronger network of Forum expertise to help Forums grow and thrive going forward. I am personally hoping to join part of the training session if my diary permits.

I thank you in advance for your assistance.

Yours sincerely,



ELENA WHITHAM

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INVESTORS IN PEOPLE™
We invest in people Silver



Protecting Vulnerable Adults From Scam Phone Calls

Since 2014 Edinburgh Trading Standards have installed 81 call blockers to protect older and vulnerable people from nuisance and scam phone calls. So far 42,233 calls have been blocked, and we estimate that 68 scams have been prevented.



37

nuisance and scam calls received per month



49%

of all calls received were nuisance or scam calls



99%

of nuisance and scam calls were blocked by trueCall call blocking technology

£1,829,144 benefits

Costs

Benefits 62:1

Cost-Benefit analysis

It is estimated that over the 4 year life of these units they will have blocked **140,397** nuisance calls (of which **38,455** will have been scam phone calls), prevented **227** scams, saved vulnerable households **£669,754**, led to a reduction of **£622,109** in NHS, social care & police costs, and an increase in wellbeing & quality of life valued at **£537,280** - total benefits of **£1,829,144**. The financial benefits of **£1,291,864** are **62** times the project costs of **£20,979**.

Comments from those protected by the trueCall call blockers



This made a huge difference and enable my mother to live in her own home for longer



My mother no longer gets anxious and agitated. I cannot impress on you the positive impact this has made.



Thanks for making my phone my friend again!

•EDINBURGH•
THE CITY OF EDINBURGH COUNCIL

05/03/2023

Regulatory Committee

10.00am, Monday, 1 May 2023

Sexual Entertainment Venues (SEVs): Update Following Judicial Review

Executive/routine
Wards All
Council Commitments

1. Recommendations

- 1.1 Committee is asked to note the contents of the report and:
 - 1.1.1 Agree to carry out a statutory consultation process to seek community and business views on:
 - 1.1.1.1 What the appropriate number of Sexual Entertainment Venues (SEVs) for Edinburgh should be;
 - 1.1.1.2 What the appropriate number of SEVs for each relevant locality within the city should be; and
 - 1.1.1.3 The existing SEV policy statement and conditions framework.
 - 1.1.2 Note the update on the legal costs incurred in respect of the Judicial Review of the existing SEVs.

Paul Lawrence

Executive Director of Place

Contact: Andrew Mitchell, Head of Regulatory Services

E-mail: andrew.mitchell@edinburgh.gov.uk | Tel: 0131 529 4208

Sexual Entertainment Venues (SEVs): Update Following Judicial Review

2. Executive Summary

- 2.1 The [Air Weapons and Licensing \(Scotland\) Act 2015](#) ('the 2015 Act') added new sections to the [Civic Government \(Scotland\) Act 1982](#) ('the 1982 Act'), enabling local authorities to introduce a discretionary licensing system for SEVs within their areas. On 31 March 2022 the Council resolved to license SEVs in terms of section 45B and Schedule 2 of the 1982 Act, with an initial implementation date of 1 April 2023. At its meeting on [13 March 2023](#), Committee agreed to postpone the implementation date to 31 December 2023.
- 2.2 This report recommends that Committee agrees to carry out a statutory consultation over a period of 12 weeks to seek community and business views on what the appropriate number of SEVs for Edinburgh and for each relevant locality within the city should be. The consultation would also seek views on the existing SEV policy statement and conditions framework.

3. Background

- 3.1 Section 76 of the 2015 Act adds new sections (45A to 45C) to the 1982 Act.
- 3.2 Where a local authority resolves to license SEVs, the provisions at section 45A of the 1982 Act require a SEV licence for premises where the sexual entertainment is operated live, is for the direct or indirect financial benefit of the organiser and is for the sole or principal purpose of sexual stimulation of members of the audience.
- 3.3 On [31 March 2022](#), Committee considered a report on the proposed licensing of SEVs within Edinburgh. Thereafter, Committee agreed to adopt a SEV licensing resolution that would require the licensing of SEVs within Edinburgh, and to adopt a scheme for the licensing of SEVs effective from 1 April 2023. The Committee thereafter determined the number of SEV premises appropriate for the City of Edinburgh to be zero; and further agreed to adopt the SEV policy statement and standard licensing conditions appended to the report, all in terms of the 1982 Act. The current SEV policy statement is attached at Appendix 1. On [13 March 2023](#), Committee agreed to postpone the effective date of implementation until 31 December 2023.

- 3.4 As previously reported to Committee, the SEV licensing policy which was approved on 31 March 2022, has been the subject of a Judicial Review in the Court of Session. On 10 February 2023, the Court issued its decision, which found against the Council and in favour of the petitioners.
- 3.4.1 The Court decided that the Council had no discretion to grant applications for SEV licences where the Council had determined the number of SEVs appropriate for Edinburgh to be zero.
- 3.4.2 The Court also decided the Council had been wrong to consider that it did have discretion to grant applications for SEVs licences when a zero numbers determination was in place. Therefore, the zero numbers determination agreed by the Council on this basis should be struck down.

4. Main report

Requirement to set an appropriate number of licensed SEVs

- 4.1 As per paragraph 9(5A) of Schedule 2 of the 1982 Act, local authorities which have resolved to license SEVs must determine the appropriate number of SEV for both their area and for each relevant locality within their area. Paragraph 9(5)(c) of Schedule 2 allows local authorities to refuse applications on grounds that, at the time the application is determined, the number of SEVs in the local authority's area or relevant locality is equal to or exceeds the number that the authority considers appropriate for their area or that locality.
- 4.2 As a result of the Court's decision in the Judicial Review, and in order to comply with that decision, the Council is required to reconsider and determine the appropriate number of SEVs for both its area and for each relevant locality within its area. Previously, Committee agreed that the appropriate limit for the number of SEVs was zero. The Court's decision in respect of the Judicial Review does not otherwise affect the validity of the Resolution or the wider SEV policy (Appendix 1) made by the Council to license SEV,s except insofar as the policy makes reference to the said zero numbers determination.
- 4.3 Committee is asked to note that the number of premises understood to be directly affected by the licensing regime is now three premises, which is one fewer than the four referred to when Committee made its original determination in March 2022.
- 4.4 Any decision made by the Committee, in respect of determining the appropriate number of SEVs, must be based on an assessment of the evidence gathered. Members must also consider the legislative requirements, relevant non-statutory guidance, and the Scottish Government's strategy 'Equally Safe; Scotland's strategy for preventing and eradicating violence against women and girls'.

Public Consultation

- 4.5 Prior to the decision of the Court of Session, at its meeting of [6 February 2023](#), Committee agreed that, following publication of the Court's decision, officers should prepare a statutory 12 week consultation to review the existing SEV policy statement, and the determination of the appropriate number of SEVs for the city.
- 4.6 Accordingly, officers have prepared a draft consultation which can be found at Appendix 2. The aim of the consultation is to seek community and business views on what the appropriate number of SEVs for the city, or any relevant locality, should be.
- 4.7 The consultation further asks for comments on the existing SEV policy statement and conditions framework (previously approved by Committee on 31 March 2022), although the 'appropriate number' has now been deleted following the Court's decision. The proposed timeline for the consultation process is attached in Appendix 3.

5. Next Steps

- 5.1 All premises which could be affected by the SEV numbers determination, SEV policy statement and conditions framework will be written to and advised of the consultation. The Directorate will also consult with the persons or groups identified in its current policy. These include the trade and other interested parties such as performers' unions and the Edinburgh Violence Against Women Partnership.
- 5.2 A methodical and robust approach to obtaining evidence and information on the subject is required in order to minimise the risk of further legal challenge to any policy or committee decision.
- 5.3 A further report will be brought back to committee later this year with the results of the consultation, further advice on the determination of an appropriate number, and whether any other changes to the existing SEV policy statement and conditions framework are proposed.

6. Financial impact

- 6.1 To date, the total cost of the Council's legal fees in relation to the Judicial Review of SEVs licensing amounts to £117,011. The amount to be paid by the Council to the petitioners in respect of their judicial expenses is not yet intimated and determined. These costs are an unfunded pressure which will be required to be contained within the Place Directorate budget.

7. Stakeholder/Community Impact

- 7.1 In developing a policy, it will be necessary to consult with a wide range of stakeholders as described above.
- 7.2 A fresh Equalities Impact Assessment will be completed and published as part of the statutory consultation process.

8. Background reading/external references

- 8.1 Sexual Entertainment Venues (SEVs): Update After Judicial Review – Regulatory Committee – [13 March 2023](#)

9. Appendices

- 9.1 Appendix 1 – Current SEV Policy.
- 9.2 Appendix 2 – Draft SEV Consultation.
- 9.3 Appendix 3 – Proposed Timeline.

The City of Edinburgh Council

Sexual Entertainment Venue Licensing Policy

Introduction

- 1.1 The City of Edinburgh Council (“the Council”) is able to regulate sexual entertainment venues (SEVs) through the Civic Government (Scotland) Act 1982 (the 1982 Act).
- 1.2 Section 76 of the Air Weapons and Licensing (Scotland) Act 2015 (the 2015 Act) added new sections 45A to 45C to the 1982 Act in order to introduce a discretionary licensing regime for SEVs. Section 76 also amends section 41 of the 1982 Act to specifically exclude SEVs from the definition of places of public entertainment to ensure that a public entertainment licence cannot also be required for those venues.
- 1.3 The Council’s Regulatory Committee agreed on 31 March 2022 to make a resolution under section 45B(1) of the 1982 Act to introduce a licensing scheme for SEVs with effect from 1st April 2023. Consequently, this SEV policy applies to the whole of Edinburgh.
- 1.4 The making of the resolution under section 45B(1) of the 1982 Act allows the Council to prescribe standard conditions and fees for the grant, variation, renewal and transfer of SEV licences and to determine the appropriate number of premises to be licensed as SEVs within the city or any identified locality of the city and the appropriate number may be set at zero.
- 1.5 The Council must prepare a statement of its policy with respect to the exercise of its functions in relation to the licensing of SEVs. The policy will have regard as to how it will affect the statutory licensing objectives of:
 - 1.5.1 Preventing public nuisance, crime and disorder
 - 1.5.2 Securing public safety
 - 1.5.3 Protecting children and young people from harm
 - 1.5.4 Reducing violence against women

- 1.6 The policy will also provide guidance for prospective applicants, existing licence holders, those who may wish to object to an application and members of the Licensing Sub-Committee when determining an application. This policy will be reviewed regularly and revised when necessary.
- 1.7 The key aims of civic licensing are the preservation of public safety and order and the prevention of crime. A specific SEVs licensing regime allows the Council to consider local circumstances in setting the number of venues able to operate within their areas and to exercise appropriate control and regulation of those venues.

Definitions

- 2.1 A SEV is defined in the 1982 Act as any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.
- 2.2 For the purposes of that definition, “sexual entertainment” means any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means). An audience can consist of just one person.
- 2.3 This definition would apply to the following forms of entertainment as they are commonly known:
 - 2.3.1 Lap dancing
 - 2.3.2 Pole dancing
 - 2.3.3 Table dancing
 - 2.3.4 Strip shows
 - 2.3.5 Peep shows
 - 2.3.6 Live sex shows
- 2.4 This list above is not intended to be exhaustive and should only be treated as indicative. The decision to licence premises as SEVs shall depend on the content of the relevant entertainment rather than the name given to it.
- 2.5 Premises at which sexual entertainment is provided on a particular occasion will not require to obtain a SEVs licence if the sexual

entertainment has not been provided on more than 4 occasions within a 12-month period.

Locality

- 3.1 The Council considers that the character of the relevant locality, the use to which premises in the vicinity are put, and the layout, character or condition of the venue in respect of which the application is made, are relevant considerations when determining the grant of a SEV licence.
- 3.2 With reference to paragraph 9(7) of Schedule 2 of the 1982 Act, “relevant locality” means:
- a. In relation to the premises, the locality where they are situated;
 - b. In relation to a vehicle, vessel or stall, any locality where it is desired to use it as a SEV.

Character & Vicinity of Relevant Locality

- 3.3 In considering whether the grant, renewal or variation of the licence would be inappropriate given the vicinity in which the SEV premises operates, the Committee shall consider the existing character and function of the area. Having regard to Scottish Government guidance, due consideration will be given to the following:
- a. Whether the premises are situated in a residential area
 - b. Whether there are any schools and other places of education near the vicinity of the premises
 - c. Whether there are any places of worship in that vicinity
 - d. Whether there are other relevant businesses or charities operating in the area e.g. homelessness shelters, women’s refuges, supported accommodation, recovery units
 - e. Whether there are certain landmarks or facilities in the vicinity (e.g. historic buildings, sports facilities, cultural facilities, family leisure facilities, play areas or parks, youth facilities, retail shopping areas, and places used for celebration of commemoration

- f. Whether there have been incidents involving anti-social behaviour, sexual assaults or more minor harassment reported in that area and/or in connection with the premises.
 - g. Whether there have been incidents of human trafficking or exploitation in that area and/or in connection with the premises
- 3.4 The Council will consider relevant locality on a case by case basis, taking into account the particular circumstances of each application.

Appropriate Number of SEVs in a Relevant Locality

- 3.5 As set out within paragraph 9(5)(c) of Schedule 2 of the 1982 Act, the Council may refuse an application for a SEV if it is satisfied that the number of SEVs in the local authority area or relevant locality at the time the particular application is made is equal to or exceeds the number which the local authority consider is appropriate for the local authority area or locality. The Council is able to determine that the appropriate number for the local authority area or locality is *(to be determined by the Regulatory Committee after consultation)*.
- 3.6 The Council must determine the appropriate number of SEVs which it considers appropriate in any area within the Council's control. Having done so, each application will be considered on its own individual merits at the time the application is submitted to the Council.
- 3.7 The Council considers the appropriate maximum limit on the number of SEVs within the City of Edinburgh is *(to be determined by Regulatory Committee after consultation)*. The Council considers that the city centre ward 11 (as shown in Appendix 1) is the only area of the city where it is appropriate to have SEVs located. No separate localities have been identified. It is considered that no other Council wards are appropriate to have any SEVs operating within them given the predominantly residential nature and character of those wards.
- 3.8 Notwithstanding the terms of paragraph 3.7 above, the Council does not consider any commercial or industrial areas in the city appropriate locations for SEVs. At the time of passing the resolution there were no SEVs operating in these areas. Further it is possible that the classification of such areas can change through regeneration or development to become residential in character. Finally, these areas are not considered

suitable as they can be isolated or quiet after normal business hours and these would not be appropriate locations having regard to the safety of performers.

Suitability of Premises

- 3.9 Under the 1982 Act the Council has the discretion to refuse applications relating to SEVs if it is considered that the grant or renewal of the licence would be unsuitable, having regard to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- 3.10 It is expected that when an application for a SEV licence is made, that the applicant will be able to demonstrate that the layout, character and/or condition of the premises is appropriate to the relevant entertainment proposed at the premises.

SEV Application Process

- 4.1 The 1982 Act allows the Council to issue a licence for a maximum period of one year. A licence can also be issued for a shorter period, if it is deemed appropriate.
- 4.2 An application for the grant, variation, renewal or transfer of a licence must be made in writing to the Council together with the appropriate fee, layout plan as well as complying with the following requirements:
- a. Within seven days of the application being lodged with the Council, the applicant must publish an advertisement of the application in a local newspaper within Edinburgh. A suggested form of advertisement is available from the Licensing Service website. A copy of the newspaper in which the advertisement appears must be lodged with the Licensing Service within three days of the publication.
 - b. The applicant must display a notice of the application on or near the premises where it can be conveniently read by the public. The notice must be displayed for 21 days from the date the application is lodged with the Council. A copy of a display notice can be downloaded from the Licensing Service website. As soon as possible after the expiry of the period of 21 days, the applicant shall submit to the Council a certificate (available online) which states that a notice was duly exhibited for the required period.

- c. Applicants will be required to provide pictures or sketches of the exterior design of the premises for consideration, in order to ensure that it complies with the standard conditions of licence.
 - d. Application packs must include a copy of the premises 'house rules' for performers and proposed code of conduct of patrons.
- 4.3 Applicants should note that the application fee is non-refundable in the event of the licence being refused or the application being withdrawn prior to determination. To view the Council's policy on refunds, click [here](#).
- 4.4 The following list organisations will receive a copy of an application upon its submission to the Council:
- a. Edinburgh Rape Crisis Centre
 - b. Edinburgh Women's Aid
 - c. Equally Safe (Edinburgh) Committee
 - d. Rape Crisis Scotland
 - e. Scottish Women's Aid
 - f. Zero Tolerance
 - g. Any community council within or neighbouring the locality in which the premises is situated.

Making an Objection

- 4.5 It is possible to lodge an objection against the grant of an application for a SEV licence. Objections must be made in writing (emails are accepted) and sent to the Licensing Service (licensing@edinburgh.gov.uk) within 28 days of the application being advertised. If an objection is lodged out with this period, it must explain why it has been lodged late. It would then be a matter for the Licensing Sub-Committee to consider if it is satisfied that there is sufficient reason why it was not made in the time required.
- 4.6 To be considered as competent, objections should include the following information:
- a. The name and address of the person or organisation making the objection
 - b. The premises to which the objection relates
 - c. The objection must be signed by the objector, or on their behalf

- 4.7 Objections to a SEV application will be considered by the Licensing Sub-Committee when determining the application. A copy of the general terms of the objection will be sent to the applicant, however certain contact details such as telephone numbers, email addresses and signatures will be removed. The name and address of any objector will not be provided to the applicant without the objector's consent.

Determining an Application

- 4.8 Every application for a SEV licence will be considered and determined at a meeting of the Licensing Sub-Committee. As stated above, if any objections are received in relation to an application, they will also be considered at the Committee meeting.
- 4.9 Objectors will be given the opportunity to speak to their written objection at a meeting of the Committee. Similarly, applicants will be given the opportunity to speak to their application and address any questions that the Committee may have.
- 4.10 Under the terms of the 1982 Act, there are mandatory and discretionary grounds for refusal of a SEV licence. The specific mandatory grounds for refusal are set out in section 9(3) of Schedule 2 of the 1982 Act, which states.

"A licence under this Schedule shall not be granted –

- a) To a person under the age of 18;
- b) to a person who is for the time being disqualified under paragraph 13(10) or 19(5) below;
- c) to a person other than a natural person if any director of it or partner in it or any other person responsible for its management is disqualified under paragraph 13(10) or 19(5) below;
- d) to a person who has been convicted of an offence under paragraphs 19 to 21 below;
- e) to a person who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made;
- f) to a body corporate which is not incorporated in the United Kingdom;
- g) to person who has, within the period of 12 months immediately preceding the date the application was made, been refused by the

same local authority the grant or renewal of a licence under this Schedule for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal; or

- h) to a person other than a natural person if any director of it or partner in it or any other person responsible for its management has within that period, been refused by the same local authority the grant or renewal of such a licence, unless the refusal has been reversed on appeal.”

4.11 Section 9(5) of Schedule 2 of the 1982 Act sets out the terms of the discretionary grounds on which a SEV application can be refused. They are as follows:

- a. That the applicant is unsuitable to hold a licence by reasons of having been convicted of an offence or for any other reason;
- b. That if the licence were to be granted or renewed, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be otherwise refused the grant/renewal of a licence if they made the application themselves.
- c. That the number of SEVs in the local authority area or relevant locality at the time the application is made is equal to or exceeds the number which the Council considers appropriate for their area or that locality;
- d. That the grant or renewal of the licence would be inappropriate having regard:
 - a) To the character of the relevant locality; or
 - b) To the use to which any premises in the vicinity are put; or
 - c) To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Suitability of Applicant

4.12 In determining an application, the Committee will consider whether the applicant is or remains fit and proper to hold a licence. The Council does not expect any fines, arbitrary or otherwise, to be in place for performers, which could result in their loss of income. Additionally, the Council expect that house fees for performers will be transparent and agreed in advance. The Council does not expect that these would be subject to change at short notice, resulting in a loss of income to the performer. Where

examples of fining or issues with house fees are brought to their attention, the Committee could take this into account when considering whether an applicant is or remains fit and proper to hold a SEV licence.

Variation of a SEV Licence

- 4.13 The licence holder of a SEV licence may apply to vary any term, condition or restriction placed upon the licence. The statutory requirements for advertising, giving notice and timeline for the consideration of the application are the same as those for initial grants or renewals as set out at section 4 of this policy.
- 4.14 Variation applications will be considered by the Licensing Sub-Committee where the applicant will be given an opportunity to speak to their application and answer any questions that Committee members may have. When determining an application, the Committee can either:
- a. Grant the variation as requested;
 - b. Make such variations as it thinks fit;
 - c. Refuse the application.
- 4.15 In the event of the Committee agreeing a condition or restriction other than the one sought in the original variation application, the decision will not take effect until the time for bringing an appeal has expired, or if an appeal is lodged, the abandonment of the appeal or the conclusion of the appeal, if found in favour of the Council.

Renewal Application

- 4.16 Provided an application for renewal has been accepted and deemed competent by the Licensing Service prior to the date of expiry, the licence shall be deemed to remain in force until such time as the renewal application has been determined.
- 4.17 The statutory requirements for advertising and giving notice are the same as those applying to initial grants. Furthermore, renewal applications will be considered by the Licensing Sub-Committee.

Right to Appeal

- 4.18 An appeal against the decision of the Licensing Sub-Committee in respect of the grant, renewal, variation or refusal of a licence must be made to the Sheriff Court within 28 days of the decision being made.
- 4.19 Where an application for a licence is refused on the under paragraph 9(5)(c) or (d) of Schedule 2 of the Civic Government Act 1982, the applicant can only challenge the refusal by way of judicial review.

Conditions

- 5.1 The Licensing Sub-Committee is able to grant or renew a SEV licence on such terms and conditions as it considers appropriate. This will typically take the form of standard conditions which are applicable to all SEV licences. Additional conditions may also be placed on the licence which are specific to the applicant or premises.
- 5.2 The Committee agreed a set of standard conditions on 31 March 2022 and these shall apply to every licence granted, varied or renewed by the Committee, unless they have been expressly excluded or varied. The standard conditions are found at appendix 1 of this policy.
- 5.3 It is an offence to operate a SEV without a licence or contravene a condition of any granted licence. Licence holders found to breaching the terms of their licence may be referred to the Licensing Sub-Committee for suspension or revocation of the SEV licence.

Relationship with Other Strategies

- 6.1 Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls was first published in 2014 and last updated in 2018 It sets out a definition of violence against women and girls which includes 'commercial sexual exploitation, including prostitution, lap dancing, stripping, pornography, and human trafficking.' Whilst recognising the conflict between this definition and the licensing of sexual entertainment venues, the Scottish Government intends that it will help to ensure that such activities take place in safe and regulated environments.

Related Documents

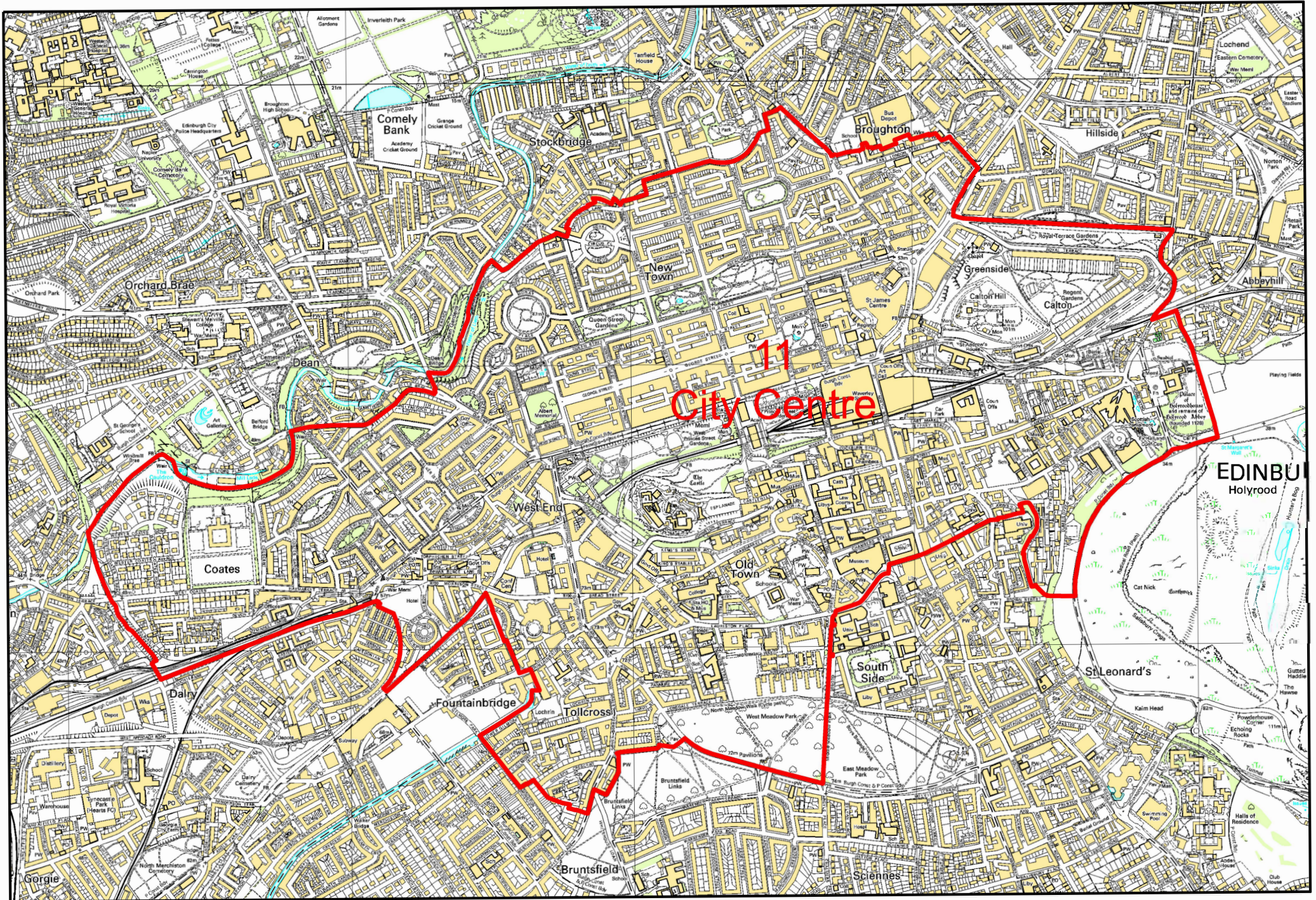
- 7.1 [Air Weapons & Licensing \(Scotland\) Act 2015 – Sexual Entertainment Venues– Update After Initial Consultation – Regulatory Committee – 21 October 2019](#)

- 7.2 [Civic Government \(Scotland\) Act 1982 – Sections 45A-45C](#)
- 7.3 [Provisions for Licensing of Sexual Entertainment Venues: Guidance – Scottish Government](#)
- 7.4 [Air Weapons and Licensing \(Scotland\) Act 2015 – Sexual Entertainment Venues – Proposed Resolution, Policy and Conditions – Update](#)

Review

- 8.1 This policy will be reviewed annually or more frequently, if required.

Appendix 1 - (of Appendix 1) - Map of CityCentre - Ward 11



Appendix 2

Draft SEV Consultation

Overview

In March 2022, the Regulatory Committee formally agreed to introduce a licensing scheme for Sexual Entertainment Venues (SEVs) in Edinburgh. This followed the introduction of new legislation which allowed local authorities to license such venues and a public consultation exercise on the issue.

Following the consultation process the Council resolved to licence SEVs, agreed the appropriate number of SEVs within Edinburgh was zero and also agreed a SEV policy statement and conditions framework.

Following a legal challenge in the courts, the Council's determination of the appropriate number being set at zero has been struck down by the Court of Session.

The Council are therefore now reconsidering the determination of an appropriate number of SEVs. At the same time the Council are also reviewing the agreed SEV policy statement in light of the Court of Session's decision.

As stated above, the Council is required to determine an appropriate number of SEVs permitted to operate in Edinburgh and each relevant locality. This consultation asks for views on what that number should be.

The consultation also asks for views on the existing licensing policy and set of licensing conditions for SEVs.

It is important to note that following the Court of Sessions decision that if the Council chooses to determine an appropriate number of SEVs within Edinburgh or any of the relevant localities therein, to be zero then no SEV premises will be permitted to operate in Edinburgh. In such circumstances, any application received for a SEV licence would require to be refused.

Adoption of the powers to license SEVs does not imply approval of these premises by the Council.

The definition of a SEV is provided by legislation and is aimed at premises providing sexual entertainment often referred to as 'lap dancing'. Premises used as massage parlours or saunas are not included in this legislation or in the definition of sexual entertainment and will not be affected by these proposals.

Why are we consulting?

The aim of the consultation is:

- To seek community and business views on what the appropriate number of SEVs permitted to operate in the city should be and the existing licensing policy and conditions framework in respect of SEVs in Edinburgh.

The number of SEVs

The Council must determine an appropriate number of SEVs within Edinburgh and for any relevant locality. The Council will be required to refuse a licence application if it determines the appropriate number of SEVs is zero in this regard.

Currently, the city centre has three premises which offer services which would fit within the definition of SEVs. This is down from the previous four premises when the policy was determined in March 2022. There are currently no SEVs operating in localities outside of the city centre.

Question 1

The Council must set an appropriate number of SEV premises within Edinburgh and for any relevant locality. What number do you think the Council should set for the following localities?

	0	1	2	3	4	5	6	7	8	8+	No limit
The city centre <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A rural area <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A busy late night economy area e.g. George Street, Grassmarket <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A town centre/high street e.g. South Queensferry, Portobello, Kirkliston <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A residential area <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
An industrial or commercial area <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 2

Please consider the type of areas where a SEV might operate, and tell us whether you agree that the following areas would normally be suitable for SEVs to operate:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
The city centre <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A rural area <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A busy late night economy area e.g. George Street, Grassmarket <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A town centre/high street within the city e.g. South Queensferry, Portobello, Kirkliston <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A residential area outwith the city centre <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
An industrial or commercial area <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 3

Do you have any comments on any aspect of the existing Sexual Entertainment Policy? The policy is attached below.

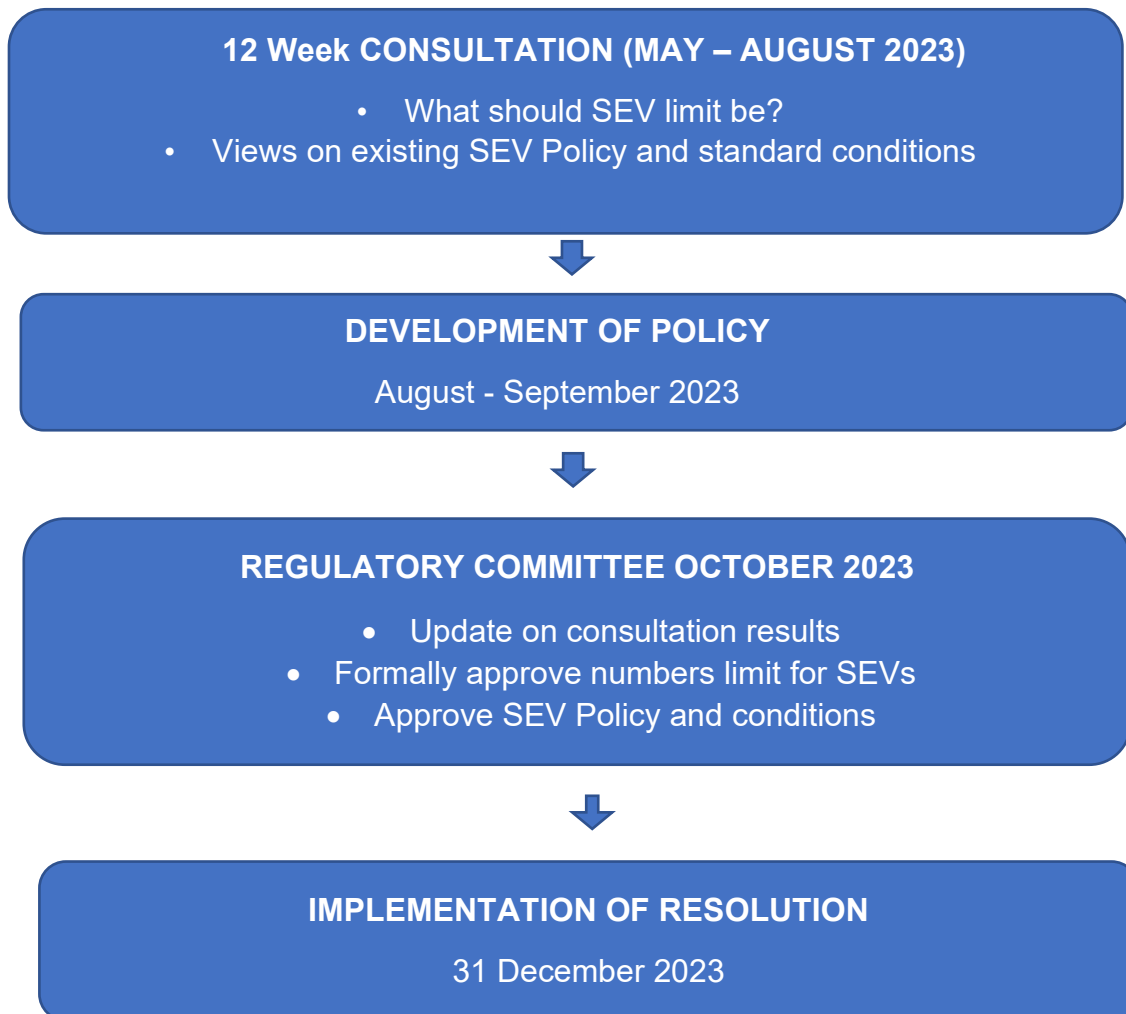
Question 5

Do you have any comments on the existing set of licence conditions for Sexual Entertainment Venues? The existing set of conditions for SEVs is attached below.

Question 6

Would you like to make any further comments?

Appendix 3 – Proposed Consultation Timeline



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Regulatory Committee

10.00am, Monday, 1 May 2023

Review of Taxi Fare Structure – Outcome of Consultation

Executive/routine	Executive
Wards	All
Council Commitments	N/A

1. Recommendations

- 1.1 Committee is recommended to:
 - 1.1.1 Note the content of this report and that the Council’s statutory duties have been met in relation to the consultation;
 - 1.1.2 Consider the representations received during the statutory public consultation period, as attached at Appendix 3;
 - 1.1.3 Agree the fare changes, as set out in paragraph 4.2, to fix the taxi fare scales (Appendix 2) with an effective date of 9 June 2023; and
 - 1.1.4 Note that, following the determination of the fare charges by the Committee, officers will carry-out the statutory notification procedures for the revised taxi fare scales.

Paul Lawrence

Executive Director of Place

Contact: Andrew Mitchell, Head of Regulatory Services

E-mail: andrew.mitchell@edinburgh.gov.uk | Tel: 0131 529 4208

Report

Review of Taxi Fare Structure – Outcome of Consultation

2. Executive Summary

- 2.1 Jacobs was engaged to carry-out initial work on the review of the current taxi fare scales and their report, together with details of further consultation undertaken with the taxi trade, was presented to Committee on [6 February 2023](#), and Committee agreed on the proposed revised taxi fare scales for public consultation.
- 2.2 This report sets out proposed changes to the taxi fare scale to reflect feedback received.

3. Background

- 3.1 Under Section 17(2) of the [Civic Government \(Scotland\) \(Act\) 1982](#) ('the Act'), the Council, as Licensing Authority, has a duty to review and set a taxi fare structure within the city. The taxi fare structure represents the maximum fare which a customer can be charged for a taxi journey within the city.
- 3.2 The Council engaged Jacobs to undertake the initial work in relation to the review of the fare structure. The Jacobs report and its conclusions, along with details of further consultation with the taxi trade, were presented to Committee on [6 February 2023](#).
- 3.3 Committee agreed the proposed revised taxi fare scales and instructed officers to advertise the changes in line with the statutory requirements of the Act.
- 3.4 There is a right of appeal against any Committee decision regarding fares, which can be exercised by any taxi licence holder or an organisation representative of taxi operators, with the appeal made to the Scottish Traffic Commissioner.

4. Main report

Statutory Consultation

- 4.1 On [6 February 2023](#), Committee agreed proposed changes to the existing taxi fare scales. The current fare tariff is attached at Appendix 1 and the proposed revised fare scales are attached at Appendix 2.

- 4.2 Specific proposed changes are as follows:
- 4.2.1 Increase Tariffs 1 and 2 by 20%;
 - 4.2.2 Increase Tariffs 3 and 4 by 15%.
- 4.3 As required by the Act, an advert was published in a local newspaper, namely the Edinburgh Evening News, on 28 February 2023. The advertised tariff was as set out in Appendix 2.
- 4.4 The proposed taxi fare tariff was also advertised on the Consultation Hub on the Council’s website where the public could submit comments.
- 4.5 There were 64 responses received to the consultation which are attached at Appendix 3. Broad themes are:
- 4.5.1 A majority of respondents were broadly supportive of the general tariff increases; and
 - 4.5.2 Some respondents said that taxi fares are too expensive.

Effect of Proposed Tariff Change

- 4.6 A trade publication ranks all Local Authorities with respect to the fares charged for a two-mile taxi journey during the day. In January 2023, the City of Edinburgh Council sat at 140 of 365 authorities (*Private Hire and Taxi Monthly* publication, January 2023).
- 4.7 Should the proposed changes be implemented, Jacobs calculates that, based on the March 2023 rankings, the City of Edinburgh Council would climb to position 14 in the ranking, as set out in the table below. It is important to note that the position in the ranking is a snapshot in time and is likely to change when other local authorities review their taxi fare charges.

Local Authority	Current Rank
Midlothian	8
City of Edinburgh	14
Fife	67
East Lothian	143
Glasgow	174
West Lothian	189
Falkirk	259

Consultation outcome

- 4.8 An updated fare scale has been prepared and is attached at Appendix 2, to reflect the proposed changes.
- 4.9 The new fare scale will take effect from 9 June 2023. This will allow for the statutory 14 day period during which taxi operators can appeal against the new fare scale.

Airport drop-off fee

- 4.10 The Committee asked officers to check and confirm the fee charged by Edinburgh Airport for dropping off a passenger in the airport's Inner Drop-Off Zone. This charge remains at £4, as stated in the current and proposed fare tariff cards.

5. Next Steps

- 5.1 If Committee approves the recommendations contained in this report:
- 5.1.1 Officers will arrange to advertise the Committee's final decision; and
 - 5.1.2 Officers will notify licence holders of the new tariff, including their right of appeal. Arrangements will be made for taxi meters to be altered to reflect the new tariff.

6. Financial impact

- 6.1 There is no direct financial impact to the Council as a result of these changes.

7. Stakeholder/Community Impact

- 7.1 If the taxi trade, specifically any operator, has a concern about the Council's decision on the new fare scales, taxi licence holders may appeal that decision individually or as a group, including any decision not to implement an increase in the fare scales. Details of this process are outlined at 3.4 above.
- 7.2 The matters described in this report have no relationship to the [Public-Sector-Equality-Duty](#) thus there is no direct equalities impact arising from this report.
- 7.3 There is no environmental impact arising from the contents of this report.
- 7.4 Following consultation with the taxi trade and Committee agreeing the proposed revised taxi fare scales, further public consultation was carried out. This was done in line with statutory requirements through advertisement in a local newspaper and additionally on the Council Consultation Hub.

8. Background reading/external references

- 8.1 None

9. Appendices

- 9.1 Appendix 1: Current fare card (from 30 December 2021)
- 9.2 Appendix 2: Revised taxi fare card (as advertised).
- 9.3 Appendix 3: Comments received.

**THE CITY OF EDINBURGH COUNCIL
CIVIC GOVERNMENT (SCOTLAND) ACT 1982**

FARE TABLE FOR TAXIS

**FOR UP TO 2
PASSENGERS**

With effect from 30 December 2021

TARIFF 1 Monday – Friday 6am – 6pm	TARIFF 2 Monday – Friday 6pm – 6am the following day 6am Saturday – 6am Monday
TARIFF 3 Monday – Friday 6am – 6pm during Christmas and New Year period	TARIFF 4 25 December - ALL DAY 1 January - ALL DAY Where Christmas period falls on Saturday and Sunday - ALL DAY Monday-Friday between 6pm and 6am during Christmas and New Year period
CHRISTMAS PERIOD	6pm on 24 December to 6am on 27 December
NEW YEAR PERIOD	6pm on 31 December to midnight on 2 January

CHARGES	TARIFF 1	TARIFF 2	TARIFF 3	TARIFF 4
<ul style="list-style-type: none"> Initial hire not exceeding 501m Initial 105 seconds of waiting time Combination of initial time and distance 	£3.00	£4.00	£4.00	£5.00
<ul style="list-style-type: none"> Each additional 163m up until 1805m and thereafter each additional 190m Each additional 35 seconds of waiting time Combination of additional time and distance 	£0.25	£0.25	-	-
<ul style="list-style-type: none"> Each additional 179m up until 1933m and thereafter for each additional 207m Each additional 38 seconds of waiting time Combination of additional time and distance 	-	-	£0.35	£0.45

EXTRA PAYMENTS

When more than 3 passengers	Each	£0.40
Note: Only 2 children under 12 years will be reckoned as one passenger. No extra fare will be charged for one child under 5 years of age.		
Each Passenger must be properly seated		
Hires ending at Edinburgh Airport Inner Drop-off Zone (See Note 4 below)	£4.00	
Call Out Charge Applicable when pre-booked	£0.80	Airport Pickup - For hires commencing at Edinburgh airport. The amount charged at the exit gate subject to a maximum of £5.00, providing it is no more than the actual amount charged.
Cancellation Fee Applicable when taxi is pre-booked but not used	£2.20	
Soiling charge - maximum of £50.00 payable by a passenger, where a vehicle is required to be removed from service for cleaning in order for it to be restored to a usable state and condition		

NOTES

- (1) The above Tariff is applicable only within the City of Edinburgh.
- (2) Any hire which terminates outside the City of Edinburgh area – FARE MUST BE NEGOTIATED AND AGREED WITH DRIVER BEFORE THE JOURNEY COMMENCES.
- (3) A copy of the Licensing Conditions can be inspected at the Council's Licensing Offices, 249 High Street, Edinburgh, EH1 1YJ and downloaded from www.edinburgh.gov.uk
- (4) **The Airport Extra** is only payable if passenger is dropped off in the covered inner drop-off zone at Edinburgh Airport and the driver has explained to the passenger before the start of the journey - (1) He will take the passenger to the drop off point just beside the airport terminal and that there is a £4 extra for this. (2) If the passenger states he is disabled, the £4 extra still has to be paid, but the driver understands that the passenger can reclaim this from the airport at the drop-off point. (3) If the passenger wishes to avoid the £4 extra, he can be taken to an outer drop-off point. However, this is further from the airport terminal, involves the use of a free shuttle bus and will require more time for the passenger to get to the airport terminal.

COMPLAINTS

Any hirer aggrieved at the level of the fare charged for any hire or for any other reason may discuss the matter with the Taxi Licensing Officer (0131 529 4250). Any complaint must be made in writing and addressed to the Complaints Officer, Licensing Service, The City of Edinburgh Council, 249 High Street, Edinburgh EH1 1YJ, and should include the vehicle's licence number and time and date of the incident.

THE CITY OF EDINBURGH COUNCIL
FARE TABLE FOR TAXIS
 With effect from 9 June 2023

FOR UP TO 2 PASSENGERS

TARIFF 1 Monday - Friday 6am – 6pm	TARIFF 2 Monday - Friday 6pm – 6am the following day 6am Saturday – 6am Monday
TARIFF 3 Monday - Friday 6am – 6pm during Christmas and New Year period	TARIFF 4 25 December – ALL DAY 1 January – ALL DAY Where Christmas period falls on Saturday and Sunday - ALL DAY Monday – Friday between 6pm and 6am during Christmas and New Year period
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CHARGES	TARIFF 1	TARIFF 2	TARIFF 3	TARIFF 4
<ul style="list-style-type: none"> ▪ Initial hire not exceeding 501m ▪ Initial 105 seconds of waiting time ▪ Combination of initial time and distance 	£3.60	£4.80	£4.60	£5.75
<ul style="list-style-type: none"> ▪ Each additional 163m up until 1805m and thereafter each additional 190m ▪ Each additional 35 seconds of waiting time ▪ Combination of additional time and distance 	£0.30	£0.30		
<ul style="list-style-type: none"> ▪ Each additional 179m up until 1933m and thereafter each additional 207m ▪ Each additional 38 seconds of waiting time ▪ Combination of additional time and distance 	-	-	£0.40	£0.52

EXTRA PAYMENTS

When more than 3 passengers	Each	£0.40
Note: Only 2 children under 12 years will be reckoned as one passenger. No extra fare will be charged for one child under 5 years of age.		
Each Passenger must be properly seated		
Hires ending at Edinburgh Airport Inner Drop-off Zone (See Note 4 below)		£4.00
Call Out Charge Applicable when pre-booked	£0.80	Airport Pickup For hires commencing at Edinburgh airport The amount charged at the exit gate subject to a maximum of £5.00, providing it is no more than the actual amount charged
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Any hirer aggrieved at the level of the fare charged for any hire or for any other reason may discuss the matter with the Taxi Licensing Officer (0131 529 4250). Any complaint must be made in writing and addressed to the Complaints Officer, Licensing Service, The City of Edinburgh Council, City Chambers, 253 High Street, Edinburgh EH1 1YJ, and should include the vehicle's licence number and time and date of the incident.

Appendix 3 – Comments Received

From: G M
Sent: 09 March 2023 16:42
To: Licensing <Licensing@edinburgh.gov.uk>
Subject: Taxi Fare Review 2014

Taxi fares should all start on the meter at 4.00 day or night. Then the increase charge per distance should be different for day and night.

Therefor more customers will still use taxis nowing they start at £4.00 the booking fee should be £1.00 extra passenger fee done away with airport charge £5.00 both pick up and drop off. 20% is to high book a cab on your own at 6.30pm to get home £5.60 start will put people off. This would get more cabs out week days and nights and weekends where there are longer journeys the increase in distance cost will benefit everyone.

It's fair. The costs of running a taxi went up astronomically and the drivers have had to take the hit. These rises will reflect the cost drivers have lost.
As a taxi owner I don't think we need an increase at this moment
Very fair
This will discourage me from getting a taxi as opposed to an Uber. It is already very expensive to get a taxi. If you live outside of town e.g. In Bonnyrigg or Midlothian then it becomes unaffordable to be on nights out in Edinburgh.
Completely agree. Between the fuel increase and Cost of living increase everyone has felt the pinch and the drivers completely deserve this tariff increase to help them out just as many other industries have given wage rises. Apart from anything else, Edinburgh cabs that were pushed into going LPG by the Council have been hit with rising costs in gas and fewer LPG fill up stations (none of which are in Edinburgh) and therefore must travel out of Edinburgh to fill up from a garage that dictates the prices as there is high demand and low supply. This means drivers are losing fuel to go fuel up, therefore deserve all the help they can get.
Very fair and deserved
Does it matter?
Ridiculous peoples have no money and you want to add 20% to the fare
The taxi drivers deserve every penny Bills are going up as well as overheads
Seems fair to me as the taxi trade are pressurised by the council to put new or nearly new cabs on the road,also the price of fuel is at an all time high..
The drivers have had a bad time with increasing cost, so deserve rise.
This is a substantial increase, but given the current climate and increase in costs across the board, it is to be expected in order for drivers to make a living.

I already think our official black Hackney cabs are expensive and especially compared with other cities.
I am very loyal to these cabs and would NEVER use Uber or the pre-booked cabs as I simply do not know who is driving them and they have never sat the taxi test.
However you are pushing loyal customers to think very hard about using cabs and taking our cars.
I think the proposed fare tariff is frankly ridiculous.
Just so long as we keep Taxis going!
I think increase is too much. I'm a taxi driver .10-15% rise would suffice.
Should going up because leaving cost going up. So, if we don't want destroying the private hire and taxi industry, tariffs should go up
Not anywhere near enough if council pushing us into £62k debt for a vehicle not fit for purpose,
About right if the council sees sense and allows perfectly acceptable vehicles to work on, given the cost of fuel
Taxi fares are already expensive!
Thats fine taxis need all they can get
It's fair because of the cost of living crisis and inflation.
We as an industry are under serious financial pressure,ie changing vehicles to euro 6 Compliance,fuel costs& other running costs we need every penny we can get.
My overheads per month are close to £1500 That's before my upkeep and diesel
I think the proposed increase is fair and reflects the significant increase in operational costs for taxi driver and owners.
I find the £0.52 increments on Tariff 4 to be somewhat peculiar, as it is not a round number and will generate unexpected fares to the traveling public. I feel this figure should be rounded down to £0.50 for simplicity. It also removes the requirement for drivers to hold copper change. Something that has not be required for over a decade.
20% to much A rise is definitely needed 15 % across the board
As a taxi driver of almost 20 years, my opinion is that at present the black cab taxi trade has never been held in less esteem by the City of Edinburgh Council and still the PUBLIC have great faith in them asking such questions as why there are so few taxi ranks, why taxis have to pay to provide a service at the airport and why the rules and regulations concerning private hire are not enforced by police and parking attendants. A 20% or 15% rise in engagement fee is not the answer. That means that passengers who do short journeys (elderly, infirm, restricted mobility etc.) are the passengers who pay more. Why not ask the people who KNOW the taxi industry (perhaps the committees of the 2 Black cab companies) what their suggestions would be rather than plucking a random figure from mid-air. Oh, and another point - why is the fee for the taxi test approximately 7 times that of an MOT when they are executed at the same time.
I think with the cost of fuel and the cost of living I think it's a fair increase. Also other less qualified ph drivers (Uber) can charge what they want.
Increase too high in current economic climate. Increasing tariffs by such amounts will not attract drivers back to the trade and will only cause people to seek cheaper alternative forms of transport.
Seems fair as everything is going up in price and taxi drivers need to earn a liveable wage
Taxi drivers deserve a good wage, they provide a invaluable service

Agree %100
<p>I am a taxi owner and driver , it is too much of a jump in increase. People are struggling enough as it is. These proposed fares are vastly over the top.</p> <p>The public will stop using our services, the amount of comments from passengers to drivers about being money grabbers will increase and no doubt force women who are vulnerable on nights out to walk home because the fare is too expensive, leaving them open to being attacked.</p> <p>All in all the council Will also see fit to increase their vastly expensive licenses to follow inline with the fare increase.</p> <p>I t should be a 5% increase</p>
The increase would be welcomed by most drivers
Too expensive - taxis in Edinburgh are already amongst the most expensive in the country.
I think it is reasonable considering the costs that we have had to absorb. But the extra passenger payment should be after two people not three
The drivers deserve a pay rise with fuel cost and cost of living going through the roof.
<p>Completely agree. Between the fuel increase and Cost of living increase everyone has felt the pinch and the drivers completely deserve this tariff increase to help them out just as many other industries have given wage rises.</p> <p>Apart from anything else, Edinburgh cabs that were pushed into going LPG by the Council have been hit with rising costs in gas and fewer LPG fill up stations (none of which are in Edinburgh) and therefore must travel out of Edinburgh to fill up from a garage that dictates the prices as there is high demand and low supply. This means drivers are losing fuel to go fuel up, therefore deserve all the help they can get.</p>
Too High
The fare increase is way too high we're trying to gett people out of there cars not in them
Fair
Good
Because of all the outlays of owning a taxi the 20% is fair and reasonable
Inflation is absolutely terrible across all industries. I guess Taxi drivers need a rise as much as all the rest of us.
<p>I agree that there should be a tariff increase, but I would like this to be in a way that the fares are more clearer to the public.</p> <p>There are too many variables, extras for more passengers etc.</p> <p>For all work that finishes outside the city boundaries these jobs should be fixed fares and set by the council, again there are too many variables with different companies and mileage rates.</p> <p>I would like to see the extra charges for call out and airport only.</p> <p>The airport charge must also be dependent on the charge from the airport. For example if the charge to drop off at the airport is £4 and two months after the new tariff comes out the airport changes the drop off rate to £5, then there shouldn't be any loss to the taxi driver like has happened in the past.</p>
The rise is required due to increasing costs of operating one of the vehicles and other costs associated with this industry but do not think it is openly welcomed by the majority of taxi operators in the current financial climate.

<p>I don't think there should be a rise of 20 percent. An increase of 10 percent would be fine with private hire getting the same increase. Increasing taxi rates and not private hire would give the private hire trade a big advantage especially for advertising. Both sides of the trade should have the same metered fares.</p>
<p>This will discourage people from using local taxi companies as opposed to Uber. If a taxi charges you more from the moment you get into it, it will push the customer to look for cheaper alternatives, especially in a cost of living crisis.</p>
<p>With rising costs across the board its inevitable. No doubt costs rise for fuel and repairs for taxis. Getting around the city is disgracefully difficult wasting time and fuel leading to more congestion and pollution. I see that in a car. Taxis, as part of public transport should go where a bus can go. We must cut emissions and cabs i see are euro 6 or electric. And all wheelchair friendly.</p>
<p>I am in favour of the proposed tariff. With the rise in the cost of living and inflation, this is only fair for drivers.</p>
<p>It's to big a rise in my opinion. I'm a black cab driver and would be happier with a rise more in line with inflation. I've not had any customers happy about it either. Not one.</p>
<p>It's probably long overdue, with the price of Fuel having gone up by over 50% since last rise, also the number of taxis that have had to be replaced due to council LEZ rules. These Taxi owners who working all through Covid to try and earn a pittance of a living have now been forced to renew/ replace perfectly good and road worthy vehicles, they have been replaced by Mercedes virus @ £42k or Electric Tx style @ £67k, that's a vast amount of money for anyone to invest in, just to have the privilege of driving the public about.</p>
<p>It is fair, costs have gone up for cabbies and it is so much harder to make a living for them right now.</p>
<p>Due to increased running costs, (fuel, insurance, maintenance, vehicle renewal)and cost of living in general over the last couple of years the proposed increase is justified.</p>
<p>Totally agree due to increased running costs, especially fuel and vehicles and record inflation. If you break down earnings after costs a tax a taxi driver could earn more working in Lidl and this his has seen many drivers quit the trade for good recently. Taxi Licences for Hackney's were trading at 40k before lockdown and are now freely available from CEC.</p>
<p>Iam a Edinburgh cab driver and I wasn't for having an increase but with the council fees,new vehicle costs,fuel etc at an all time high we definitely need this increase now..</p>
<p>I agree with proposal</p>
<p>The rise seems fair, in-line with current increases in vehicle purchase and maintenance costs.</p>
<p>I drive a private hire car 5 days a week and have done for 10 years. Taxis and private hire is a good way to get people around the city. They are cleaner than buses, less dirty and certainly quieter. Making it a successful way to earn a living is important. Giving private hire cars same access as taxi is important. As an international city we should not be discriminating against private hire cars in favour of the traditional black cabs.</p>
<p>I agree with proposed tariff. Cost of living is high therefore everyone needs a rise to cover this.</p>
<p>I just looked at tariff 1 and 2 because I think that's my typical situation and it was too much information to think about all of it at once. Tariff 1 and 2 seem reasonable at first but then I looked at an example, 1 mile at tariff 2 is £6.90, 2 miles at tariff 2 is £9.90, it feels a lot for not a huge distance and I'd also be concerned that they take a longer route than necessary.</p> <p>It would be good to publish a table of different distances & fares rather than leave it up to very complicated calculations from this formula.</p>
<p>I thought it was a lot. Then I realised that it's just inflation.</p>

It's fine. Taxi drivers have felt the pinch more than most in the last few years due to lockdowns. They now have to deal with a cost of living crisis like everyone else. Petrol and diesel are up, insurance is up, repairs are up and a new LEVC taxi has went up £5000 to £64000

The fares were already very high, and will be even more so with this new tariff. In practice, a taxi ride costs about £4 per mile (£22.70 for 5.6 miles to the airport, £11.75 for less than 3 miles from Haymarket), which makes it one of the most expensive means of transport.

Regulatory Committee

10.00am, Monday, 1 May 2023

Short Term Let Licensing Policy – Minor Updates

Executive/routine Wards Council Commitments	Executive All N/A
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1. Recommendations

- 1.1 It is recommended that Committee:
 - 1.1.1 Notes the content of this report; and
 - 1.1.2 Agrees the minor amendments to the policy described at 4.1 and 4.3.

Paul Lawrence

Executive Director of Place

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Short Term Let Licensing Policy – Minor Updates

2. Executive Summary

- 2.1 The purpose of this report is to correct one typographical error in the Short Term Lets Licensing Policy approved by the Regulatory Committee on [29 September 2022](#); and to update references to the deadline by which existing hosts must have applied for a Short Term Lets Licence from 1 April 2023 to 1 October 2023, due to the relevant date being changed by amending the applicable legislation.

3. Background

- 3.1 The Council has previously called for additional regulation of the short term letting sector through changes to planning classifications and the introduction of a licensing system.
- 3.2 Following the commencement of the [Civic Government \(Scotland\) Act 1982 \(Licensing of Short Term Lets Order 2022](#), ('the 2022 Order'), which brings short term lets ('STL') within the scope of licensable activities covered by the statutory provisions of the 1982 Act, new powers were given to local authorities to regulate STL by means of a licensing scheme.
- 3.3 On [29 September 2022](#), Committee agreed a policy and conditions with respect to STL in the City of Edinburgh.

4. Main report

- 4.1 In the course of preparing for a forthcoming hearing with respect to the policy, a minor typographical error has been identified. This error arose at a late stage of preparing the policy for the Committee meeting on [29 September 2022](#), when the draft policy was edited to change the running order. Legal advice on this error is as follows:
- 4.1.1 "The adopted STL Policy ...contains a typographical error at paragraph 4.20 in the section (paragraphs 4.17 - 4.23) dealing with temporary licences. The last line of that paragraph uses the term "exemptions" instead of "licences", which is an obvious error and one that the Council is in the course of correcting".

- 4.2 This error will be amended to avoid confusion.
- 4.3 In addition, the [Civic Government \(Scotland\) Act 1982 \(Licensing of Short Term Lets Order 2022 \(Amendment\) Order 2023](#) extended the date for existing operators to apply for a licence by six months from 1 April 2023 to 1 October 2023. The opportunity is therefore being taken to update the policy to reflect this change.
- 4.4 There are no further changes to the policy proposed.

5. Next Steps

- 5.1 If Committee approves the recommendations in this report officers will arrange to publish the updated policy.

6. Financial impact

- 6.1 There is no direct financial impact to the Council as a result of these changes.

7. Stakeholder/Community Impact

- 7.1 If adopted, the recommended changes will ensure accuracy and transparency with respect to the policy.

8. Background reading/external references

- 8.1 Report to Regulatory Committee – [Short Term Lets Policy – Update After Consultation](#)

9. Appendices

- 9.1 None

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Regulatory Committee

10.00am, Monday, 1 May 2023

Licensing Policy Development – Street Trading Update

Executive/routine Wards Council Commitments	Executive All
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1. Recommendations

- 1.1 It is recommended that Committee:
 - 1.1.1 Notes the contents of this report;
 - 1.1.2 Notes that the completion of works at the National Galleries of Scotland has been delayed until 2024 and that further work will be undertaken by Council officers in relation to the wider plans for the use of Mound Precinct and Playfair Steps, following the completion of the construction work;
 - 1.1.3 Continues the current arrangement that prevent street trading on the High Street and Hunters Square until a review is carried out;
 - 1.1.4 Agrees to consult on the current trading policy with emphasis on the issues identified in paragraph 4.2; and
 - 1.1.5 Notes that a further report will be submitted.

Paul Lawrence
Executive Director of Place

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Licensing Policy Development – Street Trading update

2. Executive Summary

- 2.1 At its meeting on [21 October 2019](#), Committee reaffirmed the Street Trading and Market Operators' policy considered at its meeting on [1 February 2016](#) (Item 6.4), and called for a further report on the proposed use of the High Street and Hunter Square. Committee agreed on [18 January 2021](#), that due to the pandemic this subsequent report would be placed on hold.
- 2.2 This report provides an update on proposals for street trading and market operator licensing within the city, and specifically the City Centre.

3. Background

- 3.1 Street Trading and Market Operator are optional licensing activities under the [Civic Government \(Scotland\) Act 1982](#). In 1983, the City of Edinburgh Council, by way of resolution, exercised its powers to adopt these activities and developed a Street Trading policy.
- 3.2 The Street Trading policy creates the ability to control and manage the activity. It ensures that traders operate within the same general constraints that apply to any other business, including that they comply with relevant legislation and meet the same minimum standards that any responsible business should observe.
- 3.3 Many parts of the city centre have been redeveloped in the period since Committee first adopted a policy on licensing of street trading.
- 3.4 This includes works to improve the quality of the public space, which has led to competing demands for the use of public space, and until the pandemic, there had been an increase in the volume of licence applications for street trading.
- 3.5 Areas particularly affected by this increased demand, and lack of available space, include Castle Street, High Street, Hunter Square, Grassmarket, Playfair Steps and the Mound Precinct. Whilst it was not possible to trade at many of these locations during the public health restrictions, the licensing service is starting to see an increase in demand for spaces and have received a number of enquiries about their availability.

- 3.6 More generally, public realm space continues to attract significant demand from street traders, market operators, parades and processions and event organisers. Demand for the use of public realm space now mirrors the levels that were experienced pre pandemic. At the Culture and Communities Committee on [28 January 2020](#) it was agreed to develop a single Public Space Management Plan (PSMP) to be supported by a single set of processes, criteria and procedures when applications are received in the future.
- 3.7 In late 2020, a period of engagement (including creation of a Stakeholder Working Group) led to the recommendation that principles for the use of public spaces for events and filming should be developed. An update on this work was reported to the Culture and Communities Committee on [13 December 2022](#). Further updates are due to be reported to Culture and Communities Committee later in the year. It is essential that all the strategic aims of the Council are considered, and that the Street Trading policy is consistent with these.
- 3.8 At its meeting on [21 October 2019](#), Committee reaffirmed the street trading and market operators' policy (which had been first considered by Committee in February 2016 (Appendix 2)). At its meeting on [18 January 2021](#), Committee considered a report from the Executive Director of Place and agreed:
- 3.5.1 That no further licences would be granted for the area outside 329 and 249 High Street;
 - 3.5.2 To continue the existing policy for street trading in Hunter Square and the High Street during 2021;
 - 3.5.3 That it would not be appropriate to allow street trading in Hunter Square from stances 11 and 12 (shown in Appendix 3); and
 - 3.5.4 Noted that the completion of the work at the National Galleries of Scotland has been delayed until 2024 and that further work will be undertaken by Council officers in relation to the wider plans for the use of Mound Precinct and Playfair Steps, following the completion of the construction work.
- 3.9 As a result of the Covid-19 pandemic, it has not yet been possible to reinstate street trading in Hunter Square.
- 3.10 Committee has previously agreed a separate policy for licensing pedicabs as street traders and this is not in scope of this report.

4. Main report

Street trading

- 4.1 Street trading has existed in the city centre for many years, and the changing landscape and redevelopment of the area has led to challenges for traders and the Council. Locations to trade from have significantly reduced, with sites that were previously traded from no longer suitable or no longer available. Many of these former sites were located outside Council buildings or other empty buildings. As a

result, the Council now has a limited number of options available to support this type of activity in the city centre.

- 4.2 The issues identified in previous reports largely remain, unchanged i.e.:
 - 4.2.1 Lack of location for street traders (there are very few sites considered suitable for trading and no new sites have been identified);
 - 4.2.2 Demand for popular trading areas (potential traders are keen to trade at locations where there is high footfall particularly in city centre locations);
 - 4.2.3 Trading hours (maximum hours of trading are set out in the street trading policy but many traders do not utilise their hours preventing others from accessing sites);
 - 4.2.4 The duration of licence (the current policy is for an annual licence or for a maximum period of 28 days for a temporary licence, with the exception of the High Street where licences were granted on a weekly basis);
 - 4.2.5 Types and styles of stalls (the standard, quality and appearance of the stall fall below what would be expected of a capital city);
 - 4.2.6 Number of traders at one location (as a result of demand for trading at certain locations within the city centre, locations are being over traded at the expense of local business); and
 - 4.2.7 Multiple licences held by business, individuals (a number of traders hold multiple places throughout the city which prevents new business opportunities).
- 4.3 There are currently 22 street trader and 19 market operator locations regularly operating throughout the city. These include a number of high-profile areas that are heavily populated by traders.
- 4.4 The number of enquiries to identify trading locations far outweighs the number of identified suitable sites or are already being traded on. Many of the existing sites have been traded on by the same businesses for decades.

High Street and Hunter Square

- 4.5 The High Street is a long-standing event space and is still one of the main Fringe locations during August. Traditionally, normal street trading was suspended during this period and the High Street (from George IV Bridge to North/South Bridge) becomes an event area managed by the Festival Fringe. In addition, policy which normally prevents the sale of hot food in the High Street has previously been relaxed during the period of the August festival. The context of this has changed over time, in that, the number of food business trader from premises in and around the high street has increased including a number of new food business now trading in Hunter Square.
- 4.6 As a matter of current policy, street trading in the High Street has been restricted to temporary licensing. Stalls are licensed to businesses and individuals on that basis to ensure that the High Street also remains available for other events and

uses. In practice, street trading has not taken place since 2018 and the policy position on this needs to be reviewed and updated as it reflects the situation pre 2018.

- 4.7 Since Committee last considered these policy issues, the Council no longer occupies the office space at 329 High Street. The redevelopment of the property has taken place, and this now makes the previous three street trading pitches outside this building untenable not least due the presence of tables and chairs.
- 4.8 The Council has also sublet office space at 249 High Street (next to the Customer Hub) to VisitScotland, and Committee agreed, in 2019, that this location is now also unsuitable for trading with the loss of a further three street trading pitches.
- 4.9 The Edinburgh High Street and Playfair Steps Traders Association (EHSPSTA) was formed to represent the interests of the street traders. They had previously asked that consideration be given to a number of proposals for street trading in Hunter Square. Committee agreed on [21 October 2019](#), in principle, that these proposals were not without merit and there were no obvious barriers to implement changes, specifically:
 - 4.3.1 Implementation of a code of conduct and a set of core principles for traders;
 - 4.3.2 Creation of a standard for street trading stalls with regard to look, size and structure, reducing the size of the existing stall from 10 x 10 feet to 8 x 8 feet;
 - 4.3.3 Installation of anchor points; and
 - 4.3.4 Increasing the number of stalls in Hunter Square to six.
- 4.10 While Committee was supportive of the EHSPSTA proposals, it also recognised that further consultation was required. That consultation did not take place due to the pandemic and, in 2021, Committee agreed to place a hold on this piece of work.
- 4.11 Given the changed picture since 2019, it is recommended that a consultation of trading at this location is undertaken with a view to determining whether or not to continue the policy of allowing street trading on the High Street and Hunter Square. It is recommended that Council continues not to issue temporary street trading licences until that a consultation has been carried out.

Mound Precinct and Playfair Steps

- 4.12 The area at the bottom of Playfair Steps, to its junction with the south side of Mound Precinct, has accommodated street trading for several years. As previously reported, National Galleries Scotland, Police Scotland and Council officers have reservations about the continued use of the Mound Precinct and Playfair Steps for street trading, in part due to possible security issues at the location. In addition, there are concerns about pedestrian access and congestion caused by the stances at Playfair Steps, especially during the Festival and festive periods.
- 4.13 The Council has been advised that the Scottish National Gallery Project has encountered a number of challenges in the building work, combined with the added

complications that Covid-19 has brought to the project. As a result, the project, which was due to complete by the end of 2021, has been pushed back towards the start of 2024. Committee is asked to note that further work will be undertaken by Council officers in relation to the wider plans for the use of this area following the completion of the works, but that at this time street trading remains suspended in that location. There are four licence holders licenced for Playfair Steps who have given undertakings not to trade whilst the works continue.

Temporary Events

- 4.14 A significant number of temporary licences are applied for and granted each year for events such as The Fringe, Edinburgh Christmas and Hogmanay. Many of these events directly affect annual licence holders and create competing needs when considering how, when and who should be allowed to trade. Separately, there are Parades and Processions which are notified to the Council and which use the High Street in particular.
- 4.15 The principles for the use of public spaces for events and filming has a direct impact on trading and it is essential that this is included in any future consideration.

Mobile Trading

- 4.16 The interest in mobile trading has increased significantly since the start of the pandemic. The range of activity proposed is no longer confined to ice-cream and food vans (which were common when that aspect of the policy was formed). Mobile trading is designed to enable traders to service a variety of streets within a specific location in line with the current street trading zones. Trading zones within the policy were previously identified to enable trading, mainly in housing estates, throughout the city. Mobile street traders were originally restricted to working in only two zones.
- 4.17 The concept of mobile trading has evolved over the years and there is now a demand for city centre trading. Traders want to be able to stop to serve their customers and can remain in place for some time. The current policy restricts this and any changes must be careful not to circumvent existing policy in relation to an identified static location. It is therefore recommended that the policy with regard to mobile trading is included in the policy consultation.

Market Operators

- 4.18 The number of locations in the city centre where markets can operate are limited, and, in reality, operators who consider themselves to be a destination market want to operate in the city centre where there is a large footfall. Site specific plans for locations like Castle Street (Appendix 5) were developed to address specific concerns.
- 4.19 It has become commonplace for applicants who trade at two or three stalls on a temporary basis to apply for a market operator's licence. This practice is designed to circumvent street trading policy and the associated fees. Mandatory conditions requiring adequate toilet facilities have not been adhered to. It is therefore recommended that any consultation considers the interaction between the street trading and market operators.

5. Next Steps

- 5.1 Regulatory Services will consult on the street trading policy as highlighted and will bring forward detailed proposals for Committee consideration.
- 5.2 Further engagement with traders and relevant parties will be carried out in respect of Playfair Steps, Mound Precinct and Hunter Square.
- 5.3 Internal engagement will also be progressed.

6. Financial impact

- 6.1 The overall change to policy will not create any additional costs to the Council budget. The Council's scale of fees for licensing applications was approved with effect from 1 April 2023. 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 licensing of street traders is part of a wider place-making role for the Council. It is essential that all strategic aims of the Council are considered and that the Street Trading policy is consistent with these aims.
- 7.2 The policy framework and conditions continue to support:
 - 7.2.1 A safe, clean and well-maintained environment;
 - 7.2.2 A more attractive environment for those living in, working in and visiting the city;
 - 7.2.3 An improved, more diverse, retail offer; and
 - 7.2.4 An environment that promotes and protects the economic wellbeing of the city.
- 7.3 Destination markets and street trading can be a draw for tourists and can bring a wide variety of stalls, commodities and cultures. Licensed street trading activities can also assist in the prevention of illegal street trading, by displacing undesirable criminal activity and hawking.
- 7.4 Conversely, if poorly managed, street trading and markets can have a negative effect on an area leading to obstruction to pedestrians, a visually unappealing and untidy street scene, sale of poor-quality goods which do not meet local needs and an increase in complaints to the Licensing Authority.
- 7.5 There is a need for a common set of rules that would apply to all street traders and market operators. As with any business, these should not cause nuisance or

inconvenience to their neighbours, or to the community, within which they are located.

8. Background reading/external references

- 8.1 Review of Street Trading Policy report to Central Local Development Committee on [7 January 2004](#).
- 8.2 Licensing Policy Development Street Trading report to Regulatory Committee on [4 April 2014](#).
- 8.3 City Centre Public Spaces Manifesto update report to Transport and Environment Committee on [2 June 2015](#).
- 8.4 Licensing Policy Development – Street Trader Licensing update report to Regulatory Committee on [25 September 2015](#).
- 8.5 Licensing Policy Development – Street Trader Consultation update report to Regulatory Committee on [1 February 2016](#).
- 8.6 Public Spaces Protocol report to Transport and Environment Committee on [9 March 2018](#).
- 8.7 Licensing Policy Development Street Trader Licensing Update Report to Regulatory Committee on [21 October 2019](#).
- 8.8 Licensing Policy Development Street Trader Licensing Update Report to Regulatory Committee on [18 January 2021](#).

9. Appendices

- 9.1 Appendix 1 - Statutory background.
- 9.2 Appendix 2 - Street Trading Policy.
- 9.3 Appendix 3 - Street Trading and Market Operators conditions.
- 9.4 Appendix 4 – Hunter Square Existing Street Trading Stances.
- 9.5 Appendix 5 - Operating Plan for Area of Special Interest – Castle Street.

Statutory Background

The Civic Government (Scotland) Act 1982 differentiates between activities which **must** be licensed (mandatory), and those which a local authority may elect to license (optional) if it sees fit. The purpose for regulating both mandatory and optional activities is not to restrict trade or competition, but to help prevent crime and disorder, ensure public safety and protect the environment. If an authority wishes to license an optional activity it must do so by way of resolution. Both street trading and market operator licensing are optional licensing activities and the City of Edinburgh Council exercised its powers to adopt these licensing activities in 1983.

Street Trading

A licence is required for street trading by a person whether on their own account or as an employee. Street trading means doing any of the following things in a public place:

- (a) hawking, selling or offering or exposing for sale any article;
 - (b) offering to carry out or carrying out for money, or money's worth, any service;
- and includes doing any of these things in or from a kiosk or moveable stall not entered in the valuation roll, except where it is done in conjunction with or as part of a retail business being carried out in premises abutting the public place.

The Civic Government (Scotland) Act 1982 provides exceptions from the requirement to hold a Street Trader's Licence. These include:

- (a) the sale of newspapers;
- (b) sale of milk on or on behalf of a person registered under section 1(3) of the Food Safety Act 1990;
- (c) sale of coal, coke or solid fuel;
- (d) activities in respect of which a certificate is required under the Pedlars Act 1871;
- (e) other activities in respect of which a licence is required under the Civic Government (Scotland) Act 1982; and
- (f) organising or participating in a public charitable collection;

Market Operator

A licence, to be known as a 'market operator's licence', shall be required for carrying on a private market.

The Act provides exceptions from the requirement to hold a market operator's licence. These include:

- (a) functions held by charitable, religious, youth, recreational, community, political or similar organisations;
- (b) markets held only for the sale of livestock, fodder or grain.

In addition to any other condition which may be included, a licence in respect of a private market shall include conditions as to:

- (a) the regulation of days and hours of opening;
- (b) the provision of adequate toilet facilities;

(c) the layout of the site or premises on which the market is to be held;

(d) the maintenance of order and public safety.

“private market” means a market, whether covered or not, carried on by any person other than a local or public authority at which goods are offered by more than one seller for sale by retail to the public.

Street Trading Policy

1. Street Trading Policy

The aim of the Street Trading policy is to grant a licence to traders:

- 1.1 Where the location is acceptable in respect of planning, transportation and safety;
- 1.2 In low amenity areas such as industrial estates; and
- 1.3 Within the curtilage of business premises where their presence is visually acceptable and will not result in an adverse effect on traffic movement or safety.

However, it is recognised, that this may be difficult to achieve in areas within the city centre due to high pedestrian flow and lack of identifiable sites.

2. City Centre and Areas of Special Interest

Unless the Council makes a specific exemption to the policy it is highly unlikely that street trading or market operator licences will be granted in the following circumstances:

- 2.1 In streets that have a significant formal layout and plan form, which would be undermined by the presence of additional items in the street. These include the New Town, and in particular George Street.
- 2.2 Within the World Heritage Site, conservation areas and areas of important landscape value, the use of portacabins or other large units of similar scale e.g. metal containers used for freight, are not considered suitable in these locations.
- 2.3 Within the setting of certain historic buildings or places which are internationally significant, including in particular HM General Register House, the Royal Scottish Academy and National Gallery, Parliament Square, St Giles Cathedral and the Signet Library. These areas should be retained as open space.
- 2.4 Where key views are likely to be adversely affected by the presence of street trading stances.
- 2.5 At important gateways to the city. This will include the approach to, and roundabout at, Edinburgh Airport and principal traffic routes in the centre of the city.
- 2.6 Within certain areas not regarded by the Council as suitable for street trading or market operations except in exceptional circumstances. Longstanding factors that would make a location unsuitable include areas of high pedestrian footfall, narrow footways and busy arterial routes. It is proposed that streets affected by this should include:
 - 2.6.1. Princes Street;
 - 2.6.2. The Lawnmarket/Parliament Square

- 2.6.3. George IV Bridge;
- 2.6.4. Lothian Road
- 2.6.5. North Bridge
- 2.6.6. South Bridge
- 2.6.7. Lothian Road
- 2.6.8. St Giles Street
- 2.6.9. Waverley Bridge

2.7 Within certain high profile areas where all suitable locations are current being heavily utilised:

- 2.7.1. Castle Street;
- 2.7.2. Rose Street;
- 2.7.3. Grassmarket;
- 2.7.4. Mound Precinct;
- 2.7.5. Playfair Steps; and
- 2.7.6. The Meadows.

It is proposed that no further licences are granted in these areas, however if in the future a suitable location becomes available this can be reviewed.

2.8 Any additional licences in the vicinity of the main sporting stadiums at Tynecastle, Easter Road, Meadowbank and Murrayfield. These locations are already well served by existing Street Trader's Licences and additional licences would only be granted when an existing location becomes available.

3. Mobile Zones

- 3.1 Street trading mobile zones were first introduced in the city in 1984 following a number of complaints about the number of mobile traders operating in one area. The zones were based largely on the residential population and popular street trading locations at the time. The zones were revisited as part of the policy review in 2004 and re-adopted.
- 3.2 While the zones were introduced to control the sale of ice cream from vehicles, they are now utilised for all mobile street trading activity. The purpose of mobile trading zones is to control and manage areas in which traders can operate. The current system restricts city wide trading and limits numbers to ensure balance for local communities and existing commercial activity.
- 3.3 The specified zones in which street traders are permitted to trade are included in Appendix 3. Princes Street, George Street, Rose Street, the Mound Precinct and the Royal Mile were excluded from the trading zones as being unsuitable for this type of activity. A street trader will not be licensed for more than two zones at any one time.

4. High Street/Hunter Square Trading

- 4.1 Street trading in the High Street and Hunter Square is intended to be temporary in nature, and given demand for space traders should not expect to be consistently trading on the High Street.
- 4.2 Given the historic nature and prominence of the High Street and Hunter Square, neither location is considered suitable for the sale of hot and cold food, although this may be relaxed in Hunter Square during the month of August.
- 4.3 The High Street is one of the main Fringe locations. During August both the High Street and Hunter Square are considered event spaces and normal trading is suspended during this period.
- 4.4 Trading at these locations may be required to be suspended for events in the area i.e. Royal visits, Armistice day services, parades and processions etc.
- 4.5 Stances in the High Street and Hunter Square will be subject to the following criteria:
 - 4.5.1. Stances will be allocated on a weekly basis (Monday – Sunday);
 - 4.5.2. Trading hours will not exceed 10:00 – 20:00hrs daily;
 - 4.5.3. Multiple applications by individuals linked to one business will not be accepted and will be returned;
 - 4.5.4. Traders will be required to indicate whether or not they are the sole trader and if they intend to apply for employee licences;
 - 4.5.5. Traders will display, in a prominent position, so that it may easily be read by customers or suppliers, a notice containing the name of the trader and/or business and details of their trading address;
 - 4.5.6. A separate licence application will be required for each date applied for. The practice of adding multiple dates to one application will not be accepted;
 - 4.5.7. A separate licence application will be required for each location applied for i.e. Hunter Square/High Street. The practice of naming specific stances will no longer be accepted;
 - 4.5.8. The relevant application fee is submitted at time of application;
 - 4.5.9. Applicant will provide the following information/documentation:
 - name of business and/or trader;
 - details of the stall to be used, including dimensions (not to exceed 8ft in length);
 - wind management plan (it is no longer appropriate to produce a generic wind management plan the plan must reflect the actual stall);
 - type of goods sold;

- public liability insurance;
- tax reference of the business/trader;
- photograph of proposed stall;
- type of goods sold (which will then be detailed on the licence);
- a copy of public liability insurance including cover for employees where appropriate.

5. Mound Precinct and Playfair steps

- 5.1 The area at the bottom of Playfair Steps to its junction with the south side of Mound Precinct has accommodated street trading for a number of years. Initially street trading at this location was intended to have utilised just the railings, but in more recent years this has expanded to include market type stalls.
- 5.2 Annual trading stances are restricted to:
- 5.2.1. Two within the Mound Precinct: stance 1 on the East side of the Mound Precinct, 25 feet from Princes Street, and stance 2 on the west side of the Mound Precinct, 25 feet from Princes Street
- 5.2.2. 13 Stances on Playfair Steps

6. Licensing Criteria

All licence applications will be subject to the following criteria:

- 6.1 In general, the issuing of licences will be limited to areas of retail, business and entertainment activity e.g. retail parks and industrial estates. Street traders/market operators shall not be permitted in streets that are predominantly residential:
- 6.2 Street traders must not obstruct or restrict pedestrian or vehicular traffic or cause a danger to road users.
- 6.3 Street traders/market operators must obtain all necessary and appropriate consents prior to making an application, and in particular the consent of the owners of any land on which a stance is to be situated or which is adjacent to any stance. The grant of a licence does not imply that the owner has consented or that there is a right to occupy the space.
- 6.4 The precise location of the proposed stance must be marked on an Ordnance Survey Map with a box and a distance in metres given to the nearest junction. The location of the stance should be clearly described:
- 6.4.1. The precise location of the proposed stance must be marked on an Ordnance Survey Map with a box and a distance in metres given to the nearest junction. The location of the stance should be clearly described, giving:

- the name of the street;
 - the side of the street (e.g. north, south etc);
 - the name of the nearest side street; and
 - the distance in metres from the nearest side street.
- 6.5 all street trading stances and markets will be mapped to clearly identify locations.
- 6.6 Stances will be clearly delineated. This may be achieved by placing brass studs or wind management anchors in the pavement where the Council directs.
- 6.7 Street trading/market operations and the stalls, kiosks, vehicles or mobile units associated with these shall only occupy a stance during trading hours.
- 6.8 At the end of trading hours the licence holder shall promptly remove and take away any stall, kiosk, mobile unit or vehicle and all other ancillary equipment placed on or in the vicinity of the trading stance.
- 6.9 Street trading is considered to be of a temporary nature and traders shall not be allowed to permanently occupy any stance. Licences will be granted on either a temporary or annual basis dependant on location.
- 6.10 Stances sited on the footway should normally be located out with pedestrian desire lines, for example at suitable recesses.
- 6.11 Where a high density of annual Street Trader's Licences already exists, further licences will only be considered where there is significant additional space identified to accommodate them.
- 6.12 Consideration will be given to how any stall or trading unit will be set up at the specified location. Driving over a public pavement will not be allowed and another means of placing a unit will be required. This will include any deliveries to or servicing of any unit, stance or stall.
- 6.13 When locating street trading stances, consideration should be given to access to street furniture by utilities and other owners of cabinets, manholes and access covers etc. A trader shall move when asked to do so by an owner or their representative wishing to access their apparatus. Maintaining the integrity of the paved surfaces, roads and pavements is important for the future maintenance of the streets being utilised. It is therefore vital that every effort is made by a licence holder to protect the road and pavement surfaces from damage caused by either placing or removing a unit or stall. Protection should also be given from any footings or stabilisers while the unit/stall is in place.

- 6.14 Amenity areas may have to be shared by street trading activities and tables and chairs being used by adjoining properties as part of the café culture within the city. In these circumstances agreements need to be reached with the relevant service departments prior to the grant of a licence.
- 6.15 Planning permission is required for open air markets if the land is used for this purpose for more than 28 days in a year. This is not 28 days per market operator, as any permissions go with the land not the applicant. It is the responsibility of the person using the land for open air market operations to obtain planning permission for this purpose.
- 6.16 A Street Trader's Licence is required for street trading by a person whether, on their own account or as an employee.
- 6.17 Employee licences will be issued to provide assistance to the actual licensed traders, but not for the purposes of operating the business on behalf of someone else.

7. Duration of Licence

- 7.1 A licence granted under the Civic Government (Scotland) Act 1982 can be issued for a period of no more than three years, or shorter period if the Council decides. Both Street Trader's and Market Operator's licences will be limited to a period of one year. Once an annual licence has been granted this will prevent another licence being issued for the same location and trading hours.
- 7.2 Temporary licences can be issued for a period of no more than six weeks, or a shorter period if the Council so decides, and are mainly used in connection with public entertainment or an event. Temporary licences will be limited to a period of 28 days. The main exception to this is street trading in the High Street and/or Hunter Square, where licences are allocated on a weekly basis due to the high volume of demand for stances.
- 7.3 Temporary licences for street trading, not linked to public entertainment or an event, will be for a maximum period of seven days.
- 7.4 In circumstances where the demand is far greater than the actual number of temporary stances available, allocation will be by way of a ballot system. This would apply to areas such as the High Street and Hunter Square
- 7.5 The issue of an annual Market Operator's licence or Street Trader's Licence could prevent other licences from being granted for the same location and hours of operation. To prevent an annual licence from restricting other trading opportunities in public realm space, it is proposed that an annual Market Operator's licence should only be considered in cases where the operator's trade is at a frequency of at least once per calendar month, and those dates should be clearly identified on the licence.

8. Hours of Operation

- 8.1 Street trader and/or market operator trading hours will normally be considered to operate between the hours of 10:00 – 20:00hrs daily.
- 8.2 Between April and October street traders will be expected to trade between 10am – 4.30pm (or other agreed hours). This should be considered as a minimum trading period.
- 8.3 There will be a presumption against street traders selling food between 23:00hrs and 5:00hrs except in exceptional circumstances at the discretion of the Licensing Sub Committee.
- 8.4 Licence holders wishing to trade between 23:00hrs and 5:00hrs will also require a Late Hours Catering Licence. A Late Hours Catering Exemption certificate can also be granted for a period of up to two months to allow trading on a temporary basis.

Street Trading and Market Operators conditions

Standard Conditions – All Street Traders

1. The holder of a Street Trader's Licence shall not be less than 18 years of age.
2. The licence holder shall not carry on business on any street so as to unreasonably obstruct road users or affect their safety.
3. The licence holder shall carry on business subject to any direction which the Police or authorised officers of the City of Edinburgh Council may reasonably be required to give.
4. The licence holder shall not, without the consent of the Licensing Authority, sell or offer or expose for sale any goods or carry out or offer to carry out for money or monies worth any service at any place other than as specified in their licence. In particular, no goods or articles of an objectionable or indecent character shall be sold or offered or exposed for sale.
5. The licence holder shall on all occasions, when carrying on business, behave in a proper and civil manner, and shall not carry on business in such a way as to cause a nuisance or annoyance to any person.
6. The licence holder shall at all times conduct business and position any vehicle used in connection with the business in such a manner that no danger is likely to arise to any other person.
7. Where vehicles are to be used to site or locate street trading units they must follow the Highway Code at all times. This includes NOT driving over public pavements to access an area or to place the unit on a stance. Vehicles may only drive over a pavement at specific designated locations where the kerb has been lowered for this specific purpose for vehicles. Pedestrian dropped crossings should not be used. This will include any deliveries to or servicing of any unit, stance or stall.
8. The licence holder shall only trade from the location or stance detailed on the licence. Any temporary relocation of stance can only be made with the consent of the appropriate Executive Director.
9. The licence holder shall obtain all necessary and appropriate consents prior to commencing trading from any stance, and in particular the consent of the owners of any land on which a stance is to be situated or which is adjacent to any stance.
10. The licence holder shall at all times when trading, wears an identity card which is issued with the licence. Licences must be displayed on any vehicle or stance.
11. The licence holder shall not lend to or allow any other person to use any licence or identity card issued by the Council.
12. The licence holder shall not sub-let the use of the site to a third party.

13. Licence holders shall have a Public Liability insurance policy to the value of £1 million.
14. The licence holder shall trade only during the hours of operation stated in the licence.
15. All temporary structures shall be designed, erected and maintained to suit their intended purpose. The design and erection shall be to the satisfaction of the Council's appropriate Executive Director.
16. Traded goods must be kept on and traded from the vehicle, trailer or stall. At no time shall such goods be permitted to lie or stand on the surrounding area or be left against adjacent walls or railings.
17. Where the licence allows the holder to sell from a vehicle, kiosk or moveable stall at an approved stance, the vehicle, kiosk or moveable stall shall be capable of being speedily and easily removed.
18. At the end of trading hours on each working day, the licence holder shall immediately remove the vehicle, kiosk or moveable stall from the approved stance and all other ancillary equipment placed on or in the vicinity.
19. The licence holder shall, during business hours and at the end of each day, ensure the collection and removal of any paper, garbage or other refuse which may be produced, or may accumulate in the course of trading on any pavement around the stance within a distance of 25 metres either side. If adjacent stances, to which the street trading licence conditions apply, are within 25 metres, any distance to be cleaned shall be the mid-point between the two stances.
20. Any stall or trading unit should not be connected to any utility service i.e. water, gas or electricity supplies either on a permanent or temporary basis and should not therefore be arranged by a Licence holder.
21. All generators must be used and stored in accordance with manufacturer's guidance.
22. The licence holder shall ensure that all music, amplified music and/or vocals are controlled to the satisfaction of the consent of the appropriate Executive Director.
23. The Health and Safety at Work etc Act 1974 and all other relevant health and safety legislation must be complied with at all times by the licence holder.
24. Any Authorised Officer of the City of Edinburgh, Fire Officer or, Police Constable or Council shall be permitted to enter and inspect any vehicle, trailer or stall at any time and all reasonable directions and requirements of such officers or of the City of Edinburgh Council must be complied with.
25. A Licence holder who changes his address shall within 14 days thereafter give notice thereof to the Licensing Authority and shall produce his licence to the Licensing Authority who shall update the particulars of such change of address.
26. If, during the currency of the licence, the licence holder is convicted of any offence, they shall, within 28 days, provide full details of such convictions, in writing, to the Licensing Authority.

Additional Street Trading Conditions – Food Trading

1. When any vehicle, trailer or stall is trading in food, all requirements of Food Safety legislation must be complied with, to the satisfaction of the appropriate Executive Director.
2. A valid food hygiene certificate must be provided to the Licensing Authority at time of application for a licence.

The licence holder shall ensure that the food hygiene certificate and relevant documentation are valid, maintained and available for inspection by any authorised officer of the Council at any time during trading hours and at any other reasonable time. Relevant documentation includes:

- Food Hygiene Training certificates for all that will be working on the stall.
 - PAT certificates (electrical safety certificates) for electrically operated equipment;
 - Gas Safety certificates for any LPG operated equipment. This must be issued by a Gas Safe registered engineer, who is registered to do LPG, Non-Domestic, and Mobile Catering; and
 - A copy of the Pressure Vessel Test for any espresso type coffee machine being used.
3. On the renewal of licence a food hygiene certificate, the licence holders will provide the Licensing Authority with a copy of the new certificate.

Additional Street Trading Conditions – Vehicles and Mobile Units

1. The licence holder shall only trade from the vehicle or trailer detailed in the licence.
2. The vehicle or trailer shall be roadworthy, and if it is to be used for trading during the hours of darkness it shall have appropriate lighting and reflectors to ensure that it is visible to other road users.
3. The vehicle or trailer shall be maintained in a sound condition so as not to leak oil or other substances onto the pavements or roads. Such an occurrence may damage the integrity of the surfacing used on the pavement and road. Failure to comply may incur costs being recovered to repair any damage caused.
4. The licence holder shall not use whistles or other sound producing devices apart from chimes and loudspeakers to attract business.
5. The licence holder shall comply with all statutory provisions relating to noise and in particular with the provisions of section 62 of the Control of Pollution Act 1974 relating to the use of loudspeakers in streets.
6. Where the licence allows the holder to trade from a vehicle, kiosk or moveable stall other than at a fixed stance, the licence holder shall remain in the same place only for the time it takes to serve the queuing customers and shall then move on.

Specified Trading Zones for Mobile Street Traders

The specified zones in the City of Edinburgh local authority in which street traders are permitted to trade shall be the streets within the including and following boundaries (with the exception of Princes Street, George Street, Rose Street, the Mound Precinct and the Royal Mile.

1. Queensferry Road, Hillhouse Road, Telford Road, Groathill Road North, Ferry Road, Pennywell Road, Marine Drive.
2. Marine Drive, Pennywell Road, Ferry Road, Groathill Road North, Telford Road, Queensferry Road, Dean Park Crescent, Comely Bank Avenue, East Fettes Avenue, Ferry Road, Granton Road, Wardie Steps to Lower Granton Road.
3. Granton Road from Wardie Steps to Ferry Road, East Fettes Avenue, Comely Bank Avenue, Dean Park Crescent, Queensferry Road, Queensferry Street to Princes Street, Waterloo Place, Regent Road, Easter Road, Leith Links to Seafield Road.
4. Seafield Road, Leith Links, Easter Road, Regent Road, Waterloo Place, North Bridge, South Bridge southward to Lady Road, Peffermill Road, Duddingston Road West, Duddingston Road, Southfield Place, Brighton Place, Bath Street to Promenade.
5. Bath Street, Brighton Place, Southfield Place, Duddingston Road, Duddingston Road West, Niddrie Mains Road, Newcraighall Road.
6. Newcraighall Road, Niddrie Mains Road, Peffermill Road, Lady Road, Gilmerton Road.
7. Gilmerton Road from City Boundary, Craigmillar Park northwards to North Bridge, Princes Street, Lothian Road, Earl Grey Street, Home Street, Leven Street, Bruntsfield Place, Morningside Road, Comiston Road, Biggar Road.
8. Biggar Road, Comiston Road, Morningside Road, Bruntsfield Place, Leven Street, Home Street, Earl Grey Street, Lothian Road, Shandwick Place, West Maitland Street, Dalry Road, Ardmillan Terrace, Slateford Road, Lanark Road.
9. Lanark Road, Slateford Road, Ardmillan Terrace, Gorgie Road, Calder Road.
10. Calder Road, Gorgie Road, Dalry Road, Haymarket Terrace, West Coates, Roseburn Terrace, Corstorphine Road, St John's Road, Glasgow Road.
11. Glasgow Road, St John's Road, Corstorphine Road, Roseburn Terrace, West Coates, Haymarket Terrace, West Maitland Street, Shandwick Place, Queensferry Street, Queensferry Road.
12. In the north by the shore at South Queensferry, in the east by the Edinburgh City Boundary, in the south by the River Almond and in the west by the Edinburgh City Boundary.
13. In the north by the River Almond, in the east by the Edinburgh City Boundary, in the south by the Calder Road (A71) and in the west by the Edinburgh City Boundary.

14. In the north by the Calder Road (A71) in the east by the Edinburgh City Boundary and in the southeast, south and west by the Edinburgh City Boundary.

Standard Conditions – Market Operators

1. Market operators will supply an Events Management Plan and Risk Assessment when they make an application. This will be available for inspection at any time when the market is in operation by any Authorised Officer of the City of Edinburgh, Fire Officer or Police Constable.
2. Licence holders shall have Market Operator Public Liability insurance with a minimum value of £5 million for any one claim.
3. Market operators will not sub-let the use of the site to a third party.
4. Any Authorised Officer of the City of Edinburgh, Fire Officer or, Police Constable shall be permitted free access to the whole of the market premises/area at any time and all reasonable directions and requirements of such officers or of the City of Edinburgh Council must be complied with. The licence holder shall obtain all necessary and appropriate consents prior to commencing trading from any stance and in particular the consent of the owners of any land on which such a stance is to be situated or which is adjacent to any such stance.
5. It is the licence holder's responsibility to inform the Council and other road users that a market will be in place between specific dates. The Licence holder must give the Council a minimum of seven days' notice, prior to the market being erected, to allow notification to other road users.
6. The licence holder shall ensure that the layout of the market and its stalls conforms to the configurations shown in the plan lodged with the application and approved for licence. The licence holder shall not, without the consent of the Licensing Authority, alter or amend the site or the premises or the layout of the site or of the premises. Nor shall the licence holder increase the number of stalls within the site from that specified on the licence.
7. Exit routes must be kept free of obstruction at all times whilst the market is open.
8. Wires, ropes or cables crossing any of the public areas must be out with the reach of the public, or installed to avoid any hazard to the public.
9. No motorised vehicles shall be permitted in the area used for the market during the hours of operation.
10. The licence holder shall not permit trading out with the trading hours specified in the licence.
11. The licence holder must maintain an accurate register with individually numbered pages and entries showing:
 - (i) The date of each occasion upon which the market is open for business to the public.

- (ii) The name, permanent address, telephone number and place of business address of each trader, the nature of the goods sold and the registration marks of all vehicles used in connection with each trader.
 - (iii) The register must also identify, on each occasion the market is open for business, the location within the market where each trader has a trading position.
12. The licence holder shall take all reasonable steps to ensure that all details of trading unit operators which are required to be registered are completed no later than four hours from the time of the market opening.
 13. The licence holder shall ensure that the register and such other documents as are maintained shall be available for inspection on the licensed premises by any Police Constable, Fire Officer or Authorised Officer of the Council at any time when the market is open for business, and at any other reasonable time.
 14. The licence holder shall ensure that registers and such other documents as are maintained must be retained by the licence holder for a minimum of two years.
 15. The operator will provide details of all individual stallholders, including equipment, scope of business and type of product to the **Licensing Manager**, at least one week before the event.
 16. The licence holder shall nominate in writing to the Council a suitable person who shall be responsible for the day-to-day running of the market and shall be in charge of and present at the market at all times when the market is open for business, with the exception of reasonable absences. The licence holder shall not, without the consent of the Licensing Authority, change the nominated person responsible for the day-to-day running of the market.
 17. The licence holder shall comply with all reasonable requirements of the Scottish Fire and Rescue Service relating to fire precautions and safety.
 18. The licence holder shall have a fire risk assessment and written evacuation policy for the site.
 19. Adequate means of escape and firefighting facilities must be maintained during all hours of operation.
 20. The number of persons admitted to the premises shall be controlled to ensure there is no overcrowding or numbers in excess of the evacuation capacity of the escape routes.
 21. The premises shall be adequately illuminated to the satisfaction of the Council. Any emergency or escape route lighting shall be by a maintained system throughout the premises, kept in proper working order and in operation when the premises are open to the public.
 22. A person, who is suitably qualified and equipped shall be nominated as a First Aider, and they will be in attendance in the market during trading hours and also while stalls are being erected and dismantled.

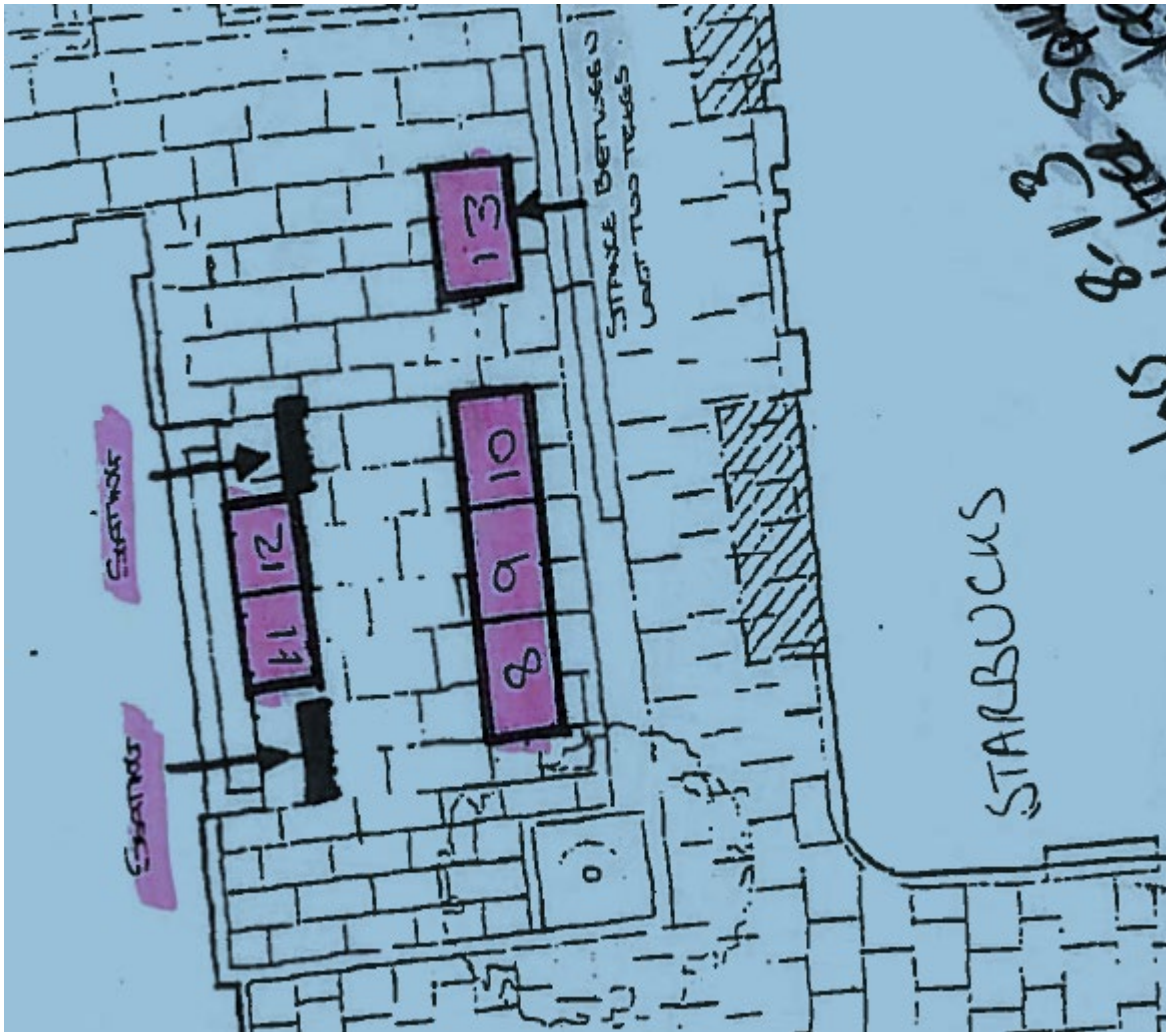
23. The licence holder or his/her agents shall take all reasonable precautions and exercise due diligence to ensure that no trader known or reasonably believed to be displaying for sale solely or mainly counterfeit merchandise (including contraband products) is permitted to trade upon the market. The licence holder or his/her agent shall also exercise due diligence in ensuring to the best of their ability that no such merchandise is displayed for sale as part of any trader's overall stock of goods.
24. The Health and Safety at Work etc Act 1974 and all other relevant health and safety legislation must be complied with at all times by the licence holder.
25. When any stall is trading in food, all requirements of the Food Safety legislation must be complied with, to the satisfaction of the appropriate Executive Director.
26. The licence holder shall ensure that the food hygiene certificate and relevant documentation are valid, maintained and available for inspection by any authorised officer of the Council at any time during trading hours and at any other reasonable time. Relevant documentation includes:
- Food Hygiene Training certificates for all that will be working on the stall.
 - PAT certificates (electrical safety certificates) for electrically operated equipment;
 - Gas Safety certificates for any LPG operated equipment. This must be issued by a Gas Safe registered engineer, who is registered to do LPG, Non-Domestic, and Mobile Catering; and
 - A copy of the Pressure Vessel Test for any espresso type coffee machine being used.
27. Adequate litter bins shall be provided by the licence holder for use by the public and shall be distributed throughout the market site. All dropped or windblown litter must be collected after close of trading and removed with the other commercial waste.
28. The licence holder shall ensure that adequate and suitable provision is made for the storage and removal of refuse and other waste from the premises; that a suitable litter bin of adequate capacity is provided outside the premises during all hours of opening.
29. The licence holder shall ensure that all music, amplified music and/or vocals are controlled to the satisfaction of the appropriate Executive Director.
30. The licence holder shall provide suitable and sufficient public sanitary accommodation on the site or in the premises for traders, their employees and the public, all to the satisfaction of the Licensing Authority.
31. All generators must be used and stored in accordance with manufacturer's guidance.
32. Wherever possible, all electrical and fuel controls must be made inaccessible to members of the public; failing which there must be suitable protection in place: all

electrical installations must be certified as complying with current I.E.E. Regulations.

33. All temporary structures shall be designed, erected and maintained to suit their intended purpose. The design should meet with the approval of the appropriate Executive Directors.
34. The licence shall not be effective until the licence holder has received final clearances from the appropriate Executive Directors confirming that the premises may be operated.
35. The licence holder shall ensure that publicity material advertising events occurring on the premises is not distributed in such a manner as to produce litter.
36. The licence holder is responsible for the clearing of the area of all stalls and associated goods, debris, tools and any traffic management placed by them including all refuse as a result of the market, prior to vacating the site.

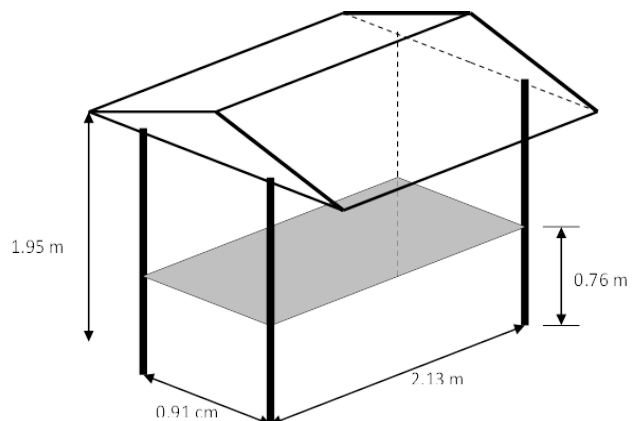
NOTE: Additional conditions may be attached at the discretion of the licensing authority.

Appendix 4 – Hunter Square Existing Street Trading Stances



Appendix 5 - Operating Plan for Area of Special Interest – Castle Street

1. Market operators will supply an Events Management Plan and Risk Assessment when they make an application.
2. Market operators should have Market Operator / Public Liability insurance with a minimum value of £5 million in any one claim.
3. Market operators will not sub-let the use of the site to a third party.
4. Market operators will appoint a day to day manager who will be on site when the market is in operation.
5. Markets will be restricted to one per calendar month for a maximum of seven days.
6. Markets can only operate between the hours of 10:00 – 20:00hrs daily.
7. The layout of the market will be in the centre of Castle Street with units facing outwards towards the existing buildings. Access corridors will be created throughout the market to allow free flow of pedestrians from east to west and vice versa; the layout format should include 4 stalls back to back (8 traders in total), space than 2 stalls (4 traders in total) back to back with a space and finally another 4 stalls back to back (8 traders in total)
8. The number of stalls shall be restricted to a maximum of 20.
9. The stalls shall all be of a stand size and appearance.



10. There shall be no preparation and sale of hot food products.
11. The operator will provide details of all individual stallholders, including equipment, scope of business and type of product to the **Licensing Manager**, at least one week before the event.

No motorised vehicles shall be permitted in the area used for the market during the hours of operation.

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Regulatory Committee

10.00am, Monday, 1 May 2023

Food Health and Safety Business Plan 2023/24

Executive/routine	
Wards	All
Council Commitments	

1. Recommendations

- 1.1. Committee is asked to note this report and that the Business Plan will be submitted to Food Standards Scotland when requested.

Paul Lawrence

Executive Director of Place

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Food, Health and Safety Business Plan 2023/24

2. Executive Summary

- 2.1 The City of Edinburgh Council has produced an annual Food Health and Safety Business Plan (Appendix 1). The format and content of the plan relating to food is governed by the Framework Agreement on Local Authority Food Law Enforcement.
- 2.2 Following audit feedback from Food Standards Scotland (FSS), the Business Plan is submitted for Committee for noting to provide oversight of the plan before it is made available to FSS.
- 2.3 Following the changes to Council political management arrangements which took effect from 17 April 2023, the Regulatory Committee terms of reference have widened to include the Council's Environmental Health and Trading Standards functions.

3. Background

- 3.1 In order to comply with the Food Law Code of Practice (Scotland) (CoP), the Council must produce an annual Food Service Business Plan (Appendix 1).
- 3.2 In previous years the Food Health and Safety Business Plan was approved by the appropriate Service Director (previously known as Head of Service). However, in 2019, Transport and Environment Committee considered a report on the outcome of a [Capacity and Capability Audit by FSS](#). Audit feedback from FSS advised that it was best practice for Elected Members to have awareness of the services provided, and that one way to do this was for the Business Plan to be made available to Committee for noting in advance of providing it to FSS.
- 3.3 Between March 2020 and October 2021, the food safety programme was largely put on hold due to the COVID-19 pandemic to ensure that Environmental Health resources were available to prioritise public health duties and COVID-19 business support. Therefore business plans for those years were not completed.
- 3.4 Ensuring that food businesses meet their statutory obligations is an integral part of Environmental Health, which investigates (among other issues) noise, public health, air quality, health and safety and environmental assessment. The Council is under a statutory duty to follow the CoP, and where necessary to cooperate with FSS.

4. Main report

- 4.1 Following the hiatus over the COVID-19 pandemic period and subsequent return to normal duties, the Environmental Health Service has produced an annual Food Health and Safety Business Plan (Appendix 1) as required by FSS.
- 4.2 FSS audits Local Authorities to ensure that they comply with the Framework Agreement, an audit report is agreed and, if required, an action plan is produced. It is a requirement of the audit that a Committee-approved Business Plan is in place.
- 4.3 The key points from the plan are as follows:
 - 4.3.1 The Food Health and Safety service (FHS) comprises 25 FTE across three teams managed by three Team Leaders. However, FHS is currently operating with 8.4 FTE vacancies, meaning there are only 16.8 FTE available. This challenge with staff numbers is consistent with other local authorities in Scotland;
 - 4.3.2 At the end of February 2023 there were 7,394 food businesses operating in Edinburgh, an increase of 177 since February 2022. However, as there is a significant turnover of food businesses in the city, so the increase does not represent the total number of new businesses. In fact, in the past 12 months, 608 new food businesses in the city have been recorded. These businesses typically require more support than well established businesses. This places additional pressure on the service and the inspection programme.
 - 4.3.3 Between 1 February 2022 to 31 January 2023, FHS inspected 1,168 businesses, resulting in 4,729 interventions of which 1,415 were enforcement actions. 612 food complaints were investigated, and 404 requests for advice were received and responded to.
 - 4.3.4 Inspections take place according to a risk rating scheme that places greatest emphasis on the highest risk businesses. With limited resources, it is not possible to inspect all premises, but using the CoP rating scheme ensures that FHS activities provide the best food protection for the residents and visitors to Edinburgh.
 - 4.3.5 Despite challenges with staff numbers, the services' assessment is that the city remains a safe place to eat. Monitoring of data available, including the number of infections notified by the NHS (113 in both years) and the number of self-reported food poisonings (218 in 2021/22 and 177 in 2022/23), shows that infections rates remain broadly similar to last year. This in itself was lower than in previous years. Additionally, the number and frequency of necessary formal enforcement actions remains low.

5. Next Steps

- 5.1 Officers will submit the Business Plan to FSS when requested.

6. Financial impact

6.1 There are no direct financial impacts from this report.

7. Stakeholder/Community Impact

7.1 The aims and objectives of the Business Plan are to ensure that food and drink intended for sale for human consumption which are produced, stored, distributed, handled, traded or consumed within the City of Edinburgh are without risk to the consumer.

8. Background reading/external references

8.1 None.

9. Appendices

9.1 Appendix 1 – Food, Health and Safety Business Plan 2023/24

Appendix 1

Food, Health and Safety Business Plan 2023/24

Version 1

FOOD HEALTH AND SAFETY BUSINESS PLAN 2023 - 2024

Business Plan 2023-24

Food, Health and Safety

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Overview

This Business Plan is prepared in order to comply with the Food Law Code of Practice (Scotland) (CoP). The City of Edinburgh Council is required to produce and approve an annual Food Service Business Plan. The content of the plan is governed by the requirements of the Framework Agreement on Local Authority Food Law Enforcement.

Mission Statement

The Food, Health and Safety Team exists to protect and enhance Edinburgh for all its citizens, businesses and visitors, ensuring that the law is complied with and that Council objectives are achieved so that all may thrive.

Aims and Objectives

We will ensure that food and drink intended for sale for human consumption, which are produced, stored, distributed, handled, traded or consumed within the City of Edinburgh are without risk to the consumer. We will regulate Health and Safety as required in Local Authority enforced premises in order to protect members of the public and employees. We will do this through inspection, investigation, education and enforcement.

Profile of Edinburgh

The City of Edinburgh Council is a predominantly urban Local Authority covering a land area of 264 square kilometres, with a population of over 522,000. The city is a popular tourist destination, with visitors coming to see the city's attractions, including museums, and monuments, as well as some of the most famous festivals in the world. It is estimated that the city's population doubles during the summer festivals due to an influx of artists and visitors. This increase in population requires resources and facilities adequate to meet these needs including tourist accommodation, entertainment, restaurants, bars and cafes, and places additional pressure on the Council including the Environmental Health Service.

There are over 7,000 food businesses in the city, of which over 4,000 are restaurants and other caterers. This is a dynamic operating environment, with the number of businesses overall increasing and number of Food Business Operators (FBO) changing. Very often new FBOs are relative 'beginners' in the food industry without full awareness of the obligations regarding food safety. Consequently, the Service has to give significant support to these businesses. This often includes having to proactively search for these businesses, as many are unaware of the legal obligation to register with the Local Authority.

Scope of the Food, Health and Safety Teams

The Food Health and Safety (FHS) service was redeployed for Covid enforcement during the Coronavirus (Covid-19) pandemic. A Local Authority Recovery Plan was agreed by the 32 Local Authorities and Food Standards Scotland (FSS). The FHS service resumed routine inspections in October 2021, but due to a new Covid-19 variant of concern around mid-December there followed a further two month hiatus, with inspections resuming in mid-February. This was reported to FSS.

From October 2021, the FHS teams followed the requirements of the document 'Interventions Food Law Code of Practice (Scotland)', which changed ways of working by

implementing the new food law inspections, which encompass what would have been food hygiene and food standards inspections and introduced a new risk rating scheme.

The FHS teams aim to provide a comprehensive, primarily enforcement-based range of services across the city, encompassing food safety, food standards, health and safety and related activities.

The teams carry out Food Law inspections in all food premises in the city according to the risk rating applied at each inspection. This risk rating determines the frequency with which each business should be inspected and is calculated in accordance with the Food Law Rating System (FLRS).

In the course of Inspections, officers will guide Food Business Operators (FBO) on required actions in order to comply with food law legislation. Officers will either leave a written report or email an electronic report. Guidance provided may be informal or formal depending upon the level of non-compliance. Formal action can range from allowing a FBO to voluntarily close an unsatisfactory premises, to closing the premises by way of a Statutory Notice and/or reporting a FBO to the Procurator Fiscal. Other options are available, and the approach is detailed in the Service's Food Law Enforcement Policy.

The 2023/24 budget for the service is **TBC**.

In support of the Council's values, all Food Law interventions are carried out with integrity, respect for FBOs and other customers and with appropriate flexibility.

The Service contributes directly towards one of the three strategic outcomes set out in the Edinburgh Partnership Community Plan (SOA 2018-28):

- That Edinburgh is a good place to live

In addition, the Council supports Food Standards Scotland's (FSS) Corporate Plan:

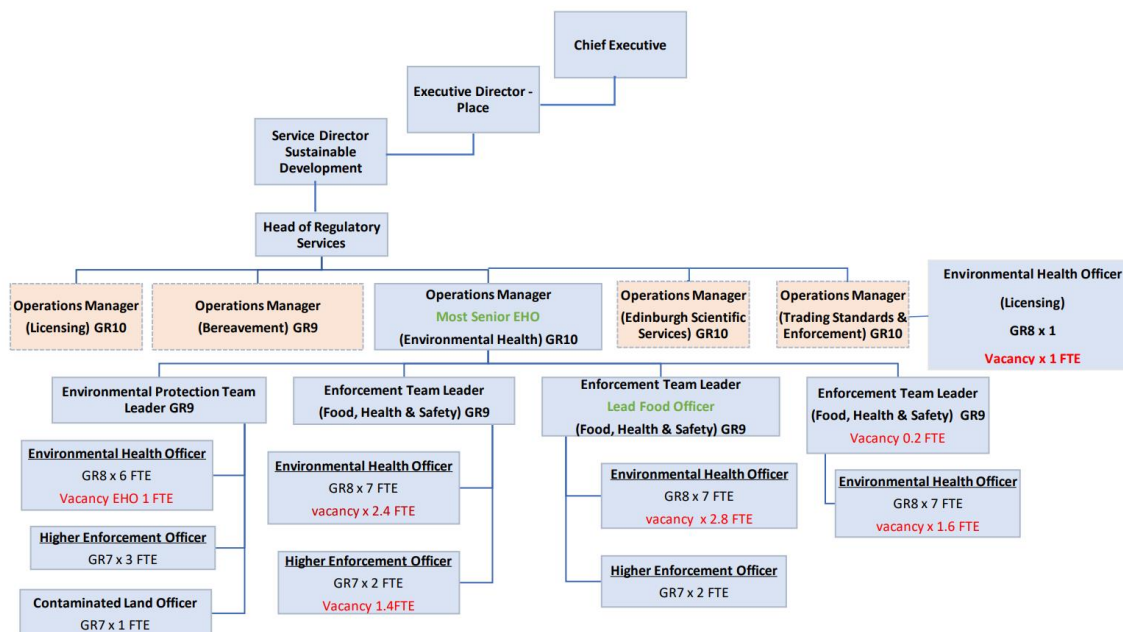
- Food is safe;
- Food is authentic;
- Consumers have healthier diets; and
- Responsible food businesses flourish.

Feed and primary production enforcement is undertaken by the Council's Trading Standards Service. All food and feed law enforcement services are part of the Place Directorate of the Council.

Operational Context

FHS has a flexible establishment of 21 full time equivalent (FTE) Environmental Health Officers (EHO) and four FTE Higher Enforcement Officers divided into three geographical team groupings. Staffing levels have been falling in recent years. Despite carrying out recruitment exercises in the past six years, it has not been possible to return to full complement. FHS carries a 0.2FTE Team Leader vacancy and 6.8SFTE EHO vacancies. Additionally, the FHS Teams have 1.4FTE vacancies for Higher Enforcement Officers, making the total vacancies 8.4 FTE. This is equivalent to one team of officers.

The Environmental Health Service overall has 8.8 EHO vacancies (one within Licensing Enforcement), and operates with 70% fewer EHOs than in 2005.



The most recent statistics (2019) provided by the Society of Chief Officers of Environmental Health Scotland (SOCOEHS) show that Edinburgh operates with the lowest ratio of EHOs to population among the seven most comparable Local Authorities in Scotland. This is in part because the service is currently running below establishment. However, even if the service was at full establishment the ratio would only be 5.2 EHOs/100,000 population and still the lowest ratio in the benchmarking group.
















	EHOs per 100K population
Scotland – highest	10.6
Scottish average	7.6
Edinburgh (if all posts filled)	5.2
<i>Edinburgh 2022</i>	3.9

The Environmental Health Service continues to train two students with the hope that they will seek to be employed by the Council at the end of their training. It is hoped that we will train more students in the coming year.

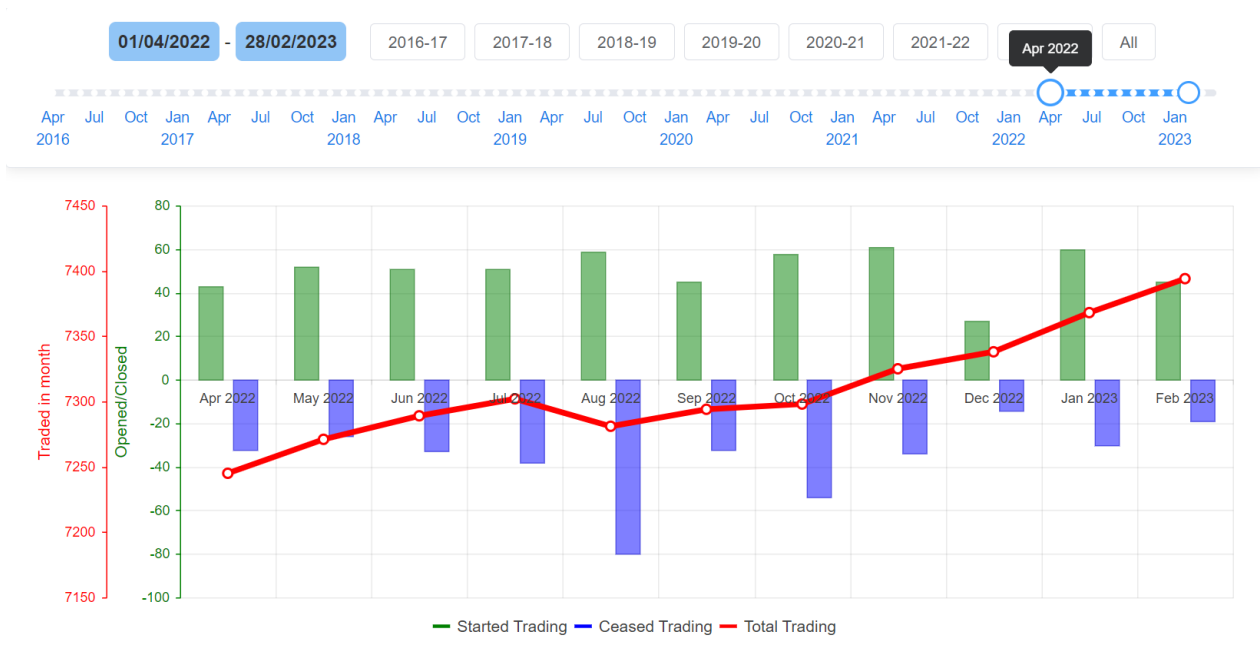
An additional significant impact on service delivery is the need to ensure that festivals, events, street markets and other temporary venues are adequately monitored. This includes the Royal Highland Show, Edinburgh International Festival, Edinburgh Festival Fringe and a variety of temporary markets. Food law and occupational health and safety matters at these events are normally coordinated by an EHO attached to the Licensing Team, supported by colleagues from Environmental Health when inspections and other interventions are required. Due to this post currently being vacant, this role is currently being covered by the Food teams. Although some of these events occur annually, the

participants are different each year and those who return often have new premises layouts. Consequently, these cannot be part of the programmed inspection list and must be dealt with as and when they arise. The work involved in carrying out these non-programmed inspections and associated activities is equivalent to two FTEs over a whole calendar year. However, the nature of the events means that the workload is not evenly distributed throughout the year.

Food Health & Safety statistics

 <p>7,394 FOOD BUSINESSES 6,505 REGISTERED</p>	 <p>4729 INTERVENTIONS TOOK PLACE IN FOOD BUSINESSES, OF WHICH 1168 WERE INSPECTIONS AND 1415 ENFORCEMENT ACTIONS</p>	<p>152 FOOD SAMPLES TAKEN</p> 	<p>612 FOOD COMPLAINTS INVESTIGATED</p> 	<p>440 REQUESTS FOR ADVICE</p> 
 <p>177 SELF-REPORTED FOOD POISONINGS INVESTIGATED</p>	<p>48 SHIPS INSPECTED AND SANITATION CERTIFICATES</p> 	<p>12 APPROVED PREMISES REQUIRING APPROVAL</p> 	<p>16,000 PREMISES FOR HEALTH & SAFETY ENFORCEMENT</p> 	<p>3 SERIOUS ACCIDENTS INVESTIGATED 4 PROHIBITION NOTICES SERVED</p> 
<p>75 FBOs WITH AN EATSAFE AWARD</p> 	<p>8 BUSINESSES WITH 22 COOLING TOWERS BETWEEN THEM</p> 	<p>205 HEALTH AND SAFETY VISITS</p> 	<p>1728 FOOD LAW RE-VISITS CARRIED OUT</p> 	<p>113 NHS REPORTED COMMUNICABLE DISEASES INVESTIGATED</p> 

Edinburgh has the highest number of food business in Scotland and at the end of February 2023 the total stands at 7,394. This is 177 more food businesses in Edinburgh than were registered at the beginning of April 2022. This is not the entire picture however, as during this period many businesses closed and others opened to replace them. This means that there are actually many more 'new' businesses than 177. In the graph below the green bars show how many businesses closed in each month and the blue bar how many new businesses opened. This shows that during the period April 2022 to the end of February 2023, 608 new businesses opened in Edinburgh. The red line indicates a steady increase in the number of food businesses in Edinburgh. This increasing trend has been going on since at least 2016. New businesses can put extra strain on the Service, as owners who are new to running a food business often require more assistance than experienced FBOs.



Service Improvement and Monitoring

The effects of both technological and legislative change require a strong focus on staff training and continuous professional development for the Food Health and Safety service to ensure the highest standards of competency, quality of service delivery and professionalism. In order to ensure that such standards are maintained, the competencies of officers in specific subject areas are rigorously and continuously assessed. Team Leaders also monitor officers' outputs to assess compliance with internal quality checks, including data input standards. This monitoring is supplemented by Team Leaders' observation of officer practice during onsite visits. Additionally, officers who are newly qualified, new to the Council or returning to food law enforcement after a long period elsewhere, follow a structured mentoring programme. These officers are assessed by the Lead Food Officer before being allowed to carry out the full range of food enforcement duties.

In response to ongoing changes to statutory guidance on food and health and safety, additional training is provided on any new or unusual foods and processes. For example, of a number of staff trained in Hazard Analysis and Critical Control Point (HACCP) to HACCP 4 level, a number have gone on to complete the Official Controls Verification (OCV) course for the inspection of approved premises.

APSE is used to benchmark against Local Authorities of a similar nature to enable the assessment of service performance. This was paused during the pandemic and we intend to return to this process this year.

Obligations Placed on the Service

Food Law sets out obligations that apply in relation to the delivery of Official Food Controls by Local Authorities, which include ensuring:

- a. The effectiveness and appropriateness of Official Controls;
- b. That controls are applied at an appropriate risk-based frequency;

- c. That they have a sufficient number of suitably qualified and experienced competent staff as well as adequate facilities and equipment to carry out their duties properly;
- d. That staff are free from conflicts of interest;
- e. That they have access to an adequate laboratory with capacity and capability for testing.

Local Authorities are required by statute to have regard to the Food Law Code of Practice (Scotland) Issue 2019 (CoP) when discharging their duties. If they do not have due regard to the requirements of the CoP, FSS may, after consulting the Scottish Ministers, give a Local Authority a direction requiring it to take specified steps in order to comply with the CoP. This means, in effect, that Local Authorities must follow and implement the provisions of the CoP that apply to them.

These statutory requirements must be brought to the attention of local authority officials and/or elected member bodies responsible for agreeing budgets or other service arrangements relevant to the delivery of Official Controls.

The City of Edinburgh Council has a documented Food Enforcement Policy that underpins the requirements of the CoP.

Food Law

A Local Authority Recovery Plan was agreed with FSS and was implemented in October 2021. A desktop exercise was undertaken to convert the existing CoP Annex 5 risk rating scores to the Food Law Interventions Performance Ladder Bands. Thereafter the premises were reviewed and allocated inspection dates, with the earliest dates being given to those premises with the highest risk and taking into account the date of the last inspection.

The FHS teams continue to follow the Local Authority Recovery Plan and to carry out interventions with respect to those businesses already inspected under the Food Law Rating System (FLRS) when they become due, using the intervention frequency as set out in the table below.

Since the beginning of October 2021 until the end of January 2023 we have completed all Group 1 premises (122) and all Group 2 Band D (927). In addition, we have completed 518 Group 2 Band C, with 745 still to do. At the time of writing, due to an increased number of re-inspections, the number of unrated premises needing inspection and a staff shortage, these were not completed by the end of March 2023. There are 104 Group 3 Band D premises that have not been inspected. These are in Band D for relatively minor issues but are all low-risk premises. Other premises were targeted ahead of these as they represented greater risk to the public.

Food authorities are required to risk rate their food businesses for food law. Information on the Performance Ladder Bands risk ratings and inspection frequencies are as follows:

5. Food Law Rating System

5.1 The Ladder

Group 1 Business	Performance Levels	Band	Intervention Frequency
<ul style="list-style-type: none"> Manufacturer of High Risk Foods. Manufacturer, Caterer, Processor or Retailer that undertakes a specific method of processing that has the potential to increase the risk to public health beyond that of normal preparation, storage or cooking. Manufacturers of Foods for Specific Groups. All Exporters. Manufacturers, Processors, Importers, Wholesaler, Distributor, Food Broker, Packers of Food at enhanced risk of food fraud, substitution, adulteration or contamination. 	Sustained Compliance	1A	18 Months
	Compliant and confident in compliance going forward	1B	12 Months
	Minor Non-compliance and/or gaps in confidence in compliance going forward	1C	6 Months
	Significant Non-Compliance and/or no confidence in compliance going forward	1D	3 Months
	Sustained non-compliance and/or Issues of Public Health Significance or Fraudulent Activity	1E	Intensive Intervention. 1 Month.
Group 2 Business	Performance Levels	Band	Intervention Frequency
<ul style="list-style-type: none"> All other Manufacturers, Processors, and Caterers. Importers, packers, wholesalers and distributors of high-risk foods not in Group 1. Head Office Business that undertakes a regional/national decision making function. Retailers handling open high-risk foods. 	Sustained Compliance	2A	24 Months
	Compliant and confident in compliance going forward	2B	18 Months
	Minor Non-compliance and/or gaps in confidence in compliance going forward	2C	12 Months
	Significant Non-Compliance and/or no confidence in compliance going forward	2D	3 Months
	Sustained non-compliance and/or Issues of Public Health Significance or Fraudulent Activity	2E	Intensive Intervention. 1 Month.
Group 3 Business	Performance Levels	Band	Intervention Frequency
<ul style="list-style-type: none"> All other retailers, Food Brokers, Importers, packers, wholesalers and distributors. Public Houses and similar Licenced Business not providing catering. Business providing limited refreshments (e.g. tea, coffee, soft drinks) as an adjunct to main activity. Child minders. Supported Living Business. Business producing low risk food based from a domestic dwelling. Bed & Breakfasts. 	Sustained Compliance or Businesses where information available at point of registration, indicates there is minimal inherent risk	3A	No proactive Intervention or 60 months.
	Compliant and confident in compliance going forward	3B	36 Months
	Minor Non-Compliance and/or gaps in confidence in compliance going forward	3C	24 Months
	Significant Non-Compliance and/or no confidence in compliance going forward	3D	3 Months.
	Sustained Non-Compliance and/or Issues of Public Health Significance or Fraudulent Activity	3E	Intensive Intervention. 1 month.

In the 12 months between 1 February 2022 and 31 January 2023, 1,168 food law inspections took place. The businesses were risk rated as shown in the graph below. It should be noted that this is a snapshot of businesses on a particular day, as the graph evolves over the course of a year. It shows the businesses that have been inspected under FLRS but it does not represent the number of inspections undertaken.

FLRS

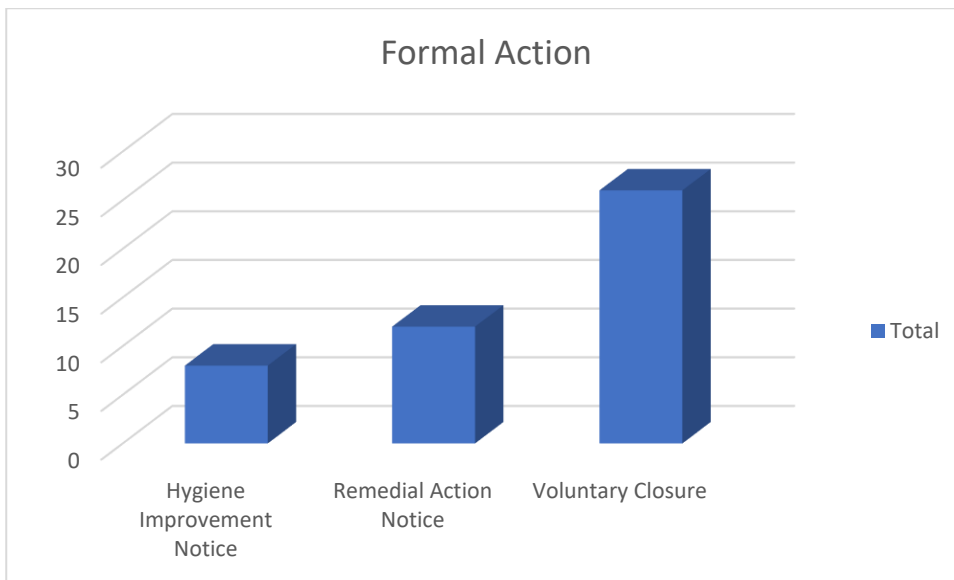


The teams continue to respond to complaints and enquiries regarding a wide variety of food law issues. During 2022/23, FHS responded to 1,906 service requests including alleged food poisoning, foreign bodies in food, food labelling and unhygienic premises and practices.

A number of enquiries received are requests for advice from businesses. This is part of the routine work undertaken on a daily basis.

During 2022-23 eight Hygiene Improvement Notices were served, 12 Remedial Action Notices were served on premises and no Hygiene Emergency Prohibition Notices were served. 26 food businesses were closed by Voluntary Closure procedures.





Food Law Incidents

All Food Law incidents are dealt with by following documented procedures and any incident that is required to be notified to FSS is sent timeously. Throughout the year FHS is notified by FSS of food alerts, and on receiving this information officers are notified. Those alerts requiring action are escalated and a response is returned to FSS. An estimate of the resource required is difficult to provide, but any alert for action will be resourced appropriately.

Food Crime and Fraudulent Activities

Officers work closely with FSS on food crime and fraud notifications as per the CoP One of our staff is a 'Food Crime Champion' who has access to the intelligence database to receive or log notifications. This work is variable and is undertaken within the existing resource allocation.

Approved Premises

Approved premises handle products of animal origin for further distribution to other retailers/caterers. There are 12 approved premises, at which inspections are carried out by two officers, to ensure there is both consistency and that the appropriate level of focus on safe food production is achieved.

Food Sampling

The Council will continue to carry out a comprehensive Food Sampling Programme to ensure that the food on sale within Edinburgh complies with food law requirements.

In partnership with the Lothian and Borders Food Liaison Group, the Council will participate in the Coordinated Food Sampling Programme for 2023-24. The programme is funded by FSS and each year LAs within their Food Liaison Groups are encouraged to apply for funding. In 2023-24 it is intended to take approximately 120 samples across a range of categories specified by FSS.

The programme for this year has not yet been determined but this plan will be updated when the range of foods has been agreed.

In 2023/24, the team proposes to submit up to a further 200 samples for chemical testing and 200 samples for microbiological testing.

In addition to this programme, food enforcement staff will continue to monitor the safety and quality of locally available imported and manufactured foods by taking samples during routine inspections of premises.

The Council does not currently have any formal home authority or other agreement with any Edinburgh food business. However, the Council does accept referrals from other food authorities, acting as the originating authority for several Edinburgh businesses where the principal issues are food standards in nature. Currently, the Primary Authority principle, which is used in other parts of the UK, does not apply to food issues in Scotland but may be introduced by FSS at any time.



Health Improvement

Under normal circumstances the FHS teams participate in national campaigns, e.g. Food Safety Week, and give presentations to schools and community groups as requested. With the end of the pandemic it is expected that we will return to this work when resources permit.

Some officers hold qualifications in Food and Nutrition, which ensures that health improvement and nutrition are considered during inspections, with advice and expertise offered at appropriate opportunities. We believe it is essential that officers are aware of the key Scottish Government strategic objective which aims for a healthier society, and ensuring our officers are knowledgeable and skilled in health outcomes is integral to this.

FSS has a strong focus on nutrition and healthy eating and supports the Council's desire to improve health and nutrition while performing statutory duties. It is our intention to increase officer knowledge in this area and we will continue to support FSS in food sampling initiatives and surveys, along with our partners in Lothian and Scottish Borders Food Liaison Group to improve health outcomes, especially in children.



External Monitoring of Food Law Performance

FSS uses the Scottish National Database (SND) to monitor LAs' food law enforcement service against the standards set out in both the Framework Agreement and the CoP. From this FSS will provide the Scottish Food Enforcement Annual Return (SFEAR) to LAs. FSS carries out regular audits of all 32 LAs on the basis of this data.

The Framework Agreement between FSS and local authorities including the Council requires that a detailed review of an authority's performance against its previous stated objective be carried out and that this should be scrutinised. This review will be done annually following receipt of the SFEAR report from FSS. As part of this process, an action plan must be developed to address any shortfall in performance against targets.

At the time of writing the total number of registered food premises in Edinburgh was 6,505, although, with additional intelligence available we believe the true figure of food businesses to be 7,394. This is a constantly changing figure as new businesses open and others close. However, for some years now (including during the pandemic) the total figure has steadily increased. The legal responsibility to register a food business with the local authority rests with the food business operator. As part of routine inspection and audit duties the registration status of a business is checked, and assistance given to the operator to meet their legal obligation.

Development Activities



As resources and workload permit, we aspire to make the following improvements to the food service.

- We will increase our involvement with nutrition.
- We will explore the use of customer satisfaction questionnaires.
- We will improve our online presence.
- We will develop a system for charging for discretionary advice and training.

The FSA/FSS sponsored Food Hygiene Information Scheme covers the whole Council area. The Scheme's 'Pass' and 'Improvement Required' grades give clear and concise

information to the public on the hygiene standards achieved at the most recent inspection. The easily understood information on hygiene standards is a benefit to potential consumers and is expected to continue to drive up standards in catering establishments in the longer term. The current ratings for Edinburgh's food businesses are available on the FSA/FSS websites via a link from the Council website, with food businesses being issued with the appropriate certificate for display following inspection. FSS had started a consultation process that could result in various changes to Food Hygiene Information Scheme (FHIS), including the compulsory display of 'Pass' and 'Improvement Required' certificates on the food premises. This is on hold as it has to be refined due to the change to FLRS

In 2023/24, in conjunction with the Council's Media Team, FHS will continue to produce Facebook posts regarding local and national environmental health matters.



The FHS teams support local businesses by providing the Food Safety Management System ('CookSafe') guidance free of charge. The teams also provide advice on Covid-19 regulations and ways to keep staff and customers safe.

Translation services are arranged when required and all printed materials provided by FSS are available in several languages. There will be a continuing need for this business support in 2023-24, particularly as the trend for a substantial number of businesses to change hands each year continues.



To support and encourage food businesses which are doing more than meeting legal requirements, recognition is given to those businesses which are achieving levels of excellence. The Service will continue to engage with proprietors whose businesses qualify and seek to promote the Eat Safe Award sponsored by the FSA, which recognises businesses that exceed legal compliance. The details are published on the Eat Safe website, which can also be accessed via our website. There are currently 75 Edinburgh premises with an Eat Safe award.

Key Internal Partners

Within the Council, principal internal partners are the four localities. Arrangements have been put in place to assist the Locality Managers to quickly resolve issues coming within the scope of the responsibilities of Environmental Health.

In line with the concept of Better Regulation and a reduction of regulatory burdens on businesses, FHS works closely with other teams in the Directorate of Place, in particular Licensing. The Licensing Service takes the lead in relation to street trading issues and events planning.

FHS also works with Business Growth and Inclusion to encourage responsible businesses and best practice.

FHS works closely with Edinburgh Scientific Services as its Food Analyst/Examiner and Agricultural Analyst, and uses its laboratory expertise in respect of the food sampling programme, food complaints and other forms of analysis and examination.

Principal External Partners

FHS will seek to maintain and expand its involvement with stakeholders and partners throughout the year. External partners include:

- Food Standards Scotland
- Lothian and Scottish Borders Food and Health and Safety Liaison Groups.
- Scottish Food Enforcement Liaison Committee (SFELC)
- National Health and Safety Co-ordinating Group (HASCOG) for Scotland
- Society of Chief Officers of Environmental Health
- Approved Establishment Working Group
- National Food Crime Advisory Group
- Scottish National Database Development Group
- Skin Piercing Working Group
- Health and Safety Executive (HSE)
- NHS Lothian Department of Public Health Medicine
- Scottish Fire & Rescue Service
- Crown Office and Procurator Fiscal Service,
- Police Scotland
- Care Inspectorate.
- Other LAs
- Scottish Food Enforcement Liaison Committee (SFELC)

The Joint Health Protection Plan

The Joint Health Protection Plan (JHPP) (a requirement under the Public Health etc (Scotland) Act 2008 ('the 2008 Act')) has been prepared with close collaboration between NHS Lothian and the four Lothian LAs. The current plan covers the period from April 2018 to March 2020. This was not updated as the pandemic interrupted 'normal' work. It remains on hold at present as a consequence of new regional arrangements for the NHS Health Boards; it is not clear if there will be a regional plan or if local plans will remain.

NHS Lothian's Health Protection Team works closely with Environmental Health Services in the Lothian LAs in the investigation and management of cases involving communicable diseases and environmental hazards. The 2008 Act sets out roles and responsibilities in these arrangements. The key communicable disease and environmental health functions of NHS Lothian and LAs are:

- To reduce preventable illness and death from communicable disease;
- To identify potential outbreaks of communicable disease at an early stage so that effective control measures can be put in place as soon as possible;
- To improve the ability to prevent further outbreaks;
- To work with other agencies to reduce any adverse environmental impact on health.

The 2008 Act has also provided an opportunity to develop planning processes, not only linking local departmental plans but also ensuring that the objectives match closely with those of the wider NHS and Lothian LAs' planning systems. An example of this is the close cooperation between Edinburgh's Environmental Health Service and Lothian NHS during the pandemic, which saw daily briefings and sharing of staff.

Communicable Diseases

We will continue to work closely with our colleagues in NHS Lothian's Health Protection Team (HPT) to investigate all cases of food poisoning and other cases of enteric infection notified to them within the population of Edinburgh. All cases are investigated in accordance with the protocol laid down in the document 'Standard Procedures for the Investigation and Management of Sporadic Cases of Gastrointestinal Infection in Lothian'. The purpose of investigating cases is to control the spread of infection within the community and the wider population. On occasion, this can require the person and/or contacts to be excluded from their school, childcare or work until cleared by microbiological screening or risk assessment.

During the year 2022/23 FHS received 113 notifications of infections (food borne disease and other infections) from NHS Lothian to follow up and an additional 218 reports of alleged food poisoning directly from the public. These numbers remain lower than in previous years and it is believed that this is still due to people's habits changing due to the Covid-19 pandemic.

In the event of an emerging potential public health incident or outbreak of gastrointestinal infection or Legionnaires' disease affecting the population of Edinburgh, we are required to provide suitably experienced staff to be part of a Problem Assessment Group or Incident Management Team. Such outbreaks and incidents may extend outwith the City boundary which will necessitate liaison with other LAs, the Scottish Government and other agencies e.g. FSS/FSA, HSE, Health Protection Scotland, SEPA.

We will continue to support and play an active part in the Lothian Health Protection Liaison Group. The Group, which comprises representatives from NHS Lothian, Scottish Water, the Animal and Plant Health Agency (APHA) and the four LAs in the Lothian area, meets four times per year. The Group discusses issues of mutual concern and interest and provides plans for the control of gastrointestinal infection and other conditions within the Lothian area. The Group also organises and participates in training exercises to test the Major Outbreak Plan and the Waterborne Hazard Plan.

Port Health

This area of work includes the two sea ports (Leith Docks and Hound Point Oil Terminal at South Queensferry) and Edinburgh Airport. At present the inspection of ocean-going vessels comprises much of the work as we implement the provisions of the Ship Sanitation regime, which is designed to address all possible vectors of disease and risk to human health on ships. 48 ship sanitation inspections were carried out in 2022-23.

The main area of work connected with Edinburgh International Airport is associated with reports of illness aboard inbound aircraft. In this regard, we work closely with NHS Lothian's Consultant in Public Health Medicine (CPHM), HPT and the airport operator. When required, officers will meet an inbound aircraft as it arrives, accompanied by the CPHM, and ensure that the aircraft is properly disinfected, if necessary, prior to commencing its outbound flight. Contact and destination details of the other passengers can be obtained in this situation, as required.

There are established Airport Call Out procedures and these are kept under review in conjunction with other agencies.

Occupational Health and Safety

Local Authorities (LAs) have a statutory duty to enforce occupational health and safety legislation at appropriate premises within their area.

To support this, HSE issued the 'National Local Authority Enforcement Code' and supplementary guidance in 2013. The most recent updated guidance was published in January 2018. LAs are obliged to have regard to this Code and guidance.

As previously stated, LAs have a statutory duty to enforce occupational health and safety legislation at appropriate premises within their area. Health and safety enforcement is undertaken by either the Health and Safety Executive (HSE) or LAs, depending on the type of premises or work activity.

LAs are responsible for enforcement in:

- retail shops;
- some warehouses;
- offices;
- catering establishments;
- provision of residential accommodation such as residential care homes, hotels and hostels;
- leisure and entertainment premises; and
- consumer services such as hairdressers, beauty salons and laundrettes/dry cleaners.

There are approximately 16,000 premises in Edinburgh for which the Council has enforcement responsibility.

FHS teams deliver a combination of programmed inspections (based on a risk scoring system), participation in local and national initiatives, reacting and responding to enquiries and investigating complaints, accidents and cases of occupational ill health.

The most effective way in which standards of occupational health and safety can be improved is by an appropriately resourced and targeted programme of inspections. Occupational health and safety is a reserved function and the UK Government has produced statutory guidance requiring LAs to significantly reduce their inspection programmes.

Unlike the proactive inspection programme required for food premises, when it comes to occupational health and safety LAs are expected to limit proactive inspection activity. Instead LAs are encouraged to use other interventions to assist businesses in complying with legislation. Nevertheless, LAs are required to retain the skills to enforce the legislation as necessary, either through accident investigations or by responding to complaints and enquiries. HSE guidance acknowledges that LA officers undertake visits to businesses for a range of purposes e.g. food hygiene or civic government licensing, and recognises that during these visits it will be appropriate to provide health and safety advice to address matters of evident concern.

In accordance with UK Government and HSE policy, we would have carried out only a limited number of pro-active inspections. However, due to the legacy of Covid

work, prioritising the re-starting of food work and embedding FLRS, prioritising existing and additional H&S reactive workload we undertook no pro-active inspection in 2022/23.

We did 205 Health and Safety visits in total. 84 visits were as a result of receiving complaints about Health and Safety standards in connection with work/workplaces. This resulted in 15 revisits to check compliance. 24 visits were done as a result of Health and Safety incidents (three accidents were fatal, and two were serious). 82 visits were done following requests from businesses.

A FTE of four officers undertook occupational health and safety enforcement and related work activities in 2022/23 as opposed to 5.7 in 2019/20. Whilst we aim to restart our Health and Safety inspections following the pandemic, these will be at a reduced level as we continue to follow Government requirements regarding inspections.

Improvements in standards of health and safety within businesses are often achieved without the need for formal enforcement action. However, where necessary, FHS will serve Improvement and Prohibition Notices to ensure compliance and will submit reports to the Procurator Fiscal for prosecution. During 2022/23, three serious accidents were investigated, no Improvement Notices were issued and four Prohibition Notices were served under health and safety legislation.

Since the mid-1990s, FHS has been involved in the Lead Authority Partnership (LAP) schemes whereby companies with outlets across LA boundaries formed a partnership with a Council (the 'Lead Authority') with a view to improving standards of health and safety management within the company and to improve consistency of enforcement by LAs. Edinburgh had LAPs with three major UK employers in the past. LAPs are no longer actively supported by HSE and a wide range of regulatory functions (currently reserved matters only) are now covered by the more prescriptive and statutory Primary Authority (PA) scheme. The Council's remaining LAP was approved by the Secretary of State as a PA partnership in March 2016 and since then guidance has been provided to the company and advice given to other LAs making enquiries to the City of Edinburgh Council.



The Control of Legionella by Private Businesses

FHS has a key role in ensuring that legionella in water systems in workplaces is controlled and poses minimal risk to the community.

The Service maintains a statutory register of 'notifiable devices' (cooling towers and evaporative condensers) located in the city. Details of sites that operate cooling towers or evaporative condensers are available to the public on the Council's website. There are

currently eight sites within Edinburgh which have between them 22 cooling towers/evaporative condensers or other notifiable system types in operation. One site has three cooling towers which are enforced by the Council and the rest are enforced by the Health and Safety Executive (HSE).

Legionella can be spread by water droplets from systems other than notifiable devices, e.g. water droplets from showers, spas, fountains, misting devices and hose and irrigation systems. When inspecting workplaces with these systems, officers have the authority to require businesses to improve the control of legionella in water systems, or indeed to prohibit their use. However, the HSE's National Local Authority Enforcement Code (a statutory code) means that the Council can no longer prioritise premises for inspection simply because they contain systems which may present a legionella risk, unless they operate a notifiable device.

Future Threats

Some of the issues that may arise during the life of this Business Plan are:

1. The situation regarding Covid-19 has settled in the UK but it remains unpredictable in other parts of the world. Accordingly, we must remain vigilant with respect to variants of concern, Although we have returned to normal work practices we need to be ready to respond to any resurgence of the virus or its variants.
2. FSS may decide to change or modify the available enforcement options. Such changes could include new types of notices or guidance on the use of notices.
3. FSS is currently exploring a project called Scottish Authorities Food Enforcement Rebuild (SAFER). This is a long term project involving LAs and has the potential to significantly change the way that LAs fulfil their statutory food law duties.
4. Possible changes to FHIS, including compulsory display of certificates on premises and amending the scoring scheme. Such changes, although potentially positive from a customer information angle, will have resource implications for FHS in terms of increased administrative and enforcement work.
5. Following the introduction in December 2014 of the Food Information Regulations there continues to be associated challenges with respect to embedding understanding of allergen awareness issues etc in the catering community. In the past year we have submitted two reports to the Procurator Fiscal regarding allergen incidents that were serious enough to warrant hospital treatment and we are currently investigating two further incidents.
6. Increasing financial pressures in local government.
7. The adequate resourcing of food and health and safety inspections and interventions and other activities, in the context of Edinburgh's ongoing year on year increase in the number of food businesses within the City which now exceeds 7,300.

8. Meeting the ongoing training and development needs of staff in a fast-changing legislative and technological environment.
9. FSS may set up a Primary Authority (PA) scheme for food law as this is a devolved matter for Scotland and, if a PA scheme is established, it is anticipated that the Service would receive requests from food businesses to be a PA.
10. Addressing the need to have a greater capacity as a service. We are frequently required to divert resources from programmed work in order to carry out important investigations e.g. multiple serious or fatal accidents concurrently. Responding to the pandemic has been the greatest example of this but also diverting staff to the Ukrainian refugee crisis.
11. The as yet unknown impacts of further devolution, e.g. Health and Safety at Work etc legislation is set to remain a reserved matter, however there may be a Scottish dimension to HSE's approach and, as a consequence, the enforcement and other related activities of Scottish local authorities.
12. Environmental Health has an ageing workforce and is facing problems in recruiting due to a lack of suitably qualified EHOs. This may cause future issues with respect to the number of staff available to inspect businesses. This situation is exacerbated by the fact that there are insufficient students studying Environmental Health to replace the anticipated level of retirees.

Stephen Williamson, Regulatory Operations Manager (Environmental Health)

0131 469 5934

Andrew Mitchell, Head of Regulatory Services

0131 469 5822

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Regulatory Committee

10.00 am, Monday, 1 May 2023

Trusted Trader Scheme Annual Report

Executive/routine
Wards

All

1. Recommendations

1.1 It is recommended that Committee notes the content of this report.

Paul Lawrence

Executive Director of Place

Contact: Andrew Mitchell, Head of Regulatory Services

E-mail: andrew.mitchell@edinburgh.gov.uk | Tel: 0131 529 4208

Trusted Trader Scheme Annual Report

2. Executive Summary

- 2.1 This report provides an overview of the Edinburgh Trusted Trader scheme. The scheme was introduced in Edinburgh to increase consumer protection by providing access to vetted traders who agreed to comply with agreed complaint resolution processes.
- 2.2 Following the changes to Council political management arrangements, which took effect from 17 April 2023, Committee terms of reference have widened to include the Council's Environmental Health and Trading Standards functions. This report is intended to increase elected member understanding of the services provided by Trading Standards.

3. Background

- 3.1 Trusted Trader aims to ensure that residents have access to traders who have been vetted by Trading Standards and display genuine verified customer feedback. If a customer does experience a problem, consumers have access to the Alternative Dispute Resolution (ADR) process, which is free and aims to avoid court action.
- 3.2 A Trusted Trader scheme was first developed by Dundee City Council in 2005 and is now operated in 14 Councils across Scotland. Edinburgh Trusted Trader was formed in 2015 as a result of recommendations stemming from the work undertaken to reform the Statutory Repairs scheme. The scheme's objectives are to increase consumer confidence, promote good practice within local business and help to prevent Doorstep Crime.
- 3.3 Consumers using the Trusted Trader scheme are asked to rate the trader and the Trusted Trader scheme as to whether they are likely to use them in the future. If a trader leaves the scheme, the reasons for leaving are recorded and used to improve the scheme to keep trader retention rates high.

Trusted Directory Services Ltd (TDS) is a commercial partner which oversees the operation of the Trusted Trader system. TDS administers the application process; the day-to-day management of the scheme; the trader reviews process; marketing of the scheme; and deals with any first line disputes/informal mediation.

4. Main report

- 4.1 The Edinburgh Trusted Trader scheme has grown since its inception, from 92 trusted traders in 2015 to 267 traders at the time of writing. The table below provides an overview of the current membership including new applications, feedback, resubscriptions etc.

Current no. of Trusted Traders	267
No. successful new applicants this year	30
No. of resubscriptions	204 (98%)
No. of refused applications in total	30
No. of agreed work requests	25,090
Estimated economic benefit to members/Edinburgh economy	£4,182,000 ⁱ
Estimated outcome/impact (scam prevention)	£788,184 ⁱⁱ

- 4.2 The scheme is primarily intended to provide consumer access to traders that they can trust, and therefore a key performance measure is the ongoing feedback provided by customers. The table below provides the breakdown of the feedback received since the scheme started. It is important to note that customers have to choose to provide feedback and the data will be a fraction of the business placed with these traders.

Feedback Ratings Received (since 2015)	15,632
5 Star Feedback	84.4 %
4 Star Feedback	11.0 %
3 Star Feedback	4.1%
2 Star Feedback	0.2%
1 Star Feedback	0.3%

- 4.3 The Trading Standards service also monitors those complaints about the traders that were not resolved, and which went to ADR to resolve disputes. Over the duration of the scheme there have been 11 ADR cases of which seven were resolved for the consumer and the remaining four for the trader.

Vetting of applicants

- 4.2 Officers periodically review the checks being undertaken to ensure that they remain robust and appropriate. By necessity, the checks are extremely thorough, but capacity within the Trading Standards Service to carry out this work must be balanced with other statutory duties and priorities. Current processing timescales are on average 10 weeks, although TDS has identified delays in some cases where the process has taken longer.
- 4.3 In an attempt to address these delays, the process has been streamlined as far as possible whilst keeping the standard of checks high. TDS now process some initial administrative checks on the Council's behalf, for example checking open source information. Thereafter, more in-depth vetting is carried out by Trading Standards staff in liaison with a range of other agencies including Police Scotland, the Advertising Standards Authority and the Health and Safety Executive. The new process is intended to reduce processing timescales to less than eight weeks for all new and renewal applications.

Fees

- 4.4 The fee to become an Edinburgh Trusted Trader is £220+VAT p.a., which compares favourably with other commercial schemes. Income from all membership costs is divided between TDS and the Council on a percentage basis. Resubscription rates are high (at 98%) for the current financial year.

Future developments

- 4.5 The Trading Standards Service has recently recruited a Grade 5 Enforcement Officer post to enhance support for the scheme and reduce the need to divert colleagues from other consumer protection/business support functions.
- 4.6 System improvements have been implemented, in conjunction with TDS, which provide additional monitoring facilities to ensure that traders are communicating with potential customers as expected. This followed feedback from TDS that the largest source of consumer complaints, against Trusted Traders, is when requests for quotes have gone unanswered. While this could be a result of the volume of quote requests which are received by some businesses, the new system builds in processes and reminders for traders where a request for a quote has gone unanswered.

5. Next Steps

- 5.1 If the report recommendations are approved officers will continue to monitor the operation of the scheme, and will provide further updates on an annual basis.

6. Financial impact

- 6.1 The scheme generates income as described at 4.6 above.

7. Stakeholder/Community Impact

- 7.1 Officers monitor customer and scheme member feedback and take action where appropriate.
- 7.2 Matters described in this report have no relationship to the public sector general equality duty, thus there is no direct equalities impact arising from this report.
- 7.3 There is no environmental impact arising from the contents of this report.

8. Background reading/external references

- 8.1 [Edinburgh Trusted Trader Website.](#)
- 8.2 [Edinburgh Trusted Trader Feedback Pages.](#)

9. Appendices

- 9.1 None.

ⁱ These calculations take into account the number of traders registered with the scheme, the number of estimated agreed contracts and the value of the average contracts agreed.

ⁱⁱ This figure is based on the number of traders registered with the scheme and a conservative average amount (£2,952) of financial detriment attributed to scams calculated by the National Trading Standards Scams Team.

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Regulatory Committee

10.00am, Monday 1 May 2023

Changes to Legislation on the Sale and Use of Fireworks in Scotland - referral from the Culture and Communities Committee

Executive/routine
Wards
Council Commitments

1. For Decision/Action

- 1.1 The Regulatory Committee is asked to consider if any relevant outputs from the report by the Executive Director of Place should be included within the further update report requested for Autumn 2023 on the legislative changes and implications for the City of Edinburgh Council.

Dr Deborah Smart

Executive Director of Corporate Services

Contact: Lesley Birrell, Committee Services
Legal and Assurance Division, Corporate Services
Email: lesley.birrell@edinburgh.gov.uk

Referral Report

Changes to Legislation on the Sale and Use of Fireworks in Scotland

2. Terms of Referral

- 2.1 On 13 December 2022, the Culture and Communities Committee considered a summary of provisions contained in the Fireworks and Pyrotechnic Articles (Scotland) Act 2022, which had been passed by the Scottish Parliament on 29 June 2022.
- 2.2 The Act contained six key provisions designed to support a cultural shift in how fireworks and other pyrotechnic articles were used in Scotland. It did not, however, give the Council any additional powers to further restrict or ban the sale of fireworks in the city.
- 2.3 **Motion**
- 1) To note the report by the Executive Director of Place.
 - 2) To agree that a further report would be submitted in Autumn 2023 providing a more detailed update on the legislative changes and implications for the City of Edinburgh Council.
- moved by Councillor Walker, seconded by Councillor Meagher
- 2.4 **Amendment**
- 1) To note the report by the Executive Director of Place.
 - 2) To agree that a further report would be submitted in Autumn 2023 providing a more detailed update on the legislative changes and implications for the City of Edinburgh Council.
 - 3) To refer the report to the Regulatory Committee for further consideration and any relevant outputs from that referral to be included within the report called for in Autumn 2023.
- moved by Councillor Osler, seconded by Councillor Thornley
- 2.5 In accordance with Standing Order 22(12), the amendment was accepted as an addendum to the motion.

2.6 **Decision**

To approve the following adjusted motion by Councillor Walker:

- 1) To note the report by the Executive Director of Place.
- 2) To agree that a further report would be submitted in Autumn 2023 providing a more detailed update on the legislative changes and implications for the City of Edinburgh Council.
- 3) To refer the report to the Regulatory Committee for further consideration and any relevant outputs from that referral to be included within the report called for in Autumn 2023.

3. Background Reading/ External References

- 3.1 [Minute](#) of the Culture and Communities Committee of 13 December 2022

4. Appendices

- 4.1 Appendix – report by the Executive Director of Place

Culture and Communities Committee

10.00am, Tuesday, 13 December 2022

Changes to Legislation on the Sale and Use of Fireworks in Scotland

Executive/routine Wards Council Commitments	Routine All
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1. Recommendations

- 1.1 It is recommended that the Culture and Communities Committee notes:
- 1.1.1 The content of this report; and
 - 1.1.2 That a further report will be submitted in Autumn 2023 providing a more detailed update on the legislative changes and implications for the City of Edinburgh Council.

Paul Lawrence

Executive Director of Place

Contact: Tom Veitch, Acting Regulatory Operations Manager

E-mail: tom.veitch@edinburgh.gov.uk | Tel: 0131 469 3871



Changes to Legislation on the Sale and Use of Fireworks in Scotland

2. Executive Summary

- 2.1 This report provides a summary of provisions contained in the Fireworks and Pyrotechnic Articles (Scotland) Act 2022, which has recently been passed by the Scottish Parliament.

3. Background

- 3.1 Following considerable disturbance and antisocial behaviour linked to Bonfire Night 2017, and subsequent local media coverage, the Council raised concerns with both the UK and Scottish Governments.
- 3.2 Motions agreed by the City of Edinburgh Council on [23 November 2017](#) also reflected widespread concerns about the events of 5 November 2017 at many locations city-wide. These motions were discharged by a 2018 report entitled [Sale and Use of Fireworks](#).
- 3.3 In response to these and other concerns, the Scottish Government committed to look at the impact of fireworks and bonfires on safer communities, and to consider any perceived legislative gaps. A public consultation on fireworks in Scotland was conducted in February 2019, followed by the establishment of a Fireworks Review Group to consider the responses and to develop recommendations for amending regulations.
- 3.4 The Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 were introduced in March 2021, implementing initial actions from the Fireworks Review Group to restrict the retail sales of fireworks by volume (5kg maximum) and to limit the permitted sales hours to 7am to 6pm only. The Trading Standards and Licensing Enforcement teams have incorporated proactive inspections and test purchasing around these new requirements into the existing regulatory compliance program, a breakdown of which is attached at Appendix 3.
- 3.5 In June 2021, a further public consultation was held on the introduction of new legislation on the sale and use of fireworks in Scotland and tackling the misuse of pyrotechnics.

- 3.6 The Fireworks and Pyrotechnic Articles (Scotland) Act 2022 ('the Act') was passed by the Scottish Parliament on 29 June 2022 and became law following Royal Assent on 10 August 2022. Specific provisions of the Act will be brought into effect by the Scottish Government.

4. Main report

- 4.1 The Act contains six key provisions designed to support a cultural shift in how fireworks and other pyrotechnic articles are used in Scotland, however it does not give the Council any additional powers to further restrict or ban the sale of fireworks in the city.
- 4.2 This report summarises the key elements of the six provisions, with a more comprehensive Scottish Government overview paper attached in Appendix 1.
- 4.3 The six key provisions are:
- 4.3.1 Introducing a fireworks licensing system;
 - 4.3.2 Introducing a proxy purchase and supply offence prohibiting fireworks or other pyrotechnic articles being provided to children;
 - 4.3.3 Restricting the days when fireworks can be supplied and used;
 - 4.3.4 Enabling local authorities to designate areas as fireworks control zones;
 - 4.3.5 Prohibiting pyrotechnic articles at certain places or events; and
 - 4.3.6 Introducing a statutory aggravation for offences involving pyrotechnic articles and emergency workers.

Fireworks licensing for the purchase and use of fireworks

- 4.4 The Act makes provision for a fireworks licensing system to be established. Once operational, all members of the public will need to apply for and obtain a fireworks licence before they are able to purchase, acquire, possess, or use most types of fireworks in Scotland.
- 4.5 A national licensing system will be developed and operated centrally by the Scottish Government and is separate from the existing licensing requirement for the storage of fireworks or all year round retail of fireworks. Enforcement relating to the new requirement for licensing will be shared between Police Scotland and local authority Trading Standards teams. Trading Standards teams will deal with retailers and the Police will deal with any issue with unlicensed members of the public seeking to purchase fireworks.
- 4.6 Establishing the fireworks licensing system will require further legislation, and it is understood that the earliest the system will be in place will be late 2023/early 2024.

Proxy purchase and supply offence

- 4.7 The Act creates an offence for a person to knowingly buy or attempt to buy, give, or otherwise make available, a firework or other pyrotechnic article to a person under the age of 18. This is known as proxy purchase or proxy supply, and similar offences already exist in relation to the supply of products such as alcohol and tobacco to children.
- 4.8 This offence is enforced by Police Scotland and commenced on 10 October 2022. This is in addition to the current offence for a retailer to sell fireworks to anyone under the age of 18. A Scottish Government guidance paper is attached in Appendix 2.

Restricting permitted days of supply and use

- 4.9 The Act sets out the periods when retailers in Scotland are permitted to supply members of the public with fireworks, as well as periods when people may use fireworks. This would replace the previous voluntary code which had recommended restrictions on the periods in which fireworks should be sold. This does not affect the supply of fireworks to professionals in the fireworks industry or organisers of public fireworks displays.
- 4.10 The provision limits the supply of fireworks to, and use of fireworks by, the general public to specific periods aligning with long established traditional or religious events.
- 4.11 It is anticipated that these changes will be in place in mid-2023, with enforcement shared between local authority Trading Standards teams and Police Scotland.

Firework control zones

- 4.12 The Act allows a local authority to designate a place (or places) within its area as a firework control zone in which it will be an offence for the general public to use certain categories of fireworks, including on private property.
- 4.13 The Scottish Government has committed to co-designing the local authority guidance for this provision with key stakeholders and local communities. Therefore, to allow time for the further legislation and guidance to be developed, it is likely that this provision will commence in mid-2023 at the earliest.

Pyrotechnic articles in public places and at designated venues and events

- 4.14 The Act creates two offences enforced by Police Scotland relating to the possession of pyrotechnics:
- 4.14.1 An offence of being in possession of a pyrotechnic article in a public place without reasonable excuse; and
- 4.14.2 An offence of being in possession of a pyrotechnic article, including all fireworks, at a designated sporting or music venue or event, without reasonable excuse.
- 4.15 The Act extends the power of Police Officers to stop and search a person (including

their vehicle) without warrant, where there are reasonable grounds to suspect that a person is committing an offence under the Act. These provisions will require further legislation before they can commence in full, and it is likely that they will commence in 2023.

Statutory aggravation for offences involving pyrotechnics and emergency workers

- 4.16 The Act makes provision for a statutory sentencing aggravation to apply in cases where fireworks and/or other pyrotechnic articles are used to attack emergency workers. Police Scotland will be responsible for the relevant enforcement of this provision.

Community Improvement Partnership

- 4.17 Since 2018, the Council has led a multi-agency Community Improvement Partnership (CIP) which brings together key stakeholders including Police Scotland, the Scottish Fire and Rescue Service (SFRS), and Council officers to co-ordinate a partnership response in the lead-up to and on Bonfire Night itself, to help keep communities safe from harm. Actions have included educational input in schools on fireworks/bonfire safety, diversionary activities for young people, fireworks test purchasing, clear up operations, and joint hot spot patrols.
- 4.18 A summary of activity of Council officers from Regulatory Services is detailed in Appendix 3.

5. Next Steps

- 5.1 An annual debrief of activity takes place after Bonfire night, with CIP partners agreeing recommendations for future work based on analysis of crimes/incidents reported and other relevant factors. A full report detailing lessons learned, estimated costs, and recommendations agreed by partners will be presented to the Community Safety and Justice Partnership in March 2023. The report will include an action to enhance communications activity relating to the promotion of licensed community-organised events.
- 5.2 The Council will also contribute to the Scottish Government's implementation activity relating to the legislative changes outlined in this report, which includes provisions for restricting permitted days of supply and use of fireworks, and a licensing system for their purchase and use due to be fully implemented in 2023/24.
- 5.3 A further report will be presented to Committee in Autumn 2023 on the implementation of the Act and the implications of this for the Council.

6. Financial impact

- 6.1 Following the establishment of the Fireworks Review Group and publication of its [November 2020 report](#) setting out recommendations for legislative change, the Scottish Government created a short life working group (SLWG) to consider the costs of implementing the proposed provisions. The SLWG membership consisted of stakeholder representation including representatives from other local authorities and the Council. Projected costings are being developed but will depend on the final details of the new statutory requirements and associated guidance once published.

7. Stakeholder/Community Impact

- 7.1 The Scottish Government overview paper (Appendix 1) provides the rationale for each of the provisions introduced by the new legislation, including the intended stakeholder/community impact.

8. Background reading/external references

- 8.1 [City of Edinburgh Council Meeting](#) on 23 November 2017 at which Council Motions in relation to fireworks were raised.
- 8.2 Report to the Culture and Communities Committee, 26 March 2019, [Council response to the Scottish Government Consultation on Fireworks in Scotland](#).
- 8.3 Fireworks Review Group [report to the Scottish Government](#), 3 November 2020
- 8.4 [Fireworks and Pyrotechnic Articles \(Scotland\) Act 2022](#).

9. Appendices

- 9.1 Appendix 1 – Overview of Fireworks and Pyrotechnic Articles (Scotland) Act 2022.
- 9.2 Appendix 2 – Fireworks and Pyrotechnic Articles (Scotland) Act 2022 - Guidance for proxy purchase offence.
- 9.3 Appendix 3 - Trading Standards and Licensing Enforcement activity in advance of 5 November 2022.

Overview of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022

The Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (“the Act”) was passed by the Scottish Parliament on Wednesday 29 June 2022 and became law following Royal Assent on Wednesday 10 August 2022.

The Act contains six key provisions designed to support a cultural shift in how fireworks and other pyrotechnic articles are used in Scotland (further information on categories of fireworks and other pyrotechnic articles is included at the end of this paper). These are:

- Introducing a fireworks licensing system.
- Introducing a proxy purchase and supply offence prohibiting fireworks or other pyrotechnic articles being provided to children.
- Restricting the days when fireworks can be supplied and used.
- Enabling local authorities to designate areas as firework control zones.
- Prohibiting pyrotechnic articles at certain places or events.
- Introducing a statutory aggravation for offences involving pyrotechnic articles and emergency workers.

Fireworks Licensing

The Act makes provision for a firework licensing system to be established. This licensing system will be developed and operated centrally by the Scottish Government.

Once this is in operation, all members of the public will need to apply for and obtain a fireworks licence before they are able to purchase, acquire, possess or use category F2 and F3 fireworks in Scotland. This includes people who are part of a community group or organisation and who are organising a public firework display on behalf of that group or organisation.

There will be a number of mandatory requirements as part of the fireworks licence application process, such as completing a fireworks training course, disclosing any previously revoked or cancelled fireworks licences, and disclosing unspent convictions for relevant offences.

The training course will be a core element of the licensing system, which will need to be successfully completed before a fireworks licence can be granted. This will ensure that those who are able to purchase, possess and use fireworks in Scotland have the required knowledge on how to do so in a safe, appropriate and lawful way.

The aim of the licensing system is to ensure members of the public who use fireworks are aware of how to do so safely, responsibly and lawfully. There are exemptions set out within the Act for certain groups who it is considered already have adequate fireworks knowledge. This includes regulatory authorities, professional firework operators and businesses involved in the supply or trade of fireworks, and their employees.

The Act makes it an offence to purchase, acquire, possess or use an F2 or F3 firework without having a licence. It also makes it an offence to supply an F2 or F3 firework to a person who does not have a licence. Trading Standards will enforce offences in relation to

the commercial supply of fireworks. This includes ensuring retailers are taking the necessary steps to check that an individual has a valid licence, or is exempt, when they supply fireworks. Police Scotland will enforce aspects involving the possession and use of fireworks by the public, including establishing whether those in possession of, or using, fireworks are licensed to do so.

Establishing the fireworks licensing system will require further legislation, for example setting out details of the training course and the amount of the licence fee. Time will therefore be required to consult on and prepare such legislation and for this to be scrutinised by the Scottish Parliament; as well as to commission and develop a suitable IT system.

The very earliest the licensing system will therefore be in place will be late 2023 / early 2024.

Proxy Purchase and Supply Offence

The Act makes it an offence for a person to knowingly buy or attempt to buy, give or otherwise make available, a firework or other pyrotechnic article to a person under the age of 18. This applies to all fireworks and pyrotechnic articles apart from category F1 fireworks and percussion caps for toys that are classified for use by children.

This type of offence is known as proxy purchase or proxy supply, and there are already similar offences in relation to the supply of products such as alcohol and tobacco to children.

There may, however, be legitimate reasons for making pyrotechnic articles, such as safety flares, available to people under the age of 18. There are therefore specific exemptions from the offence in relation to the non-retail supply of appropriate pyrotechnic articles in certain limited circumstances.

The Act makes it clear that a person does not commit an offence if the pyrotechnic article is designed to be used as a visual distress signal, and the person providing the pyrotechnic article intends for the recipient (under the age of 18) to use the pyrotechnic article only for that purpose in appropriate circumstances. For example, if an adult supplies a person under the age of 18 with a safety flare to use if they need to signal for help whilst sailing, the adult does not commit an offence.

It is recognised that some people under the age of 18 may need to use pyrotechnic articles as part of their education, training or employment in supervised settings. Such use of pyrotechnics is subject to safety obligations already placed on education providers and employers, such as health and safety legislation on managing risk in the workplace. Use of pyrotechnics may also be required when a person under the age of 18 is a member of the armed forces, a cadet force, or an organisation involved in activities such as search and rescue. These activities are also exempt from the new offence.

Police Scotland will have enforcement responsibility for the new proxy purchase and supply offence. Trading Standards will continue to have enforcement responsibility for ensuring that retailers of fireworks and pyrotechnic articles operate in line with existing legislation concerning the commercial supply to children under the age of 18. This includes, for example, utilising enforcement tools such as test purchasing to ensure a retailer does not supply fireworks to a child.

Work is underway to commence this offence in early October 2022.

Restricting the Days of Supply and Use

The Act sets out permitted periods when retailers in Scotland are able to supply members of the public with fireworks, as well as periods when people are able to use fireworks. This does not apply to category F1 fireworks. It also does not affect the supply of fireworks to professionals in the fireworks industry, to organisers of public fireworks displays, or to purchasers located outside Scotland.

The Act limits the supply of fireworks to, and use of fireworks by, the general public to specific periods that align with long established traditional or religious events. The permitted days when fireworks can be supplied are:

- 7 April to 14 April (which covers the Sikh festival of Vaisakhi);
- 27 October to 10 November;
- 26 December to 31 December;
- The first day of Chinese New Year and the 3 days immediately preceding it; and
- The first day of Diwali and the 3 days immediately preceding it.

The permitted days when fireworks can be used, as set out in the Bill, are:

- 7 April to 16 April;
- 27 October to 12 November;
- 26 December to 2 January;
- The 3 days immediately preceding the first day of Chinese New Year to the seventh day after the first day of Chinese New Year; and
- The 3 days immediately preceding the first day of Diwali to the seventh day after the first day of Diwali.

The permitted days for use extend slightly beyond when fireworks can be supplied to avoid a situation where people buy fireworks towards the very end of the permitted supply period and then are not able to use them on that day, for example due to bad weather.

The Act allows the Scottish Ministers to introduce a compensation scheme to address the economic impact of restricting the days of supply of fireworks, if required. This would be a targeted scheme and would be limited to only those businesses that are wholly or mainly concerned with the supply, distribution or importation of fireworks in Scotland, where a likely negative impact can be demonstrated. The detail of the scheme will be set out in regulations.

The restricted days of supply and use provisions will not require further substantive legislation or formal guidance before commencement. However, fair and sufficient time will be provided for businesses to adapt their processes and existing stock in line with the changes. Regulations will be required to provide for any compensation that is to be available, as described above. This provision will therefore not commence this year. It is anticipated that these changes will be in place in mid-2023.

Firework Control Zones

The Act provides local authorities with the power to designate a place (or places) within its area as a firework control zone, where it will be an offence for the general public to use (category F2 and F3) fireworks, including on private property.

The Act sets out that local authorities must have regard to any guidance which is published by the Scottish Ministers in relation to firework control zones. It is intended that guidance will be published to provide local authorities with the information and best practice to make informed decisions concerning the designation, amendment, or revocation of firework control zones.

It will still be possible for public firework displays, whether organised by a professional firework operator or by a community group, to take place within a firework control zone (subject to local licensing arrangements). This ensures that well organised public displays can continue in such areas.

The Scottish Government has committed to co-designing the local authority guidance for this provision with key stakeholders such as COSLA and local communities. To allow sufficient time for a meaningful co-design process it is likely that the fireworks control zones provision will commence in mid-2023, although time will then be required for local authorities to ensure appropriate processes are in place and undertake the mandatory 60-day consultation process in advance of any zones being designated.

Pyrotechnic articles in public places and at designated venues and events

The Act creates two offences relating to the possession of pyrotechnics: an offence of being in possession of a pyrotechnic article, excluding F1 fireworks, in a public place, without reasonable excuse; and an offence of being in possession of a pyrotechnic article, including all fireworks, at a designated sporting or music venue or event, without reasonable excuse. The creation of two distinct offences ensures both proportionality in the restrictions applied to different places, and consistency with existing pyrotechnic offences which are to be replaced by those in the Act. A person convicted of either new offence is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

The Act extends the power of police officers to stop and search a person (including their vehicle) without warrant where there are reasonable grounds to suspect a person is committing an offence under the Act. It is anticipated that these powers will support these new offences to be effective in their aim of proactively preventing the misuse of pyrotechnics and fireworks, and thereby providing increased protection to the public

These provisions will require further legislation before they can commence in full and to their full intended effect. It is likely these will commence in 2023.

Statutory Aggravation for Offences involving Pyrotechnics and Emergency Workers

The Act makes provision for a statutory sentencing aggravation to apply in cases where fireworks and/or other pyrotechnic articles are used to attack emergency workers, reflecting the serious nature of offences committed in these particular circumstances.

For all offences committed involving the use of a lit or ignited (or recently lit or ignited) firework or other pyrotechnic article and where the victim or intended victim of the offence is an emergency worker, the courts are required to treat this as an aggravated offence and, amongst other matters, must take the aggravation into account when determining the appropriate sentence.

In addition, it will require courts to record when offences involving the use of fireworks and pyrotechnics against emergency workers have been found to be aggravated. This will help

build data and evidence over time as to the extent of use being made of fireworks and pyrotechnics in offences against those who risk life and limb keeping communities safe.

Work is underway to commence this offence in early October 2022.

Further information on categorisation of fireworks and pyrotechnic articles

Fireworks are categorised as either category F1, F2, F3 or F4 depending on the type and composition of the firework, including the net explosive content (NEC), and the associated hazard and noise levels. While there are some exceptions, broadly speaking categories of firework can be described as:

- F1 fireworks are typically indoor or close proximity fireworks with lower minimum safety distances, for example 1 metre. Examples of common types of F1 products include small sparklers, ice fountains, Christmas crackers and party poppers. These are not covered by the new offence.
- F2 fireworks are outdoor fireworks that have an NEC of up to 600g depending on their type and have a minimum spectator safety distance of 8 metres. Examples of common types F2 products include roman candles (up to 50g), rockets (up to 75g) and batteries (up to 500g) and combinations (up to 600g).
- F3 fireworks are outdoor fireworks that have an NEC up to 3000g. They have a minimum spectator safety distance of 25 metres. Examples of common types of F3 products include larger rockets (up to 200g), mines (up to 200g), batteries (up to 1000g) and combinations (up to 3000g).
- F4 fireworks present a high hazard and are for professional use only and are not available to members of the public.

Pyrotechnic articles, that are not categorised as fireworks, are given a different categorisation. This includes:

- Theatrical Pyrotechnic Articles (T1 and T2), often referred to as stage pyrotechnics proximity effects or special effects. These are items designed for use on stage and in theatres, including use by professionals for television shows, films, sporting events and concerts. Examples might include maroons and stage gerbs (theatrical fountains).
- Other Pyrotechnic Articles (P1 and P2) which are most often designed for outdoor use and can include devices designed for life saving (such as distress flares and distress rockets), and paintball accessories (such as smoke devices).

For further information regarding the Fireworks and Pyrotechnic Articles (Scotland) Act 2022, please contact fireworks@gov.scot.



Fireworks and Pyrotechnic Articles (Scotland) Act 2022: prohibition on providing fireworks and pyrotechnic articles to children

Guidance on the prohibition on the provision of fireworks and pyrotechnic articles to children through the Fireworks and Pyrotechnic Articles (Scotland) Act 2022.

The Fireworks and Pyrotechnic Articles (Scotland) Act 2022 was passed by the Scottish Parliament on 29 June 2022 and received Royal Assent on 10 August 2022.

Section 21 of the Act includes an offence which prohibits the provision of fireworks and other pyrotechnic articles to children.

This makes it illegal for anyone to provide¹ a firework, or other pyrotechnic article, to someone under the age of 18.

The offence came into force on 10 October 2022.

Anyone that commits this offence is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale (which is currently £5,000) or to a term of imprisonment not exceeding 6 months, or both.

This type of offence is known as proxy purchase or proxy supply, and there are already similar offences in relation to providing products such as alcohol and tobacco to children.

Enforcement

Police Scotland have enforcement responsibility for the new proxy purchase and supply offence. Offences in relation to the commercial supply of fireworks and other pyrotechnic articles will continue to be enforced by Trading Standards.

Existing laws: supply of fireworks and pyrotechnic articles to children

The commercial supply of fireworks and other pyrotechnics articles continues to be subject to existing legislation.

It is already illegal for any economic operator, such as a retailer, to supply F2 and F3 fireworks, and P1 and T1 pyrotechnics to anyone under 18 years of age (The Pyrotechnic Articles (Safety) Regulations 2015)

¹ This includes knowingly buying, attempting to buy, giving or – in any way - making available

What type of products are included in the proxy purchase and supply offence?

The proxy purchase and supply offence applies to all fireworks and other pyrotechnic articles other than category F1 fireworks and percussion caps for toy guns (intended for use by children under the age of 14).

Category F1 fireworks are not included as it is not an offence for a person under the age of 18 to possess a category F1 firework.

Percussion caps for toys that are intended for use by children under the age of 14 are also excluded from the definition of "pyrotechnic article" in the Pyrotechnic Articles (Safety) Regulations 2015 (S.I. 2015/1553) (see regulation 3(2)(e)) meaning that such percussion caps may be sold to children directly.

While it is already unlawful for retailers to sell category F4 fireworks, and category P2 and T2 pyrotechnics to the public, these are included in the new offence to make it explicitly clear that these items should not be provided to a child.

Further information on categorisation of fireworks and pyrotechnic articles

Fireworks are categorised as either category F1, F2, F3 or F4 depending on the type and composition of the firework, including the net explosive content (NEC), and the associated hazard and noise levels. While there are some exceptions, broadly speaking categories of firework can be described as:

- F1 fireworks are typically indoor or close proximity fireworks with lower minimum safety distances, for example 1 metre. Examples of common types of F1 products include small sparklers, ice fountains, Christmas crackers and party poppers. These are not covered by the new offence.
- F2 fireworks are outdoor fireworks that have an NEC of up to 600g depending on their type and have a minimum spectator safety distance of 8 metres. Examples of common types F2 products include roman candles (up to 50g), rockets (up to 75g) and batteries (up to 500g) and combinations (up to 600g).
- F3 fireworks are outdoor fireworks that have an NEC up to 3000g. They have a minimum spectator safety distance of 25 metres. Examples of common types of F3 products include larger rockets (up to 200g), mines (up to 200g), batteries (up to 1000g) and combinations (up to 3000g).
- F4 fireworks present a high hazard and are for professional use only and are not available to members of the public.

Pyrotechnic articles, that are not categorised as fireworks, are given a different categorisation. This includes:

- Theatrical Pyrotechnic Articles (T1 and T2), often referred to as stage pyrotechnics proximity effects or special effects. These are items designed for use on stage and in theatres, including use by professionals for television

shows, films, sporting events and concerts. Examples might include maroons and stage gerbs (theatrical fountains).

- Other Pyrotechnic Articles (P1 and P2) which are most often designed for outdoor use and can include devices designed for life saving (such as distress flares and distress rockets), and paintball accessories (such as smoke devices).

Legitimate use of pyrotechnic articles by people under 18 years of age

There may be legitimate reasons for making pyrotechnic articles, such as safety flares, available to people under the age of 18. There are therefore specific exemptions from the offence in relation to the non-retail supply of appropriate pyrotechnic articles in certain limited circumstances.

The Act makes it clear that a person does not commit an offence if the pyrotechnic article is designed to be used as a visual distress signal, and the person providing the pyrotechnic article intends for the recipient (under the age of 18) to use the pyrotechnic article only for that purpose in appropriate circumstances. For example, it is not an offence if a person provides a person under the age of 18 with a safety flare to use if they need to signal for help whilst sailing.

It is recognised that some people under the age of 18 may need to use pyrotechnic articles as part of their education, training or employment in supervised settings. Such use of pyrotechnics is subject to safety obligations already placed on education providers and employers, such as health and safety legislation on managing risk in the workplace. Use of pyrotechnics may also be required when a person under the age of 18 is a member of the armed forces, a cadet force, or an organisation involved in activities such as search and rescue. These activities are also exempt from the new offence.

Sources for further information

- [Fireworks and Pyrotechnic Articles \(Scotland\) Act 2022](#)
- [The Fireworks \(Scotland\) Miscellaneous Amendments Regulations 2021](#)
- [The Fireworks Act 2003](#)
- [The Fireworks \(Scotland\) Regulations 2004](#)
- [Fireworks Regulations 2004](#)
- [Explosives Regulations 2014](#)
- [The Pyrotechnic Articles \(Safety\) Regulations 2015](#)

Contact

For further information contact fireworks@gov.scot

Trading Standards and Licensing Enforcement activity in advance of 5 November 2022

Action		Notes
Fireworks storage inspections	31 inspections completed (with SFRS and Police Scotland partners where available)	<ul style="list-style-type: none"> • Mostly multinational retailers with agreed systems in place to prevent inappropriate sales and ensuring safe storage • Some premises had decided to cease supply
Fireworks storage revisits	Five revisits	<ul style="list-style-type: none"> • Following a significant theft of fireworks from a retailer, we updated our guidance regarding the storage arrangements on site and carried out a series of revisits to implement the new arrangements • Storage guidance is usually agreed nationwide to ensure consistency, and so is being raised with enforcement groups for further consideration
Test purchase attempts	Eight attempts made – no sales made	<ul style="list-style-type: none"> • These visits related to the new restrictions referenced at 3.4 of the report, restricting the volume of sales to 5kg and the times of sales to between 7am and 6pm only. • Two premises closed thus no test purchase could be attempted.
Test purchase attempts	Seven attempts made – no sales made	<ul style="list-style-type: none"> • Age restricted sales • Two premises closed thus no test purchase could be attempted.
Screening of Fast Parcel outlets	Ongoing - in conjunction with partners in Border Force	<ul style="list-style-type: none"> • Scotland pilot as part of staged implementation of Fireworks (Scotland) Act • No significant issues identified
Online screening	Ongoing	<ul style="list-style-type: none"> • Scotland-wide
Intelligence led work	Two investigations completed – no enforcement action necessary	<ul style="list-style-type: none"> • Visit to domestic premises with Police Scotland after an allegation of illicit/illegal fireworks being sold • Visit to premises in the South of the city after an allegation of an unregistered fireworks retailer