

Regulatory Committee

10.00am, Thursday, 9 January 2020

Air Weapons and Licensing (Scotland) Act 2015 – Repeal of Theatres Act 1968 – Update After Statutory Consultation

Executive/Routine

Wards

All

Council Commitments

1. Recommendations

- 1.1 The Regulatory Committee is asked to:
- 1.1.1 Note the contents of this report and the outcome of the statutory consultation;
 - 1.1.2 Agrees to vary the City of Edinburgh Council's Public Entertainment Resolution as set out in Appendix 2 to bring theatres in to the Public Entertainment Resolution, and note that this will take effect on 27 January 2021; and
 - 1.1.3 Agrees the revised fee structure by removing the Theatres category and to include this within the Public Entertainment Fees criteria, effective 28 days after the Resolution takes effect for any application received after that date.

Paul Lawrence

Executive Director of Place

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Air Weapons and Licensing (Scotland) Act 2015 – Repeal of Theatres Act 1968 – Update After Initial Consultation

2. Executive Summary

- 2.1 This report provides the Committee with an update following the statutory consultation and requests that the Committee vary its Public Entertainment Resolution to include any theatrical performances including plays, ballet, comedy and musical productions within the Council's Public Entertainment Resolution.

3. Background

- 3.1 The Theatres Act 1968 ('the 1968 Act') provides a licensing regime for premises which are used for the public performance of plays. Section 41 of the Civic Government (Scotland) Act 1982 ('the 1982 Act') provides a discretionary licensing regime for places of public entertainment, and the definition of "place of public entertainment" in section 41(2) specifically excludes premises which are currently licensed under the 1968 Act. Prior to the commencement of section 74 of the Air Weapons and Licensing (Scotland) 2015 Act ('the 2015 Act'), theatres were required to be licensed under the 1968 Act and were therefore exempt from the licensing regime under the 1982 Act.
- 3.2 Section 74 of the 2015 Act repeals the 1968 Act and thus removes the licensing requirement. Section 74 also amends section 41 of the 1982 Act to remove the exemption of theatres from the definition of "place of public entertainment". This change in legislation allows a local authority to resolve under section 9 of the 1982 Act to license theatres under its public entertainment licensing regime, should it choose to do so.
- 3.3 Where a local authority passes a resolution to license theatres, there is a required period of at least nine months between the date the resolution is passed and the date it comes into effect. As theatres must currently be

licensed under the Theatres Act 1968, the commencement of section 74 is in two parts. The amendments to section 41 of the 1982 Act have now been brought into force with the repeal of the 1968 licensing regime on 27 January 2021. This is to provide local authorities with time to make a resolution to license theatres under the public entertainment licensing regime, and to have that regime in place by the time mandatory theatre licensing comes to an end, should they choose to do so. This should also give theatres requiring a licence sufficient time to apply and to secure a licence under the new scheme, before the existing scheme is repealed.

- 3.4 The licensing of places of public entertainment is governed by section 41 of the 1982 Act. A public entertainment licence is required for the use of premises as a place of public entertainment. The 1982 Act defines “place of public entertainment” as:

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

The Council’s Public Entertainment Resolution 2014 sets out a list of premises which are required to be licensed (Appendix 1).

- 3.5 The current public entertainment resolution took effect on 7 March 2014, following previous changes to policy.
- 3.6 In addition to a Theatre Licence, the majority of large theatres within the local authority area also have a licence granted under the Licensing (Scotland) Act 2005 and will therefore be exempt from a licence required under the 1982 Act.
- 3.7 The proposal to add theatres to the Public Entertainment Resolution is not an additional licensing burden but will allow the local authority to maintain an appropriate level of control in items of public safety, similar to that under the 1968 Act.
- 3.8 As directed by the committee at its meeting on 11 March 2019 an initial consultation on the proposed changes was published on the Council’s Consultation Hub between 10 June and 18 July 2019 with a view to changing the Public Entertainment Resolution to include theatrical performances.

4. Main report

- 4.1 As directed by the committee at its meeting on 19 August 2019 the statutory consultation was published with the proposed changes in the Edinburgh Evening News on 25 September 2019 (Appendix 1).
- 4.2 No responses were received in relation to the statutory consultation notice.
- 4.3 The steps for varying the resolution are specified in Section 9 of the 1982 Act. The consultation phase is now complete. If the Committee approves the

proposed changes to the Resolution then the new Resolution will take effect on 27 January 2021.

- 4.4 Following the statutory consultation, it is proposed that the Committee vary its Public Entertainment Resolution to include any theatrical performances including plays, ballet, comedy and musical productions within the Council's Public Entertainment Resolution as set out in Appendix 2 and note that this will take effect on 27 January 2021.
- 4.5 It is not proposed to amend the current licence fees for Public Entertainment to include a separate criterion for Theatrical performances and from implementation on 27 January 2021 the Theatre licensing fee will be replaced by the Public Entertainment licence fee.
- 4.6 The current Theatre fees broadly mirror the fees associated with Public Entertainment Licensing, as shown in Appendix 4. With the exception of the following:
 - 4.6.1 Theatres fees were not increased on 1 April 2019 in line with other application fees in the knowledge that Licencing of Theatres was to be abolished at the start of 2021. This accounts for the slight difference between the two fees.
 - 4.6.2 There is no discount within the Theatres fee structure for community and voluntary events. Once included within the Public Entertainment fee structure, voluntary and community groups will thereafter be able to take advantage of this discount.
 - 4.6.3 The licensing fees currently include a separate fee category for street theatre. There is no specific criterion for this type of activity within the Public Entertainment licence structure. There was only one application for a Street Theatre Licence in 2019, the majority of events of a similar nature have in the past applied for Public Entertainment Licences. It is therefore not proposed to create an equivalent fee in the public entertainment fee structure.

5. Next Steps

- 5.1 All existing Licence holders will be advised of the changes in legislation and Public Entertainment Resolution.

6. Financial impact

- 6.1 The Council's current scale of fees for licensing applications was approved with effect from 1 April 2019. Any costs implementing policy changes will be

contained within the current ring-fenced income generated from licence application fees.

- 6.2 The current fee for Theatres will no longer be applicable and the activity will fall under the current Public Entertainment Licence fees. There is expected to be a drop in licence fee income as some premises will benefit from the statutory exemption for premises holding a liquor licence.

7. Stakeholder/Community Impact

- 7.1 The development of policy in respect of the licensing of theatres is part of a wider place-making role for the Council. It is essential that all the strategic aims of the Council are considered and that the revised conditions are consistent with these.
- 7.2 There is a requirement to carry out a statutory consultation as part of the resolution process and the timeline for this is outlined in Appendix 3.
- 7.3 The contents and recommendations neither contribute to, nor detract from, the delivery of the three Public Sector Equality Duties.
- 7.4 The contents and recommendations described in this report do not deliver any outcomes relating to the ten areas of rights, nor do they enhance or infringe them
- 7.5 All licence holders were written to and advised of the consultation, which commenced on 10 June and finished on 18 July 2019.
- 7.6 The statutory consultation notice was published with the proposed changes in the Edinburgh Evening News on 25 September 2019.

8. Background reading/external references

- 8.1 [Air Weapons and Licensing \(Scotland\) Act 2015 – Repeal of Theatres Act 1968](#) report to Regulatory Committee on 11 March 2019.
- 8.2 [Air Weapons and Licensing \(Scotland\) Act 2015 – Repeal of Theatres Act 1968](#) – Update After Initial Consultation report to Regulatory Committee on 19 August 2019

9. Appendices

- 9.1 Appendix 1 – Edinburgh Evening News Statutory Notice
- 9.2 Appendix 2 - The Council's Public Entertainment Draft Resolution 2020
- 9.3 Appendix 3 – Implementation timeline
- 9.4 Appendix 4 – Fees table

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

On 19 August 2019 the City of Edinburgh Council’s Regulatory Committee (‘the committee’) agreed to advertise its intention to vary the Council’s existing Public Entertainment Resolution (dated 7 March 2014).

Having carried out appropriate consultations on the following variation, the committee proposes to amend its current Public Entertainment Licence Resolution (‘the 2014 Resolution’) by means of the following:

To issue the City of Edinburgh Council’s Public Entertainment Resolution, to amend the categories of premises which are required to be licensed, by:-

- (a) Expanding the category specified in the 2014 Resolution relating to Theatrical performances, to include any theatrical performances including plays, ballet, comedy and musical productions.

The Resolution comes into effect from 27 January 2021, following which it will be an offence under section 7 of the Act to do without a licence what is specified below as requiring to be licensed.

Any objections or representations to this proposal should be lodged in writing with the Licensing Manager, The City of Edinburgh Council, City Chambers, Level 10, 329 High Street, Edinburgh, EH1 1YJ or by email to licensing@edinburgh.gov.uk, no later than 28 days after the date of this advertisement.

THE CITY OF EDINBURGH PUBLIC ENTERTAINMENT RESOLUTION - DRAFT

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

(1) Section 41 of the Act relating to Public Entertainment shall continue to have effect throughout the Council’s area.

(2) Subject to the terms of the Act, a Public Entertainment licence shall be required for the use of the premises specified in (3) below as places of Public Entertainment as from 27 January 2021

(3) Subject to paragraphs (4) and (5) below, the premises in the Council’s area which require to be licensed under the Resolution are as follows:

- (a) Billiard, snooker and pool halls
- (b) Premises used for circuses

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

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

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

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

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

Paul Lawrence,

**Executive Director of Place
City of Edinburgh Council**

The Council's Public Entertainment Draft Resolution 2020

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**Paul Lawrence,
Executive Director of Place
City of Edinburgh Council**

Implementation timeline



Fees table

Public Entertainment Licence Fees		Theatres Licence Fees	
Capacity 1 – 200	£1066 – 1 year new or temporary up to 28 days	Commercial operation – capacity 1 – 200	£955 – 1 year new or temporary up to 28 days
Capacity 1 – 200 inc late application surcharge	£1276 – temporary up to 28 days		
Capacity 1 – 200	£863 – 1 year renewal	Commercial operation – capacity 1 - 200	£776 – 1 year renewal
Capacity 201 - 1000	£1594 – 1 year new or temporary up to 28 days	Commercial operation – capacity 201 - 1,000	£1432 – 1 year new or temporary up to 28 days
Capacity 201 – 1000 inc late application surcharge	£1913 – temporary up to 28 days		
Capacity 201 - 1000	£1066 – 1 year renewal	Commercial operation – capacity 201 - 1,000	£955 – 1 year renewal
Capacity 1001 - 5000	£3197 – 1 year new or temporary up to 28 days	Commercial operation – capacity > 1,000	£2866 – 1 year new or temporary up to 28 days
Capacity 1001 – 5000 inc late application surcharge	£3837 – temporary up to 28 days		

Capacity 1001 - 5000	£2129 – 1 year renewal		Commercial operation - capacity > 1,000	£1911 – 1 year renewal
Capacity 5,001 - 10,000	£6395 - 1 year new or temporary up to 28 days			
Capacity 5,001 - 10,000 inc late application surcharge	£7660 – temporary up to 28 days			
Capacity 5,001 - 10,000	£4257 – 1 year renewal			
Capacity 10001 - 15,000	£10387 – 1 year new or temporary up to 28 days			
Capacity 10001 - 15,000 inc late application surcharge	£12459 – temporary up to 28 days			
Capacity 10001 - 15,000	£7788 – 1 year renewal			
Capacity > 15000	£13433 – 1 year new or temporary up to 28 days			
Capacity > 15000 inc late application surcharge	£16124 – temporary up to 28 days			
Capacity > 15000	£10074 – 1 year renewal			
			Street Theatre	£46 – per event/per day
			Street Theatre inc late application surcharge	£56 – per event/per day

PUBLIC ENTERTAINMENT – Variation to an existing licence		THEATRE - Variation to an existing licence	
Change to capacity > 15,000	£13455		
Change to capacity > 15,000 inc late application surcharge	£16145		
Change to capacity > 10,001 to 15000	£10400		
Change to capacity > 10,001 to 15000 inc late application surcharge	£12479		
Change to capacity 5,001 - 10,000	£6395		
Change to capacity 5,001 - 10,000 - inc late application surcharge	£7674		
Change to capacity 1,001 - 5,000	£3198	Change to capacity > 1,000	£2866
Change to capacity 1,001 - 5,000 - inc late application surcharge	£3837	Change to capacity > 1,000 inc late application surcharge	£3339
Change to capacity 201 - 1,000	£1609	Change to capacity 201 - 1,000	£1432
Change to capacity 201 - 1,000 - inc late application surcharge	£1931	Change to capacity 201 - 1,000 inc late application surcharge	£1669
Change to capacity 1 - 200	£1066	Change to capacity 1 - 200	£955
Change to capacity 1 – 200 - inc late application surcharge	£1278	Change to capacity 1 – 200 inc late application surcharge	£1112

Variation other than a capacity increase	£118	Variation other than capacity increase	£118																
Live animal supplement *	£224 – per event	Live animal supplement *	£224 – per event																
*any application that involves a vet inspection will be charged the full cost of that inspection <u>in addition</u> to the licence application fee		*any application that involves a vet inspection will be charged the full cost of that inspection <u>in addition</u> to the licence application fee																	
Hypnotism supplement	£224 – per event																		
<p>The fee due for an application to increase the capacity of an existing public entertainment licence will comprise of the difference between (a) the fee due for a licence with the new increased capacity and (b) the fee already paid for a licence with the original occupant capacity as per the following;</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>example</u></th> <th style="text-align: right;"><u>£</u></th> </tr> </thead> <tbody> <tr> <td>(a) fee due for a licence with a capacity of 350</td> <td style="text-align: right;">1594</td> </tr> <tr> <td>(b) less the fee paid for a licence with a capacity of 200</td> <td style="text-align: right;">1066</td> </tr> <tr> <td style="border-top: 1px solid black;">total fee payable for application to increase capacity</td> <td style="text-align: right; border-top: 1px solid black;">£528</td> </tr> </tbody> </table>		<u>example</u>	<u>£</u>	(a) fee due for a licence with a capacity of 350	1594	(b) less the fee paid for a licence with a capacity of 200	1066	total fee payable for application to increase capacity	£528	<p>The fee due for an application to increase the capacity of an existing theatre licence will comprise of the difference between (a) the fee due for a licence with the new increased capacity and (b) the fee already paid for a licence with the original occupant capacity, as per the following;</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>example</u></th> <th style="text-align: right;"><u>£</u></th> </tr> </thead> <tbody> <tr> <td>(a) fee due for a licence with a capacity of 350</td> <td style="text-align: right;">1432</td> </tr> <tr> <td>(b) less the fee paid for a licence with a capacity of 200</td> <td style="text-align: right;">927</td> </tr> <tr> <td style="border-top: 1px solid black;">total fee payable for application to increase capacity</td> <td style="text-align: right; border-top: 1px solid black;">£505</td> </tr> </tbody> </table>		<u>example</u>	<u>£</u>	(a) fee due for a licence with a capacity of 350	1432	(b) less the fee paid for a licence with a capacity of 200	927	total fee payable for application to increase capacity	£505
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PUBLIC ENTERTAINMENT - Community/Charitable/Religious or Political Group Events	
Free to enter events	
capacity up to 500 - see note 5	No Fee
capacity 501 - 2500	£155 – temporary up to 28 days
capacity 2501 - 5000	£309 – temporary up to 28 days
capacity greater than 5000	temporary up to 28 days - 25% discount of normal fee
capacity 501 - 2500	£412 – 1 year
capacity 2501 - 5000	£824 – 1 year
capacity greater than 5000	25% discount of normal fee - 1 year
Public Entertainment – Free to enter events	
no public entertainment licence is required for the following 'free to enter' events	
<ul style="list-style-type: none"> • Events held by a charitable, religious, youth, sporting, community, political or similar organisation (see note 1) providing the capacity does not exceed 500 people • premises used for exhibitions of art work • premises in which live music is being provided incidentally to the main purpose or use of the premises where that main purpose or use is not as a place of public entertainment. 	
Pay to enter events	
capacity of up to 250- see note 6	No Fee
capacity 251 - 2500	£155 – temporary up to 28 days
capacity 2501 - 5000	£309 – temporary up to 28 days
capacity greater than 5000	temporary up to 28 days - 25% discount of normal fee

capacity 251 - 2500	£412 – 1 year
capacity 2501 - 5000	£824 – 1 year
capacity greater than 5000	25% discount of normal fee - 1 year
Public Entertainment – Pay to enter events with a maximum capacity of 250 people	
<p>no public entertainment licence is required for premises used for functions or events by;</p> <ul style="list-style-type: none"> • any charity, religious, community or political group or any similar non-commercial organisation <p>where the public pay to enter or use the any facilities for their entertainment provided the capacity does not exceed 250 people</p>	