

Culture and Communities Committee

10.00am, Tuesday, 13 December 2022

Amplification of Sound in Public Spaces

Executive/routine Wards Council Commitments	Executive 11 – City Centre
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1. Recommendations

- 1.1 Culture and Communities Committee is asked to note:
 - 1.1.1 The summary of existing legislation (Appendix 1) relating to the amplification of sound in public spaces;
 - 1.1.2 The information provided on the creation of a bye law and that any decision for this would need to be on the basis of evidence presented; and
 - 1.1.3 That the outcome of the consultation and feedback from the Busking Working Group will be reported back to Committee, in order to consider whether there would be sufficient to justification to proceed with preparing a bye law.

Paul Lawrence

Executive Director of Place

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Amplification of Sound in Public Spaces

2. Executive Summary

- 2.1 This report sets out the existing legislative framework governing noise in public spaces.

3. Background

- 3.1 On [28 October 2021](#), the Council approved a motion by Councillor Neil Ross on the Amplification of Sound in Public Spaces. The approved motion stated that the Council:
- 3.1.1 Welcomes buskers and street entertainers who liven up our city and who follow the Council's advice to do so at a considerate volume so passers-by can hear but nearby businesses and residents are not disturbed.
 - 3.1.2 Recognises the concerns of residents, businesses and visitors, in particular in the city centre, about the negative auditory impact of overamplification of sound by some buskers and street entertainers in public spaces when the advice at 3.1.1 above is ignored.
 - 3.1.3 Notes that a level of noise at or above 85 decibels can damage hearing or inflict pain on the hearer.
 - 3.1.4 Notes that there is a limitation on the amplification of sound for open air events in the standard conditions of the Council's Public Entertainment Licence.
 - 3.1.5 Notes the failure of the Council to bring forward any proposals to control the amplification of sound in public spaces in response to the motion approved by the Council on 22 August 2019.
 - 3.1.6 Notes the answers given on 23 September 2021 to questions on the control of noise from street entertainers and the lack of powers available to the Council to achieve balanced, fair, sensible and positive street performing behaviours.
 - 3.1.7 Therefore, requests the Convener of the Regulatory Committee to write to Ben Macpherson MSP, the Minister for Local Government in Scotland:

- 3.1.7.1 To highlight the negative auditory impact of amplified sound from buskers and street entertainers in public spaces in Edinburgh;
 - 3.1.7.2 To request additional powers to allow the Council to effectively control the amplification of sound in public spaces under the Civic Government (Scotland) Act 1982, whether through an extension of the arrangements governing the licensing of public entertainment or by other means; and
 - 3.1.7.3 To report to the Regulatory Committee within two cycles to provide details of the correspondence with the Minister, including the response received from the Minister and details of any progress made.
- 3.1.8 Also requests the Council's Street Enforcement team to actively engage with buskers and street entertainers to encourage adherence to the Council's advice on busking, as noted on the Council's website.
- 3.1.9 Also requests that officers explore the feasibility of creating straight forward ways for residents and businesses to report disturbances to the Council arising from the amplification of sound in public spaces.
- 3.2 In response to the action outlined in paragraph 3.1.7, an update was provided to Regulatory Committee on 28 February 2022. Councillor Neil Ross again wrote to the Minister and the Minister's reply dated 8 August 2022 is attached at Appendix 2.
- 3.3 The remainder of the motion was addressed in a report to Culture and Communities Committee on [26 April 2022](#). The Committee decision was to:
- 3.3.1 Note the report.
 - 3.3.2 Agree to continue to erect notices to indicate and signpost appropriate busking locations, and to ensure that the Environmental Team would be working with the police to identify busking hot spots.
 - 3.3.3 Agree to revisit Section 79 of the Environmental Protection Act to identify what powers were available and how they could be enforced and to agree to provide a further report or briefing note to the Committee.
 - 3.3.4 Agree to provide a web form for residents to report busking concerns.
 - 3.3.5 Agree to adopt learnings for management of busking from other Scottish cities and to work with the Scottish Government to address gaps in legislation.
 - 3.3.6 Agree to verify with Police Scotland the number of convictions for noise offences after 9.00 pm and to liaise with Councillor Doggart.

4. Main report

- 4.1 The following section of the report summarises the legislative powers which could be considered to incorporate the amplification of sound in public spaces.

Legislative Powers

- 4.2 Section 54 of the Civic Government (Scotland) Act 1982, wide ranging and is intended to deal with instruments, singing and playing radios or other sound producing device that give a person reasonable cause for annoyance.
- 4.3 Enforcement powers for this section of the Civic Government (Scotland) Act 1982 are only available to Police Scotland.
- 4.4 There is no requirement for measurements to be taken, a Police Officer simply needs to form an opinion that the noise is annoying.
- 4.5 In addition, there is Section 62 of the Control of Pollution Act 1974. This section of the act attempts to deal with any person who operates or permits to operate a loudspeaker in a road between 9pm and 8am, or at any time for the purpose of advertising any entertainment, trade or business.
- 4.6 As noted, this part of the 1974 Act is specifically designed to deal with noise from loudspeakers used by commercial businesses operating in a road.

Section 79 – Environmental Protection Act 1990

- 4.7 Section 79 of the Environmental Protection Act 1990 is intended to deal with statutory nuisance, including noise emitted from a premises, or caused by a vehicle, machinery or equipment in the road.
- 4.8 In such circumstances, the Council has a duty to investigate and, where appropriate, service an abatement notice pursuant to section 80 and 80A of the 1990 Act.
- 4.9 However, statutory nuisance is not defined. Generally, this is considered to mean that the disturbance from a single source, is long term and sustained in its nature. It is acknowledged that cumulatively busking can continue in some locations for an extended period but in practice it is often transient in nature with individual buskers moving from location to location. It is therefore unlikely that busking would meet the threshold of statutory nuisance under this section of the 1990 Act.
- 4.10 In circumstances where a statutory nuisance is identified, any abatement notice would require to have an appeal period of 21 days allowing the person on whom it has been served the right to exercise an appeal to the courts. In Edinburgh there have been no abatement notices issued in relation to street performers in the last 10 years.

Other Legislative Powers

- 4.11 A summary of the other legislative powers which could have a bearing on the action taken in relation to noise in public spaces (with and without amplification) is attached in Appendix 1.
- 4.12 While a Street Trading Licence is required for the sale of CDs, the Civic Government (Scotland) Act 1982 does not specify busking as a licensable activity therefore it is not possible to use the existing licensing framework to regulate noise in public spaces.

- 4.13 To create a licensing framework for noise in public spaces would require a change in primary legislation. However, this risks impacting the ability to hold other licensed events due to the inappropriateness of dual licensing.
- 4.14 Also, it is important to note that this would not give the Council the power to stop noise in public spaces generally.

Byelaw to tackle the nuisance of noise in public spaces

- 4.15 As noted above, there is existing legislation which could potentially deal with the problem of noise (including amplification) in public spaces. Specifically, the Civic Government (Scotland) Act 1982 (s54) and the Control of Pollution Act 1974 (s62) are considered to be the primary legislation in place to deal with any nuisance of noise in public spaces.
- 4.16 Where an issue is covered by existing legislation, it is not permitted to introduce a byelaw to also deal with that issue.
- 4.17 Should a decision be taken to proceed with the design of a byelaw which does not duplicate any of the existing legislation, this would require the approval of the Council and the Scottish Government.
- 4.18 The overall time taken to introduce a new byelaw can vary but will generally take around 18 months.
- 4.19 A byelaw must be specific and proportionate to the problem it seeks to address. The submission of a proposed byelaw must be objectively justified, with a clear evidence base, (e.g. by a consultation with those who may be affected by the issues underpinning the proposed byelaw). Details of any objections must be sent to Scottish Ministers.
- 4.20 The evidence base may consist of an analysis of complaints made to the Council about noise nuisance (including amplification) in public spaces. Additionally, the Council may seek a letter of support from the Chief Constable of Police Scotland. Statistical evidence may also be used to support the necessity to tackle this type of nuisance in the area affected. A consultation with persons affected by the proposed byelaw will also form part of the evidence base.

Busking Working Group

- 4.21 As is being reported to this Committee on another agenda item today, the annual review of the Summer Festivals 2022 highlighted the challenges of busking in the city.
- 4.22 In response to this, it is proposed to create a busking working group which will consist of officers from across the Council, the Police and relevant local stakeholders.
- 4.23 This group will help take forward a partnership approach to managing nuisance busking and amplified sound in public spaces. It is proposed that the group will develop a clear plan, with recommendations on zones where busking and amplified sound could be managed and the times of year that appropriate management could be delivered.

- 4.24 The group will also identify resources necessary to deliver the plan, including any financial implications to deliver it successfully.

Resident Survey

- 4.25 Following Committee in April 2022, the Street and Environmental Enforcement team erected advisory busking advice notices at identified hotspots such as the Grassmarket and Hunter Square. This team also collect feedback from residents directly in order to respond to areas of concerns. Committee had previously requested that a webform for residents to report concerns should be created. However, due to the cost of implementation, in 2022/23 officers have continued to respond to resident feedback received directly to the Street and Environmental Enforcement Team.
- 4.26 To ensure that the scale of any issues is clearly understood and, recognising that should the decision be taken to proceed with a bye law (in addition to the existing legislation), it is proposed to carry out a survey of residents to seek details of their experiences of the amplification of noise in public spaces.
- 4.27 This survey response will be added to other resident feedback held by the Council, including complaints and submissions made to the Street and Environmental Enforcement Team.
- 4.28 The resident survey will be launched in the new year and will seek feedback on the following:
- 4.28.1 Particular hot spots where busking and amplified sound should be avoided;
 - 4.28.2 Any locations or zones where busking and amplified sound could be accommodated and managed;
 - 4.28.3 Times of day and year when busking and amplified sound could be accommodated and managed; and
 - 4.28.4 Any initial information provided by the Busking Working Group.

5. Next Steps

- 5.1 The feedback from the resident survey and the Busking Working Group will be presented to a future Committee in order to consider whether there would be sufficient to justification to proceed with preparing a bye law.

6. Financial impact

- 6.1 There are no financial impacts arising from this report, other than staff time to progress the resident survey and any other actions agreed by Committee.

7. Stakeholder/Community Impact

- 7.1 It is intended to carry out a resident survey to seek evidence of the issues associated with the amplification of noise in public spaces.

8. Background reading/external references

- 8.1 [City of Edinburgh Council – Busking Guidance.](#)

9. Appendices

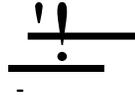
- 9.1 Appendix 1 – Summary of Legislation
- 9.2 Appendix 2 – Response from the Minister for Social Security and Local Government (9 August 2022)

Appendix 1 – Summary of Legislation

Legislation	Section	Primary Purpose	Enforcement Responsibility	Challenges and/or Issues
Civic Government (Scotland) Act 1982	54	Instruments, singing, playing radios or other sound making device that give any person reasonable cause for annoyance	Police Scotland	Complaints have to compete with other service demands and priorities.
Control of Pollution Act 1974	62	Operating or permitting to operate a loudspeaker in a road between 9pm and 8am, or at any time, for the purpose of advertising, entertainment, trade or business	Police Scotland	Intended to deal with noise from a loudspeaker in a road. Not applicable where loudspeakers are not used. Complaints have to compete with other service demands and priorities.
Environmental Protection Act 1990	79	Duty to detect statutory nuisances, includes prejudicial noise emitted from 'equipment' in a road	Local Authority	Statutory nuisances are not defined in the legislation. Typically considered to be noise from one source over a sustained period of time and prejudicial to health. The Act does not cover the collective impact of noise from a number of sources. Unlikely that the noise from a busker would meet the threshold of statutory nuisance. Significant trained resources would be required to prove the noise should be considered a statutory nuisance. Further, any notice issued could not be enforced for 21 days to allow the opportunity for appeal.

The Public Health (Scotland) Act 2008	113	Provides powers to serve fixed penalty notices as an alternative to prosecution if the enforcement notice issued under the Environmental Protection Act (1990 (s79)		
Antisocial Behaviour (Scotland) Act 2004	Part 2	Antisocial Behaviour Order (ASBO) can be issued to prevent a specific person from causing a disturbance in a specific geographical area (at an address or an area of public street). These powers also extend to allow the local authority to apply for a warrant to seize any equipment causing the antisocial behaviour.	Local Authority Police Scotland	Duty to investigate and serve a warning notice. A fixed penalty notice (FPN) can also be served (following a warning) if the problem persists. The FPN can be issued by a representative of the local authority (with appropriate powers) or a Police Officer. Highly unlikely that acts of an individual buskers would meet the threshold of causing fear and alarm or negatively impacting health.
Roads (Scotland) Act 1984	129 (2)	Deals with individuals who place or deposit anything in a road, that obstructs or endangers road users.	Police Scotland	Complaints have to compete with other service demands and priorities.

Minister for Social Security and Local Government
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Ionadail
Ben Macpherson BPA/MSP



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Our Reference: 202200310699
Your Reference: NR/Macpherson/lr

9 August 2022

Dear Cllr Ross,

Thank you for your recent letter regarding amplification of sound in public places, a follow up to Cathy Fullerton's letter dated 8 December 2021.

Since my response (22 December 2021), officials responsible for Noise and Nuisance policy within the Scottish Government are in discussions with legal colleagues on whether existing legislation might be used to confer powers to allow Scottish Local Authorities to effectively control the amplification of sound in public spaces. Officials will look to raise this issue with other local authorities to establish whether this is a widespread concern and consider whether there is scope to extend the arrangements governing the licensing of public entertainment under the Civic Government (Scotland) Act 1982. Scottish Government Noise Policy officials will be in touch in due course to discuss this further.

Yours sincerely,

BEN MACPHERSON

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

Tha Ministearanna h-Alba, an luchd-comhairleachaidh sonraichte agus Runaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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