

## The Highland Licensing Committee

Meeting - 11 August 2015

Agenda Item	7
Report No	HLC/067/15

### Review of Public Entertainment Licence Activities

#### Report by the Legal Manager

##### Summary

This report invites the Committee to consider the responses received in relation to the consultation carried out to review the activities which are currently licensed as public entertainment under Section 41 of the Civic Government (Scotland) Act 1982.

#### 1.0 Background

1.1 The Council has resolved to license a number of activities under Section 41 of the Civic Government (Scotland) Act 1982 which relate to public entertainment.

1.2 Prior to April 2012 a public entertainment licence could only be applied where the public were charged money or monies worth to take part in or view the entertainment activity. From 1 April 2012 an amendment to the abovementioned Act meant that Licensing Authorities had the power, if they wished, to require a licence for any activity which they had resolved to licence whether the public were charged a fee or not.

1.3 It is down to the discretion of each Licensing Authority, through its public entertainment licence resolution, whether to require a licence for 'free' events.

1.4 A list of the current activities licensed by the Council is attached in Appendix 1.

1.5 As it has been some time since this list of activities has been revised Officers have undertaken a review of the list and made some proposals in relation to removing some activities and adding in others. These draft proposals were agreed by the Highland Licensing Committee who also agreed to go out to public consultation on these.

#### 2.0 Consultation Survey Results

2.1 A public consultation on the proposed changes resulted in a total of 429 completed consultation responses received either by hard copy or via a survey on the Council's website.

2.2 A number of the responses received highlighted the fact that some of these activities are already regulated by other bodies and it was emphasised that the intention was not to duplicate any requirements by introducing a public entertainment licence for an activity which was already sufficiently regulated.

2.3 The consultation survey consisted of a number of specific questions relating to the proposed changes.

2.4 Below, each question is detailed together with the results and a summary of the responses and additional information.

3.1 **Q1: Exhibitions, lectures and illustrated talks**

Premises used for exhibitions, lectures and illustrated talks are currently required to hold a public entertainment licence. The Council proposes to remove this category as the premises used for these activities are likely to be within fixed premises. They will therefore already be subject to Fire Service and Building Standards regulations. The nature of the activity is also unlikely to cause any public safety/disorder issues.

3.2 **Do you agree that exhibitions, lectures and illustrated talks should not require a licence?**

**Results**

Yes 89% No 5% Don't know 6%

3.3 The majority of respondents agreed with the proposal to remove this category. There were some comments in relation to exhibitions which take place in temporary premises e.g. marquees and those where a large number of people are expected to attend. Those who disagreed with the proposal cited the requirement for licence holders to, at present, produce risk assessments, electrical certificates etc. as a reason to retain this category.

3.4 The following are types of activity which are currently licensed under the category of 'exhibitions': museums, art, craft, flowers, model vehicles, motor shows, vintage vehicles and farm animals.

3.5 In view of the comments in 3.3 above Members are invited to consider whether the licensing of exhibitions, which take place either outdoors or which involve the use of temporary structures (and where there is a charge to the public) be retained, with lectures, illustrated talks and exhibitions held in fixed premises being removed from the list of activities.

4.0 **Q2: Fireworks and laser displays**

4.1 Fee paying laser and firework displays are currently required to hold a public entertainment licence. The Council proposes to retain this category and to extend the requirement to include non-fee paying events. This will ensure that relevant health and safety requirements are complied with. The category would apply to any public displays and would therefore exempt private displays e.g. at weddings, birthdays, private parties etc.

4.2 **Do you agree with the proposal to extend the category of fireworks and laser displays to include non-fee paying public events?**

**Results**

Yes:52% No:39% Don't know: 9%

- 4.3** In the responses there was a recognition that firework displays are a potentially dangerous activity which can attract a large number of people to an area for a short period of time and that it was a sensible idea to licence these. It would also ensure that the emergency services have advanced warning of these events.
- 4.4** However a large number of the responses highlighted the impact that the introduction of a licence, and associated fee, for free fireworks displays would have on small communities and which would make a large number of these events unviable to hold. A note of the current fees for public entertainment are detailed in Appendix 2 of the report.
- 4.5** There was a suggestion that firework displays which were carried out by a professional organisation who hold public liability insurance, have a health and safety statement, carry out risk assessments and have a trained professional on site be exempt. It was also suggested that displays which will attract less than 100 people also be exempt.
- 4.6** As firework displays are often weather dependant there was also a concern that if a display required to be postponed, whether licence applications could be processed at short notice for a rescheduled date. Other suggestions in the responses included introducing health and safety guidelines but without the need for a licence.
- 4.7** One respondent stated that the introduction of a licence could result in a decrease in free public events and an increase in private events and therefore potentially an increase in accidents.
- 4.8** The Scottish Fire & Rescue Service have advised that they agree and support the proposal as any increased scrutiny and compliance would almost certainly have a direct impact in increasing public safety which directly aligns with the objectives of their Service.
- 4.9** The Fire Service was asked if they could provide any statistical information relating to incidents and accidents, both locally and nationally, involving public firework displays. They have advised that whilst all incidents and call outs are recorded, they specify the location of the incident rather than the type of incident and therefore unfortunately this information could not be provided.
- 4.10** The Council's Environmental Health Service and Health and Safety Unit were also asked to confirm if they had received reports of any accidents at firework displays within Highland. Both advised that they had no record of any incidents being reported to their respective services in relation to employees or the public.
- 4.11** A number of responses also sought clarification as to the definition of a public fireworks display as opposed to a private fireworks display. As indicated in paragraph 4.1 of the report any fireworks which form part of a private celebration e.g. a wedding, birthday etc. would not be classed as a public display.
- 4.12** Members are invited to consider whether public entertainment licensing should be extended to cover non fee paying public laser and public firework displays. If so, Members are also invited to consider whether a reduced fee or waiving of the fee altogether should be applied for events which are being organised by the community for the benefit of the community.

## **5.0 Q3: Off road vehicle driving**

**5.1** Premises that are used for go-carting are currently required to hold a public entertainment licence. The Council proposes to retain this category, and to extend the requirement to include off road vehicle driving. This will include, but not be limited to, cars, bikes, quad bikes, motocross and motorcycle scrambling. This will ensure that relevant health and safety requirements are complied with.

**5.2 Do you agree with the proposal to introduce the category of off road vehicle driving?**

### **Results:**

Yes: 48%    No: 38%    Don't know: 13%

**5.3** Some of those responding thought that the definition was too ambiguous and appeared to cover land owners accessing their own land, or estates that offer shooting/stalking, which requires some off-road driving and also that it appeared to cover mountain bikes.

**5.4** A number of responses highlighted that some providers only offered training, which shouldn't be classed as entertainment, and that events are mostly organised in association with national bodies and many off-road users who take part in the sport are members of clubs who are affiliated with national bodies.

**5.5** Some stated that many venues/companies are covered by the Adventure Activities Licensing Authority and that the Health and Safety Legislation is sufficient and asked whether there is any evidence that this is not working.

**5.6** One respondent was happy that the introduction of licensing may restrict unauthorised motor vehicles on premises, especially woodland and moorland.

**5.7** Others also felt that the danger associated with the sport meant a licence was necessary. However, many felt a PEL would restrict the sport and could destroy off-road sites and centres.

**5.8** By way of some background to the proposal to introduce this category, in 2009 there was a fatal accident at the Brahan Estate, Ross-Shire when a vehicle which was taking part in off road driving activity collided with and broke an electricity pole, which resulted in the passenger of the vehicle involved being fatally electrocuted. Following this a Fatal Accident Inquiry was held, and one of the recommendations of the inquiry was that the Council considers whether this type of activity should be the subject of licensing under public entertainment.

**5.9** At present there is no overall statutory body which regulates off road vehicle activities. There are a number of organisations which provide training and accreditation to providers and businesses. Examples of this include BORDA (British Off Road Driving Association) and LANTRA. Membership of these training and accreditation schemes would be undertaken on a voluntary basis by the individual providers

**5.10** As detailed above There are a wide range of activities which fall within the category of 'Off Road Vehicle Driving', which include quad bike treks, 4x4 vehicle with instructor training and self drive guided off road driving.

- 5.11** Some of these off road activities may be regulated by the Motor Sports Association (MSA) (further details in relation to the MSA are contained in paragraph 6.6 below). It is suggested that consideration be given to whether a public entertainment licence would be required or necessary where the activity is already regulated by the Motor Sport Association.
- 5.12** The Scottish Auto Cycle Union (SACU) is the governing body for motorcycle sport in Scotland. Formed in 1913, they have more than 40 affiliated clubs organising events for all ages and abilities. They issue competition licences, provide event insurance and training for officials and each sporting discipline has their own committee, elected by the clubs, to help promote and develop their sport. Again it is suggested that consideration be given to whether a public entertainment licence would be required or necessary where the activity is already regulated by the Scottish Auto Cycle Union.
- 5.13** Paragraph 6.14 of the report refers to work which is currently being carried out by a Review Group on Motorsport Event Safety. The next part of this review will consider other areas of two, three and four wheeled motor sports and it is suggested that the Committee await the outcome of this review before determining whether to licence such activities to ensure that there is no duplication in relation to the requirements for these types of activities.

#### **6.0 Q4: Motor rallies**

**6.1** It is not intended to include motor rallies such as the Snowman rally as a licensable activity. It is considered that such events are sufficiently regulated when run under the auspices of the Motor Sports Association.

#### **6.2 Do you agree with this position?**

##### **Result:**

Yes: 76%    No: 9%    Don't know: 15%

- 6.3** Whilst the majority of respondents agreed with the above proposal many of the comments suggested that this was exactly the type of event the public entertainment licence should be required for. A number of issues were sighted including dangerous parking on public roads, improper control of parking and spectators standing very close to the rally. It was also suggested that the fatality at the Snowman Rally in 2013 implies that the MSA regulations are not sufficient.
- 6.4** Some of those responding also thought that there was an inconsistency as many clubs and events mentioned in Q3 (Off Road Vehicle Driving) are also covered by the MSA or other national bodies and felt that if the Snowman rally is not included then the sports mentioned in Q3 should not be either.
- 6.5** One respondee stated that this type of event has a lot of sponsorship and so can afford to pay for the licence, unlike many of the clubs mentioned in Q3.

- 6.6** A number of responses indicated that due to the aforementioned accident at the Snowman Rally in 2013 that this type of activity should be licensed. However Members would require to consider whether the introduction of public entertainment licence would add to the safety or whether it would simply be a duplication of what is already in place.
- 6.7** Following the fatality mentioned above, which occurred at the 2013 Snowman Rally, Officers met with representatives from the Highland Car Club who organise the event together with a representative from the Motor Sports Association (MSA) which is the governing body for such events. The MSA is recognised as the sole motor sport governing body for the United Kingdom by the world governing body, the Federation Internationale de L'Automobile (FIA). As the governing body, the MSA is responsible for the governance and administration of all major forms of motor sports in the UK, controlling the technical and sporting rules across the various disciplines which include:
- Car Racing (circuit racing)
  - Karting
  - Rallying
  - Cross Country e.g. competitive safaris, hill rallies and trials
  - Rallycross (combines head-to-head competition offered by circuit racing with the slippery surfaces usually reserved for rallying).
  - Autocross (cars compete individually against the clock on a temporary circuit laid out on a grass field).
  - Autotests (emphasis on precision driving rather than flat out speed, employing spin turns, reverse flicks and handbrake turns to negotiate the set route in the shortest possible time).
  - Hill Climbs & Sprints (run against the clock but this time over a measured distance at venues ranging from disused airfields to the driveways of picturesque private estates).
  - Drag Racing
  - Trials (Trials are the oldest form of motor sport that gave rise to hill climbs, sprints, rallies and autotests. The competitive element in a trial is the ability to climb gradients of varying difficulty).
- 6.8** The MSA have a robust system of administering and monitoring any events which are operated under their auspices.
- 6.9** Officers also met with representatives from Forestry Commission Scotland (FCS) given their role in providing consent to organisers for the use of Forestry Commission land for activities such as motor rallies.
- 6.10** FCS have a comprehensive evaluation process which they undertake before granting any organisation permission to carry out activities on their land. Only events which are approved by the Motor Sports Association (MSA) and the Scottish Auto-Cycle Union (SACU) would be considered for permission by the FCS to take place on their land.
- 6.11** The FCS is involved at the planning and set up stages and during the event itself as per their internal 'Operational Guidance' booklets to ensure that its interests in terms of occupiers liability are met. They also undertake a check of the activity and participate in the post event evaluation to ensure that any lessons learned are picked up and acted upon. FCS makes it clear that the

management of the event is a matter for the organiser and not FCS staff. However if the provisions of the permission are not met FCS staff will stop a stage or the whole event proceeding.

- 6.12** Members may wish to give consideration to where an activity of off road vehicle driving is already regulated by the Motor Sport Association whether further regulation by way of a public entertainment licence would be necessary. It is also suggested that consideration be given to any event which takes place on FCS land as to whether a public entertainment licence would be required given the requirements which organisers would already require to comply with in being granted permission by FCS to operate on their land.
- 6.13** Following the accident in May 2014 at the Jim Clark Rally in the Borders which resulted in the fatality of three spectators a 'Safety of Public Events Review' was commissioned, lead by Police Scotland. The review took around four weeks to complete and involved carrying out 'health checks' on forthcoming events.
- 6.14** In addition to this there was a further review of the safety of motorsport, reported back to Shona Robison MSP. One of the key aspects of the review focused on spectator safety. This review involved a number of agencies including Police Scotland, Health and Safety Executive (HSE), Motor Sport Association (MSA), Scottish Auto Cycle Union (SACU), Local Authorities and Forestry Commission Scotland. Sir Jackie Stewart was also asked to provide expert advice in relation to the review.
- 6.15** The outcome of the review was published on 6<sup>th</sup> January 2015 and contained a number of key recommendations to improve safety at such events. These recommendations included the introduction of an MSA licensing scheme and training for marshals, a press accreditation scheme, increased liaison between rally organisers and Police Scotland and tightening up of measures such as use of Safety Plans, spectator safety officers and course cars.
- 6.16** The next part of this review will consider other areas of two, three and four wheeled motor sports.

## **7.0 Q5: Trampolines**

- 7.1** Premises used for bouncy castles and similar structures are currently required to hold a public entertainment licence. The Council proposes to retain this category and extend the requirement to include trampolines. This will ensure the relevant health and safety requirements are complied with, including appropriate risk assessments. Do you agree with the proposal to extend this category to trampolines?

### **Results:**

Yes: 56%    No: 31%    Don't know: 13%

- 7.2** Several responses suggested that there is some confusion over what this is aiming to cover e.g. trampolines in back gardens if friends are invited, hiring of bouncy castles/trampolines for parties and whether this includes sports centres and schools.

- 7.3 For the avoidance of doubt the licensing of this activity would apply only where a charge is made to use or view the activity. Trampolines used for private use either in back gardens or at private events e.g. birthday parties would not fall within the scope of licensing.
- 7.4 Some felt that these would already be covered by health and safety legislation and other forms of insurance.
- 7.5 Some respondents highlighted the effect which the introduction of this category, and associated fee, may have on small community events.
- 7.6 The latest accident figures available from The Royal Society for the Prevention of Accidents are for 2002 and showed that 11,500 people in the UK went to hospital after an accident with a trampoline, an increase of more than 50 per cent over a five-year period.
- 7.7 Licensing this activity for public fee paying events will ensure that appropriate risk assessments are carried out to ensure, amongst other things, that only the appropriate numbers of persons are permitted on at a time, the location is suitable, safety pads and or netting are provided where required and that there is an adult supervising the activity.
- 7.8 Members are asked to consider whether a revised fee structure should be considered for community events which include bouncy castles and trampolines.
- 7.9 Members are also invited to consider exempting persons who hold a street traders licence for the activity of providing mobile bouncy castles/structures at various locations, providing that they hold public liability insurance and have provided the relevant certification and risk assessments for the structure(s).

**8.0 *Q6: Entertainment/variety shows***

- 8.1 Premises that are used for musical performances are currently required to hold a public entertainment licence. The Council proposes to retain this category and extend the requirement to include premises used for entertainment/variety shows. This will ensure that issues such as capacity of premises, stewarding, first aid arrangements, noise management etc. are properly addressed. Do you agree with the proposal to extend this category to include premises used for entertainment/variety shows?

**Results:**

Yes: 53%    No: 34%    Don't know: 12%

- 8.2 Some of the responses sought clarification as to the definition of an entertainment and variety show. In this regard a variety show can be defined as 'A show consisting of a series of short unrelated performances'.
- 8.3 It should also be clarified that only entertainment/variety shows to which members of the public can attend upon payment would fall within this definition. Shows held e.g. by a school where pupils, families, friends etc. can attend and where no payment is charged does not require to be licensed.



**8.4** It is suggested that the majority of such shows would take place in premises which are already licensed for other types of public entertainment such as community halls, schools etc. and would therefore only require this activity to be added to the public entertainment licence which they already hold.

**8.5** Members are invited to consider whether entertainment/variety shows should be included within the musical performances category.

**9.0 *Q6: Concerts and Musical Performances***

**9.1** The Council proposes to introduce the requirement for a licence for outdoor concerts/musical performances which are free and have a capacity of over 100. This will only apply where music is the principle activity of the event.

**9.2** Do you agree with the proposal to extend the category of concerts and musical performances to include free outdoor concerts music performances with a capacity of over 100?

**Results:**

Yes: 48%    No: 37%    Don't know: 15%

**9.3** Some of those responding questioned how the capacity of 100 was derived and the fact that it could be difficult to enforce if an event is free.

**9.4** An example given was of pipe bands who often play in the summer with people stopping to listen and which can attract over 100 people. This could put off voluntary organisers who do not know how many people will attend.

**9.5** There was a query in relation to how 'capacity' would be determined e.g. a field holds 500 people but only 50 are expected, would this require a licence?

**9.6** Several responses suggested that the figure of 100 seemed too low.

**9.7** Some asked at what point does music become the principal activity and who would define this. Would a licence be needed for a one-off event and does this also apply to private events e.g. weddings with entertainment.

**9.8** It was felt that there would be a significant impact on community events such as carol concerts and could take away from the local culture and local community groups if fewer events are held. A pipe band which responded commented that they would not play in an outdoor area that did not have a PEL, meaning some communities would miss out on performances.

**9.9** In respect of Paragraph 9.8 above which related to concerns that the introduction of this category would have an impact on events such as local pipe bands playing in the street for tourists or for carol singing. The intention is not to license these types of activity but to ensure that larger concerts and musical performances, where there is no charge to the public, are licensed.

- 9.10** Some examples of large 'free' events which have taken place in Highland include the Olympic Torch Evening Ceremony/Concert in 2012 (Northern Meeting Park, Inverness), a Luis Palau Concert held in 2009 (Bught Park, Inverness) the Queens Baton Relay evening celebration held in July 2014 (Jubilee Park, Dingwall) all of which attracted significant numbers of attendees.
- 9.11** Licensing of these types of events would ensure that amongst other issues, Traffic Management, Noise Management, Stewarding, Medical Provision, Health and Safety including Fire Safety, certification for staging, marquees etc. and public liability insurance are all taken into consideration when determining the application.
- 9.12** There were also queries in relation to the wording of the proposed amendment in that the use of the word capacity caused confusion as a location may have a very large capacity but the numbers of persons likely to attend may be small in comparison.
- 9.13** In view of this and the representations received it is suggested that the number which should trigger the requirement for a licence be set at 250 and that the requirement for a licence be based on an event where amplified music or use of a public address system is the principle activity of the event. This figure would be based on the expected numbers of persons attending and not on the capacity of the site or location.

## **10.0 Q7: Raves**

- 10.1** The Council proposes to add an additional category to require premises used for raves to hold a public entertainment licence. This category would apply to both fee paying and non-fee paying events. The definition of a rave would be an event which features fast rhythm electronic music in a continuous DJ set. Electronic music being defined as a set of electronic music genres which is created for use by disc jockeys and is produced with the intention of it being heard in the context of a continuous DJ set wherein the DJ progresses from one record to the next via a synchronised segue or 'mix'. This will ensure the relevant health and safety requirements are complied with, including appropriate risk management, noise management, first aid provision etc. Do you agree with the proposal to introduce the category of raves?

### **Results:**

Yes: 70%    No: 19%    Don't know: 11%

- 10.2** While the majority of respondents agreed that 'raves' should be included as a licensed activity a number pointed out that this should fall within the concert/musical performance category and not be subject of a separate category.
- 10.3** Members are invited to consider removing the reference to raves, with this activity now being picked up in the concert/musical performance category.

## **11.0 Q8: Outdoor sports**

**11.1** The Council proposes to add an additional category to require premises used for outdoor sports to hold a public entertainment licence. The definition of outdoor sports would be any activity where physical skill is the predominant factor. It would exclude athletic or sports grounds whilst they are being used for their primary purpose, as these premises will already be covered by relevant regulations. This will ensure relevant health and safety regulations are complied with. Do you agree with the proposal to introduce the category of outdoor sports?

### **Results:**

Yes: 15%    No: 77%    Don't know: 7%

**11.2** A large number of responses highlighted the existing regulation currently in place for various outdoor sporting activities and in particular that of the Adventure Activities Licensing Authority (AALA). Further details of the scope of AALA is provided below. There are also a number of other bodies which regulate a variety of outdoor activities including the Royal Yachting Association, Scottish Canoe Association, Triathlon Scotland, Sportscotland, Scottish Sports Association, Mountain Training Association, Snowsport Scotland, British Orienteering Federation, please note that this list is not exhaustive.

**11.3** Officers met with representatives from AALA, the Cairngorms Business Partnership Activity Operators, the Scottish Adventure Activities Forum and the Scottish Sports Association Outdoor Pursuits Group to hear their views in relation to the proposals within the consultation.

**11.4** The main concerns raised at the meetings and also in the consultation responses was in relation to the lack of clarity and definition of 'Outdoor Sports' and to the duplication of regulation which the introduction of public entertainment licensing would have on outdoor activities providers.

### **11.5 Scope of the Adventure Activities Licensing Authority**

**11.6** The Adventure Activities Licensing Authority (AALA) was established by the Activity Centres (Young Persons' Safety) Act 1995.

**11.7** The 1995 Act and the Adventure Activities Licensing Regulations 2004, require providers of adventure activities for young people under the age of 18 to hold a licence. The following activity types are presently within scope of the AALA licensing scheme as set out within the Adventure Activities Licensing Regulations 2004:

- Caving
- Climbing
- Trekking
- Watersports

**11.8** Licensing requirements apply to those organisations which provide activities in return for payment. A licence is required where schools or colleges provide activities to pupils of another educational establishment or to other members of

the public, in return for payment. Activity centres, field study centres and the like which are run by education authorities or departments are also required to have a licence.

## **11.9 Scottish Government**

- 11.10** In 2010 following a review of the operation of health and safety laws Lord Young of Graffham published his report *Common Sense, Common Safety* which recommended the abolition of licensing of adventure activity, and replacing it with a voluntary code of practice overseen by the HSE. However, separate discussions with adventure activities providers in Scotland (including a full Scottish Government consultation exercise) revealed strong support for retaining the AALA licensing regime in Scotland. It was also established that the subject matter of the Activity Centres (Young Persons' Safety) Act 1995 was devolved.
- 11.11** In June 2012 Scottish Ministers advised the UK Government that they wanted licensing retained in Scotland and requested that the powers to regulate on adventure activities licensing be transferred to Scottish Ministers. In December 2012 the Scottish Government set up a stakeholder group to look at how the current regulations, which had not been reviewed since 2004, could be amended/improved by Scottish Ministers when the powers were transferred.
- 11.12** In terms of the additional activities, there is a general view that the four broad categories of activity already covered by the UK regulations should be retained (caving, climbing, trekking and watersport), and some gaps have been identified but the stakeholder group hasn't reached any firm conclusions about these at present.
- 11.13** On 10<sup>th</sup> December 2014 the Scottish Adventure Activities Forum (SAAF) held a consultation event in Inverness inviting stakeholders to give their views about a range of matters including reviewing the definition of adventure activities and identifying any activities which should also be included in the regulations. They also published a survey which could be completed by stakeholders.
- 11.14** A report on the findings will be submitted by SAAF to the Scottish Government by the end of March 2015 to help inform their decision making.
- 11.15** At this event it was noted that the powers detailed in 11.11 of the report were due to be transferred to Scottish Ministers in September 2015. Until such time as this happens providers in Scotland will continue to be regulated under the current UK licensing arrangements which are still in place.
- 11.16** As previously stated in the report it is not the intention to duplicate the requirements for an activity which was already sufficiently regulated.
- 11.17** Given that the Scottish Government are to review and possibly expand the range of activities covered under the Adventure Activities Licensing it is suggested that the Committee wait until this review has been completed before considering any further the issue of regulation of outdoor activities thus avoiding any potential duplication of regulation of activities.

**11.18** Once the outcome of the review is known then the Committee can consider if there remain any gaps to which the introduction of public entertainment licensing would help improve the safety of such activities.

## **12.0 Q9: Other categories**

**12.1** Are there any categories of activities/events which are not included which you feel should be?

### **Results:**

Yes: 5%      No: 75%      Don't know: 20%

**12.2** A number of suggestions were made in relation to additional activities which should be considered as being licensed under public entertainment. These include:

- Any publicly accessible premises that play recorded music (*currently regulated by the Performing Rights Society*)
- Premises used for more than 10 people camping
- Walking/Rambling Groups
- Strip clubs/Lap dancing clubs (*New licensing scheme being proposed by Scottish Government*)
- Any premises that is used for any wedding/ceilidh/music/fundraising event where there is potential capacity of more than 100 persons, even if that event is entirely private whether indoor or outdoor and whether or not there is an alcohol licence of any type.
- Climbing wall
- Dry ski slope
- Bungee trampolines
- Indoor climbing facilities

**12.3** As indicated in italics above for a number of the suggestions above these are already covered by other legislation or there are proposals to introduce legislation to cover these.

## **13.0 Fees**

**13.1** A number of representations have been received in relation to the cost associated with the additional activities particularly in relation to events and activities which are organised by community, charity, voluntary and other non commercial organisations.

**13.2** The current fee structure for public entertainment provides for a lower application fee to be charged to non commercial organisation for both indoor and outdoor events and activities.

## **14.0 Health and Safety at Work Act 1974**

**14.1** A number of responses suggested that the Health and Safety at Work Act 1974 would cover the safety requirements in the absence of licensing.

**14.2** Below is some background to the Health and Safety at Work Act.

- 14.3** The Health and Safety at Work etc. Act 1974 (also referred to as HSWA, the HSW Act, the 1974 Act or HASAWA) is the primary piece of legislation covering occupational health and safety in Great Britain. The Health and Safety Executive, with local authorities (and other enforcing authorities) is responsible for enforcing the Act and a number of other Acts and Statutory Instruments relevant to the working environment.
- 14.4** The Act sets out the general duties which employers have towards employees and members of the public, and employees have to themselves and to each other.
- 14.5** These duties are qualified in the Act by the principle of 'so far as is reasonably practicable'. In other words, an employer does not have to take measures to avoid or reduce the risk if they are technically impossible or if the time, trouble or cost of the measures would be grossly disproportionate to the risk. What the law requires here is what good management and common sense would lead employers to do anyway, that is, to look at what the risks are and take sensible measures to address them.
- 14.6** The Management of Health and Safety at Work Regulations 1999 (the Management Regulations) generally make more explicit what employers are required to do to manage health and safety under the Health and Safety at Work Act. Like the Act, they apply to every work activity.
- 14.7** The main requirement on employers is to carry out a risk assessment. All employers and self-employed persons are required to make a risk assessment, though where there are five or more employees the significant findings of the Risk Assessment must be recorded
- 14.8** The nature of a business undertaking will be the deciding factor as to who will be the Enforcing Authority as delegated under the Health and Safety (Enforcing Authority) Regulations 1998, whether the Health and Safety Executive, Local Authority or other enforcing authorities.
- 14.9** Enforcement at present tends to be more intervention or reactive based by Environmental Health Departments including any complaints or accident /incidents in relation to a business undertaking in line with current legislation and the HSWA.
- 15.0** **Process**
- 15.1** Where the Council intends to commence licensing a new activity, in terms of the legislation, they must allow a period of 9 months from the date that the resolution is made before the licensing scheme can commence. This is to allow time for anyone who is likely to require to be licensed to make application and for that application to be determined in time for the licensing going live and it is to also allow time for persons to adapt their businesses so as to meet any licensing requirements.

## **16.0 Next Step**

- 16.1** Once the Committee has agreed the revised list of activities, in terms of Section 9(6) of the Civic Government (Scotland) Act 1982, the Licensing Authority requires to publish in a newspaper circulating in their area the terms of the proposed change to the resolution and invite representations from the public within 28 days of the first publication of the notice.
- 16.2** Any representations received will then be considered by the Licensing Committee who will then agree the final list of revised activities.

## **17.0 Recommendation**

The Committee is invited to consider the responses in relation to the consultation and the additional information provided and agree whether any amendments to the list of public entertainment activities are required.

Designation: Legal Manager

Date: 29 July 2015

Author/Reference: Michael Elsey: 12/2/4

**List of Current Public Entertainment Licence Activities**

billiard, snooker and pool halls

premises used for exhibitions

premises used for fireworks displays

premises used for health and fitness activities, including gymnasia and saunas

premises used for laser displays and war games

premises used for agricultural shows

premises used for Highland Games

premises used for Go-Karting

premises used for bungee-jumping and bungee-running

premises used for bouncy castles or similar structures

discos and dances

musical performance

lectures and illustrated talks

Concert

Circuses

Fairgrounds

travelling shows

travelling funfairs

Sun Tanning Premises



## Public Entertainment

Public Entertainment – Indoor (excluding community/public halls)	£393
Public Entertainment – Indoor (community/public halls)	£161
Public Entertainment - Non commercial outdoor event	£393
Public Entertainment - Commercial outdoor event – Capacity of up to 5000 persons	£508
Public Entertainment - Commercial outdoor event – Capacity between 5000 and 10,000 persons	£1022
Public Entertainment - Commercial outdoor event – Capacity between 10,000 and 20,000 persons	£6430
Public Entertainment - Commercial outdoor event – Capacity between 20,000 and 30,000 persons	£8854
Public Entertainment - Commercial outdoor event – Capacity over 30,000 persons	£11,275
Fairground/Funfairs	£462
Fairground/Funfairs – Fee for same activity/multiple location (only applicable where the same site plan used and identical activity applied for)	£109
Bouncy Castles or Similar Structures	£393
Bouncy Castles or Similar Structures – Fee for same activity/multiple location (only applicable where the same site plan used and identical activity applied for)	£109
Variation Fee for Commercial outdoor events - Capacity of up to 5000 persons	£254
Variation Fee for Commercial outdoor events - Capacity between 5000 and 10000 persons	£510
Variation Fee for Commercial outdoor events - Capacity between 10,000 and 20,000 persons	£3215
Variation Fee for Commercial outdoor events - Capacity between 20,000 and 30,000 persons	£4427
Variation Fee for Commercial outdoor events - Capacity over 30,000 persons	£5639

**NOTE: THE FEE FOR TEMPORARY LICENCES IS 50% OF THE RELEVANT FULL APPLICATION FEE EXCEPT FOR TEMPORARY COMMERCIAL OUTDOOR APPLICATIONS WHICH WILL ATTRACT THE FULL APPLICATION FEE WITH NO DISCOUNT ON THE GROUNDS OF THE WORK INVOLVED IN PROCESSING AND DETERMINING THE SAME.**