
Report To:	General Purposes Board	Date:	9 June 2021
Report By:	Interim Head of Legal Services	Report No:	LS/061/21
Contact Officer:	Lindsay Carrick	Contact No:	01475 712114
Subject:	Air Weapons and Licensing (Scotland) Act 2015 Repeal of Theatres Act 1968		

1.0 PURPOSE

- 1.1 This report provides the Board 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").

2.0 SUMMARY

- 2.1 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".
- 2.2 This amendment allows local authorities to resolve under section 9 of the 1982 Act to license theatres under its public entertainment licensing regime. The Theatres Act 1968 was repealed on 27 January 2021.
- 2.3 At its meeting on 9 December 2020 the Board authorised the Head of Legal & Property Services to undertake a public consultation exercise to obtain public opinion as to whether the performance of plays should be included within the public entertainment licensing regime, and is so what type of premises should be included.
- 2.4 The public consultation exercise has now been completed. The consultation exercise which carried out for a period of 6 weeks was made available to members of the public on the Council's website. No responses to the consultations were received.
- 2.5 The Board is asked to make a decision as to whether it makes a resolution to include the performance of plays within the public entertainment licensing regime and, if so determine the exact terms of the resolution. This includes consideration of the definition of a play and whether a charge to the public, the type and the size of premises should be taken into account for licensing purposes.
- 2.6 The Board should note that there are currently two theatres within the Inverclyde area namely the Beacon Arts Centre and The Albany. Both theatres have a premises licence granted under the Licensing (Scotland) Act 2005, and will therefore be exempt from a licence required under the 1982 Act.

3.0 RECOMMENDATIONS

- 3.1 That the Board notes the contents of this report.

3.2 That the Board determines whether to pass a resolution to include the performance of plays within the Inverclyde Public Entertainment Licensing regime and specify a date when the resolution will take effect; and if appropriate instruct the Interim Head of Legal Services to publish a notice of the resolution as required at least 28 days before the Resolution comes into effect which can be no earlier than nine months after the Resolution is made.

Anne Sinclair
Interim Head of Legal Services

4.0 BACKGROUND

4.1 The Theatres Act 1968 (“the 1968 Act”) provided a mandatory licensing regime for premises which were used for the public performance of plays. The 1968 Act defined 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.

4.2 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.

4.3 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.

4.4 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.

4.5 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 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.

4.6 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.

5.0 PROPOSALS

5.1 The steps for varying a resolution to include additional licensable activities are set out at section 9 of the 1982 Act.

- 5.2 A public consultation exercise has now been undertaken between 21 December 2020 and 21 January 2021. No responses were received in relation to the statutory consultation notice.
- 5.3 The Council's Licensing Resolution dated 12 June 2013 set out in Appendix 1 lists the activities which require a licence in terms of section 9 of the Civic Government (Scotland) Act 1982.
- 5.4 The proposal to add theatres and theatrical performances, including dance, to the Public Entertainment premises is not an additional licensing burden but will allow the local authority to maintain an appropriate level of control in terms of public safety, similar to that under the 1968 Act.
- 5.5 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 not take effect for a period of at least 9 months between the date the resolution is passed and the date it comes into effect.
- 5.6 Following the statutory consultation, it is proposed that the Board vary its Resolution to include any theatrical performances including plays, ballet comedy and musical productions within the Council's Resolution as set out in Appendix 1.
- 5.7 It is not proposed to amend the current licence fees for Public Entertainment to include a separate category for Theatrical performances and it is proposed that the previous Theatre Licensing fee will, once any Resolution takes effect, be replaced by the Public Entertainment licence fee.
- 5.8 Should a new Theatre seek to open, prior to the date the resolution comes into effect, then it will be open to the Council to grant a temporary public entertainment licence for a restricted period. A temporary licence can have the maximum duration of up to 6 weeks with consecutive temporary licences being permitted.

6.0 IMPLICATIONS

6.1 Finance

The loss of income fee created by the repeal of Theatres Act 1968. The fee under the 1968 Act no longer applies and the activity will fall under the current Public Entertainment Licence fees should this be considered. It is anticipated that there will be a reduction in the licence fee income as the two theatres identified at para 2.6 both qualify for the statutory exemption in respect of premises holding a liquor licence in which public entertainment is being provided during licensed hours.

Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

6.2 Legal

Section 74 of the 2015 Act amends the 1968 Act to repeal the theatre licensing regime under that Act. Section 74 also amends section 41 of the 1982 Act to remove the exemption of theatres from the definition of “places of public entertainment”. A local authority could thereafter resolve under Section 9 of the 1982 Act to licence theatres under its public entertainment licensing regime.

6.3 Human Resources

None

6.4 Equalities

Equalities

(a) Has an Equality Impact Assessment been carried out?

	YES
X	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required

(b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report’s recommendations reduce inequalities of outcome?

	YES – A written statement showing how this report’s recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
X	NO

(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
X	NO

6.5 Repopulation

There are no repopulation implications arising from this report.

7.0 CONSULTATIONS

7.1 A public consultation exercise has been undertaken in relation to whether the public performance of plays should be included within the public entertainment licensing regime.

8.0 BACKGROUND PAPERS

8.1 None

LIST OF ACTIVITIES VARIATION OF RESOLUTION

Inverclyde Council, Municipal Buildings, Clyde Square, Greenock PA15 1LY, in terms of Section 9 of the above Act, hereby resolve that as from 12 June 2013 the following activities and the provision of Part 2 of the 1982 Act shall have effect within the whole area of Inverclyde Council and the particular activities referred to herein shall require to be licensed and regulated in accordance with the provisions of Section 10-27 (inclusive) and Sections 38 to 44 (inclusive) of the said Act as amended by the Criminal Justice (Licensing) (Scotland) Act 2010 and shall be regulated by those provisions

Activity

Taxis and private hire cabs and their drivers

Second hand dealers

Boat hirers

Street Traders

Market operators

Premises used for public entertainment

Premises used for late hours catering

Window cleaners

A place of public entertainment shall apply to the following classes:-

premises used for public entertainment with the exception of educational establishments

premises owned and managed by Local Authorities

The following activities shall be excluded from the requirement to be licensed.

gala day, fetes and other similar small scale outdoor events of a community nature

school fetes and similar school fundraising events

fetes and similar fundraising events run by any religious bodies

premises used for exhibitions of artwork; and

premises used for oral recitals including poetry reading and story telling.

E.Paterson

Head of Legal & Democratic Services