

Agenda item	6
Report no	HLC/003/20

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 14 January 2020

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 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 The 1968 Act is due to be repealed on 27 January 2021.
- 1.3 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”. This thereby allowed local authorities to resolve under section 9 of the 1982 Act to license theatres under its public entertainment licensing regime.
- 1.4 At the Committee meeting of 5 November 2019, Members resolved to license theatres under its public entertainment regime with effect from 27 January 2021. Members deemed it necessary to licence the public performance of plays for the preservation of public order and safety and the prevention of crime.
- 1.5 Consequently, the statutory procedure set out in section 9 of the 1982 Act had to be followed which included a formal publication of the proposal to vary the existing public entertainment licence resolutions followed by a 28 day consultation period.

2. Recommendation

- 2.1 Members are invited to make a final resolution for publication.

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. A licence under the 1968 Act is valid for one year.

3.2 Section 41 of 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 and cinemas.

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”.

3.4 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.

4. Procedure

4.1 At the Committee meeting of 5 November 2019, Members agreed to vary the current public entertainment licensing (PEL) resolution to include the public performance of plays with effect from 27 January 2021 as they deemed it necessary to licence for the preservation of public order and safety and the prevention of crime.

4.2 Members agreed that the scope of the resolution should include the following:

- The current definition of a play given in the Theatres Act 1968 should continue to be used
- A PEL should be required for all plays, regardless of whether there is a charge to the public
- A PEL should be required for both indoor and outdoor premises
- A PEL should be required for all venues, regardless of capacity

- 4.3 Consequently, the statutory procedure for varying a resolution to include licensable activities set out in section 9 of the 1982 Act must be followed. This includes formal publication of the proposal to vary followed by a 28 day consultation period. A copy of the resolution is attached as **Appendix 1**.
- 4.4 Members can make modifications to a proposed resolution in light of any representations received but they cannot increase its scope. The statutory consultation period was carried out between 12 November 2019 to 10 December 2019 and no responses were received.
- 4.5 If Members proceed to make a final resolution, the further publication process set out in section 9(8) of the 1982 Act must be followed. This includes publishing the final terms of the resolution together with a notice stating (1) that with effect from 27 January 2021 it will be an offence under section 7(1) of the 1982 Act to carry on the activity of the public performance of a play without a public entertainment licence and (2) that applications will be considered by the local authority after the expiry of one month after the date of the making of the resolution.
- 4.6 When 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.
- 4.8 The proposed timeline for the procedure for including the public performance of plays within the public entertainment resolution is set out in **Appendix 2**.

5. Implications

- 5.1 Should any type of theatres not be included within the public entertainment resolution, those 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: 18 December 2019

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Background Papers:

Civic Government (Scotland) Act 1982

Air Weapons and Licensing (Scotland) Act 2015

Appendices:

Appendix 1 – Public Entertainment Licence – Extension of Licensing Resolution

Appendix 2 – Timeline for procedure

THE HIGHLAND COUNCIL

CIVIC GOVERNMENT (SCOTLAND) ACT 1982

PUBLIC ENTERTAINMENT – EXTENSION OF LICENSING RESOLUTION

The Highland Council as the Licensing Authority for the Highlands in terms of section 9 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”), intends to vary its existing Public Entertainment Licensing Resolutions which came into effect on 26 February 1998 and 1 January 2017.

Section 41 of the 1982 Act relating to public entertainment will continue to have effect throughout the whole of The Highland Council’s area in relation to the use of places of public entertainment whereby members of the public are admitted or may use any facilities for the purposes of entertainment or recreation for the activities listed in the existing Resolutions.

The following changes to the licensing of public entertainment activities will apply within The Highland Council area to include an additional premises/activity:

1. With effect from **27 January 2021**, a Public Entertainment Licence shall be required for the use of premises for the public performance of any play which prior to 27 January 2021, require a licence under the Theatres Act 1968.
2. The definition of a play shall be:
 - (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.
3. A Public Entertainment Licence shall be required for all public performances of a play, regardless of
 - a. whether there is a charge to the public
 - b. the capacity of the premises
4. A Public Entertainment Licence shall be required for all public performances of a play in both indoor and outdoor premises.

BUT excluding the following places which are already excluded in terms of section 41 of the 1982 Act

- a) an athletic or sports ground while being used as such;
- b) premises in respect of which a licence is required under s.41A of the 1982 Act (indoor sports entertainment licences) while such premises are being used for the purposes mentioned in that section;
- c) a sexual entertainment venue (as defined in s.45A of the 1982 Act in relation to which Schedule 2 has effect, while being used as such;
- d) an educational establishment while being used as such;
- e) premises belonging to or occupied by any religious body while being used wholly or mainly for purpose connected with that body;
- f) premises licensed under the Cinemas Act 1985;
- g) premises in which there is a club gaming permit within the meaning of section 271 of the Gambling Act 2005 or a prize gaming permit within the meaning of section 289 of that Act;
- h) licensed premises within the meaning of the Licensing (Scotland) Act 2005 in which public entertainment is being provided during licenced hours within the meaning of that Act;
- i) 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
- j) such other premises as the Scottish Ministers may by order made by statutory instrument specify.

Any representations in relation to the proposed new resolution may be made in writing to the Principal Solicitor - Regulatory Services, Council Offices, High Street, Dingwall, IV15 9QN or licensing@highland.gov.uk within 28 days of the first publication of this notice and will be considered by the Licensing Authority before any resolution is made.

The Licensing Authority may make such modifications to the proposed resolution as they think fit in the light of representations made to them about it provided such modifications do not extend its scope.

12 November 2019

HIGHLAND LICENSING COMMITTEE

(14 January 2020)

- Report back to HLC at the end of the statutory consultation period to allow any modification to be made to the resolution.



FINALISE AND PUBLISH RESOLUTION

(January 2020)



PREPARE APPLICATION FORMS AND GUIDANCE NOTES

(January – February 2020)



ABOLISHMENT OF THEATRES ACT 1968 AND IMPLEMENT RESOLUTION

(27 January 2021)