

Agenda item	6.
Report no	HLC/042/19

THE HIGHLAND COUNCIL

Committee: **THE HIGHLAND LICENSING COMMITTEE**

Date: **6 August 2019**

Report title: **Air Weapons and Licensing (Scotland) Act 2015 – repeal of Theatres Act 1968**

Report by: **The Principal Solicitor – Regulatory Services**

1. Purpose/Executive Summary

- 1.1 This report provides the Committee with an update on the implementation and changes to the licensing regime as a result of the Air Weapons and Licensing (Scotland) Act 2015 (“the 2015 Act”).
- 1.2 The Civic Government (Scotland) Act 1982 (“the 1982 Act”) was amended on 26 April 2019 by the 2015 Act. This removed the current exemption that premises licensed under the Theatres Act 1968 do not come within the definition of “places of public entertainment”.
- 1.3 This thereby allows local authorities to resolve under section 9 of the 1982 Act to license theatres under its public entertainment licensing regime. It is anticipated that the Theatres Act 1968 will be repealed on 27 January 2021.
- 1.4 It is proposed to start a consultation exercise to seek public opinion on whether or not the use of premises for the public performance of plays should be included within the Council’s list of licensable public entertainment activities.

2. Recommendation

- 2.1 Members are invited to agree the terms of the consultation exercise, subject to any amendments, for publication and note the proposed approach and timeline for any potential inclusion of theatres within the public entertainment resolution.

3. Background

3.1 The Theatres Act 1968 (“the 1968 Act”) currently provides a mandatory licensing regime for premises which are used for the public performance of plays. The 1968 Act defines a play as

(a) any dramatic piece, whether involving improvisation or not, which is given wholly or in part by one or more persons actually present and performing and in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role; and

(b) any ballet given wholly or in part by one or more persons actually present and performing, whether or not it falls within paragraph (a) of this definition.

The licensing of theatres is currently dealt with by the Council’s Environmental Health Service. There are 9 premises which are currently licensed for the public performances of plays under the 1968 Act.

3.2 Section 41 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) provides a discretionary licensing regime for places of public entertainment. Places of public entertainment are defined as “any place where members of the public are admitted or may use any facilities for the purposes of entertainment or recreation”. There are a number of premises which are specifically excluded in the 1982 Act including athletic or sports grounds, premises licensed for the sale of alcohol or gaming, cinemas and certain other categories. A copy of the terms of section 41 is set out in **Appendix 1**.

3.3 Until 26 April 2019 theatres were specifically excluded as a “place of public entertainment” within the 1982 Act. However, section 74 of the 2015 Act amends section 41 of the 1982 Act to remove the exemption of theatres from the definition of a “place of public entertainment”. A local authority could therefore now resolve under section 9 of the 1982 Act to license theatres under its public entertainment regime. A copy of the list of premises which the Council has resolved to license under its public entertainment licensing regime is set out in **Appendix 2**.

3.4 The licensing of places of public entertainment under the 1982 Act is an optional licensing activity and categories of premises (which includes land) should only be required to be licensed if it is deemed necessary for the preservation of public order and safety and the prevention of crime, which are the key aims of civic licensing. Premises should also only be licensed if there are additional safeguards that the public entertainment licensing regime would offer which are not already provided by other statutory regimes governing premises at which plays are publically performed. Other statutory regimes include fire, health and safety, building standards, liquor licensing and food hygiene legislation.

3.5 The 2015 Act also further amends the 1982 Act to clarify what conditions can be applied to a public entertainment licence authorising the use of premises for the public performance of plays. Conditions cannot be used to regulate the nature of the plays to be performed nor the manner of performing them. Standard conditions can be attached and any additional conditions which are considered appropriate on the grounds of public safety.

- 3.5 The rest of section 74 of the 2015 Act repeals the 1968 Act theatre licensing regime under that Act and is due to come into force on 27 January 2021. This is intended to give local authorities time to get a public entertainment licensing regime in place before mandatory theatre licensing ceases should they resolve to do so. This should also give theatres that may require a licence under the public entertainment licensing regime sufficient time to apply and obtain a licence under the new licensing regime before the existing scheme is repealed.
- 3.6 The main reason for the repeal of the 1968 Act and allowing the performance of plays to become a public entertainment licensable activity under section 41 of the 1982 Act is to introduce greater flexibility by letting a local authority set out the scope of the public entertainment regime. The guidance from the Scottish Government has suggested that local authorities will, for example, be able to exclude premises offering plays to very small audiences from the licensing requirement where they consider that appropriate and proportionate.
- 3.7 Consideration should also be given to the type of premises that may require a public entertainment licence for the public performance of plays. The 1968 Act theatre licensing regime currently applies to plays performed in “any place” and would therefore include outdoor play performances. It also requires any performance in a public place and any performance which the public are permitted to attend, whether or not for payment, to be licensed.

4. Procedure

- 4.1 It is proposed to start a consultation exercise to obtain public opinion as to whether theatres should be included within the public entertainment licensing regime and, if so, what types of premises should be included. The proposed questions are set out in **Appendix 3**.
- 4.2 After the period of consultation, the responses would be circulated at a future meeting which would allow Members to (a) make a decision as to whether they make a resolution to include the performance of plays within the public entertainment licensing regime and, if so, (b) the exact terms of the resolution.
- 4.3 If at this point Members are minded to include the performance of plays within the public entertainment licensing regime, a statutory procedure must be followed.
- 4.4 The steps for varying a resolution to include additional licensable activities are set out at section 9 of the 1982 Act. This includes formal publication of the proposal to vary followed by a 28 day consultation period. Any responses would be reported back to a future meeting. After consideration of the outcome of the consultation, Members can make modifications to the proposed resolution in light of the representations received but they cannot increase its scope. If Members proceed to make a modified resolution, a further publication process must be followed.
- 4.5 Where a local authority passes a final resolution there is a required statutory period of at least 9 months between the date the resolution is passed and the date it comes into effect. A proposed time line for any potential inclusion of theatres within the public entertainment resolution is set out in **Appendix 4**.

5. Implications

- 5.1 Should theatres not be included within the public entertainment resolution, premises which are used for the public performance of plays would no longer be licensed for this use from 27 January 2021. Some larger premises would still be regulated by the Licensing (Scotland) Act 2005 for any liquor licence or would require to have a public entertainment licence for other activities including concerts or musical performances.

Date: 24 July 2019
Author: Claire McArthur

Background Papers:

Civic Government (Scotland) Act 1982
Air Weapons and Licensing (Scotland) Act 2015

Appendices:

Appendix 1 – s.41 of the Civic Government (Scotland) Act 1982
Appendix 2 – Current list of premises which require a public entertainment licence
Appendix 3 – Draft consultation questions
Appendix 4 – Proposed implementation timeline

41.— Public entertainment licences.

(1) A licence, to be known as a “public entertainment licence”, shall be required for the use of premises as a place of public entertainment.

(2) In this section, “*place of public entertainment*” means any place where [...] ¹members of the public are admitted or may use any facilities for the purposes of entertainment or recreation but does not include—

(a) an athletic or sports ground while being used as such;

(aa) premises in respect of which a licence is required under [section 41A](#) of this Act while such premises are being used for the purposes mentioned in that section;

(ab) a sexual entertainment venue (as defined in [section 45A](#)) in relation to which [Schedule 2](#) (as modified for the purposes of [section 45B](#)) has effect, while being used as such;

(b) an educational establishment while being used as such;

(c) premises belonging to or occupied by any religious body while being used wholly or mainly for purposes connected with that body;

(d) premises licensed under [...] ⁴[section 1](#) of the [Cinemas Act 1985](#);

(e) premises in respect of which there is a club gaming permit (within the meaning of [section 271](#) of the [Gambling Act 2005 \(c.19\)](#)) or a prize gaming permit (within the meaning of [section 289](#) of that Act of 2005);

(f) [premises in respect of which a premises licence within the meaning of [section 17](#) of the [Licensing \(Scotland\) Act 2005](#) has effect] ⁶ in which public entertainment is being provided during [licensed] ⁷ hours within the meaning of that Act; [...] ⁸

(g) premises in which machines for entertainment or amusement are being provided incidentally to the main purpose or use of the premises where that main purpose or use is not as a place of public entertainment [; or] ⁹

(h) such other premises as the Scottish Ministers may by order made by statutory instrument specify.

(2A) A statutory instrument containing an order made under subsection (2)(h) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) Without prejudice to [section 3B](#) of and] ¹¹[paragraph 5 of Schedule 1](#) to this Act, a licensing authority may attach conditions to a public entertainment licence—

(a) restricting the use of the premises to a specified kind or specified kinds of entertainment or recreation;

(b) limiting the number of persons to be admitted to the premises;

(c) fixing the days and times when the premises may be open for the purposes of the entertainment or recreation.

(3A) In relation to a public entertainment licence which authorises the use of premises for the performance of plays, no condition may be attached to the licence as to the nature of the plays which may be performed, or the manner of performing plays, under the licence.

(3B) Subsection (3A) does not prevent a licensing authority from attaching, by virtue of [section 3B](#) or in accordance with subsection (3) or [paragraph 5 of Schedule 1](#), any condition which they consider appropriate on the grounds of public safety.

(4) In this section, “*educational establishment*” has the meaning given by paragraphs (i) and (ii) of the definition of that expression in [section 135\(1\)](#) of the [Education \(Scotland\) Act 1980](#) but includes a university and a theological college.

What Entertainment Is Required To Be Licensed?

A public entertainment licence will be required for the use of premises, i.e. any place including the use of land, where members of the public are admitted or may use the facilities for the following purposes of entertainment or recreation. Unless otherwise stated below, a licence will be required only where admission is on payment of money or monies worth. The two exceptions to this are firework displays and certain types of outdoor concerts and music performances (see paragraphs (c) and (v) below). In each of these two cases a licence is also required where there is no charge for entry to the event.

(a)billiard, snooker and pool halls;

(b)premises used for exhibitions; (From 1st January 2017 only exhibitions, which take place outdoors or which involve the use of a temporary structure and where there is an admission fee or charge to the public will require a public entertainment licence).

(c)premises used for fireworks displays (includes where there is no admission fee or charge).

(d)premises used for health and fitness activities, including gymnasia and saunas;

(e)premises used for laser displays and war games;

(f)premises used for agricultural shows;

(g)premises used for Highland Games;

(h)premises used for Go-Karting;

(i)premises used for bungee-jumping and bungee-running;

(j)premises used for bouncy castles or similar structures;

(k)discos and dances;

(l)musical performances;

(m)lectures and illustrated talks (From 1st January 2017 only lectures and illustrated talks which take place outdoors or which involve the use of a temporary structure and where there is an admission fee or charge to the public will require a public entertainment licence).

(n)concerts;

(o)circuses;

(p)fairgrounds;

(q)travelling shows;

(r)travelling funfairs;

(s)Sun Tanning Premises.

(t)Trampolines and bungee trampolines

(u)Entertainment/Variety shows

(v)Outdoor concerts and musical performances where there is no admission fee or charge and which have a capacity of over 250 and where amplified music, or use of a public address system, is the principle activity of the event.

Consultation questions

1. Do you think that premises that are used for the public performance of plays should be licensed under the public entertainment licensing regime?

Yes

No

Please provide reasoning for your answer

2. Do you think that it is necessary to license the public performance of plays for the preservation of public order and safety and the prevention of crime?

Yes

No

Please provide reasoning for your answer

3. The definition of a play currently given in the Theatres Act 1968 is:

- (a) any dramatic piece, whether involving improvisation or not, which is given wholly or in part by one or more persons actually present and performing and in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role; and
- (b) any ballet given wholly or in part by one or more persons actually present and performing, whether or not it falls within paragraph (a) of this definition.

Do you agree that if public performances of plays were licensed under the public entertainment regime that this definition could be used?

Yes

No

If you do not agree, please provide reasons

4. If public performances of plays were licensed under the public entertainment regime, should this only apply to plays where there is a charge to the public?

Yes

No

Please provide reasons for your answer

5. If public performances of plays were licensed under the public entertainment regime, should this apply to both indoor premises and outdoor premises used for the performance of plays?

Yes – both indoor and outdoor premises

No – indoor premises only

No – outdoor premises only

Please provide reasons for your answer

6. If public performance of plays were licensed under the public entertainment regime, should all venues be required to have a licence or should smaller venues (based on audience capacity) be excluded?

Yes – all venues should be included

No - smaller venues should be excluded

Please provide reasoning for your answer, including any commentary on what would be an appropriate number for audience capacity

REPORT TO HIGHLAND LICENSING COMMITTEE INVITING MEMBERS TO GO OUT TO PUBLIC CONSULTATION

(6 August 2019)

- Should the Council license theatres under the public entertainment licensing regime
 - If so, what types of premises should be included



CONSULTATION PERIOD

(12 August – 23 September 2019)



HIGHLAND LICENSING COMMITTEE

(5 November 2019)

- Report back to HLC with consultation responses
- Produce draft conditions for Members to consider should they resolve to license theatres
- Draft resolution under section 9 of the 1982 Act for Members to consider should they resolve to licence theatres



(If Members resolve to licence)

STATUTORY CONSULTATION

(8 November 2019 – 6 December 2019)

- Newspaper publication and consultation period for resolution and conditions



HIGHLAND LICENSING COMMITTEE

(January 2020 meeting date -tbc)

- Report back to HLC at the end of the statutory consultation period to allow any modification to be made to the resolution and conditions in light of the representations received.



FINALISE AND PUBLISH RESOLUTION

(January 2020 – date tbc)



PREPARE APPLICATION FORMS AND GUIDANCE NOTES

(January – February 2020)



ABOLISHMENT OF THEATRES ACT 1968 AND IMPLEMENT RESOLUTION

(27 January 2021)