

REPORT TO: Licensing Sub-Committee

MEETING DATE: 11 October 2012

BY: Executive Director (Support Services)

SUBJECT: Amendment of Resolution on Public Entertainment
Licensing regime

1 PURPOSE

- 1.1 To inform the Sub-Committee of the outcome of the consultation process relative to the proposed amendment to the resolution on Public Entertainment licensing in the light of recent legislation.

2 RECOMMENDATIONS

- 2.1 That the Sub-Committee either (1) approve the proposed wording of the amended resolution, which wording is attached to this report, and authorise the Corporate Legal Advisor and such staff as she may designate to advertise the adoption of the amended wording in the local press; or (2) initiate a full public consultation on Public Entertainment licensing, as is being suggested by received correspondence as detailed below.

3 BACKGROUND

- 3.1 A report was submitted to the Sub-Committee on 8 March 2012 advising that various provisions of the Civic Government (Scotland) Act 1982 as regards licensing were the subject of amendment by virtue of the Criminal Justice & Licensing (Scotland) Act 2010.
- 3.2 With particular reference to Public Entertainment licensing, the then current definition of "Place of public entertainment" given in Section 41 of the 1982 Act was "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 or recreation." The key part of that definition was the section shown underlined, and effectively meant that an event which is free to enter did not require a licence under Section 42.

- 3.3 Section 176 of the 2010 Act has amended Section 42 by deleting the words underlined above, with the effect that free to enter events will now be caught by the licence regime. The proposed change took effect from 1 April 2012.
- 3.4 Public entertainment licences under section 42 are one of a range of licences which are discretionary in terms of the Act, meaning that the licence will only be required if the Local Authority makes a resolution to that effect. In East Lothian the resolution to licence Public Entertainment activities was made in 1984. The current resolution is worded to match the terms of the legislation as originally enacted, and makes specific reference to the payment of money or money's worth. The Sub-Committee agreed in March to the formulation of an amended resolution relative to public entertainment licensing, which deletes the reference to the payment of money or money's worth, in line with the changes to the parent legislation.
- 3.5 The Sub-Committee also agreed that the categories of activities which would require to be licensed under Section 42, which had been unchanged since the original resolution in 1984, should be reviewed and updated, and consideration given to specific exceptions from the requirement to be licensed, given the considerable controversy which the amending legislation caused relative to free local and charitable events being unduly penalised by potentially being brought within the licensing regime for the first time due to the removal of the need for payment of money as outlined above.
- 3.6 In accordance with the decision of the Sub-Committee at their meeting in March, the wording of the resolution was reviewed and amended. In this connection the wording of the resolutions in place in Edinburgh and West Lothian were examined. The current proposed wording is very similar to that adopted by our neighbour authorities. The proposed wording of the amended resolution was advertised in the local press on 31 August 2012, giving a 28 day period expiring on 28 September 2012 for the submission of objections and/or observations.
- 3.7 I would advise that one objection has been received as a result of this consultation process. The email dated 28 September 2012 from the objector is attached hereto. The objection follows on from correspondence from the Royal Burgh of North Berwick Community Council to the Chair of the Sub-Committee regarding the wider issue of Public Entertainment which suggested that a full public consultation process regarding the public entertainment licensing regime would be more appropriate.
- 3.8 The letter from the Association dated 16 May 2012 is also attached to this report. With regard to the assertion in the letter that there is no legal obligation to extend the licensing regime, it is not disputed that public entertainment licensing is one of the discretionary licensing activities, as stated in paragraph 3.4 above. It is thus entirely within the power of the licensing authority to decide that such activities shall not require to be

licensed at all. The authority chose to impose a licence in 1984, and, to date, I am unaware of any intent to change this decision. If the licence regime is to remain, then a change to the resolution is required. The 2010 Act has removed the reference to payment of money- therefore free events that did not previously require a licence will now fall within the regime, unless the Licensing Authority decides to exempt them, or decides to remove this category of licence altogether. The proposed resolution does specifically exempt a number of activities, but it is clear from the terms of the letter that the Community Council has considerable concerns with the methods the Sub-Committee have adopted regarding the proposed amendment to the resolution.

- 3.9 An email from the Community Council to members of this Sub-Committee on 26 September makes clear that these concerns remain, notwithstanding the proposed exemptions contained in the draft resolution. This has now been formally followed up by the attached objection.
- 3.10 As the legislation has now changed, the Council resolution requires to be altered to remove reference to money or money's worth, if the intention is to retain the licensing regime for public entertainment. The Sub-Committee must now consider the objection which has been received, and determine whether they wish to address the concerns of the Community Council by initiating a formal, wide-reaching review of the licensing of entertainment activities, or whether they are happy to proceed on the basis of the proposed resolution wording.

4 POLICY IMPLICATIONS

- 4.1 The Council has the statutory power to resolve to require a licence for public entertainment and had made such a resolution. Unless the Council decide to revoke this resolution, the terms of the resolution require to be amended to reflect the changes being introduced to the legislation and to remain consistent therewith. The changes to the law have a potential impact on many local and charitable events that have nor previously fallen within the ambit of the Section 42 licence by virtue of being free to enter. For this reason the proposed resolution amendment includes proposed exemptions from the licensing regime in order to limit the negative impact on the organisers of such events.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - The potential widening of the activities qualifying as “public entertainment” and thus needing to be licensed in terms of the legislation as amended may lead to a potential increase in fee income relative to this type of licence
- 6.2 Personnel - none
- 6.3 Other - None

7 BACKGROUND PAPERS

- 7.1 Civic Government (Scotland) Act 1982
- 7.2 Criminal Justice & Licensing (Scotland) Act 2010, sections 172-178
- 7.3 Resolution of East Lothian District Council 1 July 1984
- 7.4 Letter from Royal Burgh of North Berwick Community Council dated 16 May 2012
- 7.5 Email from Royal Burgh of North Berwick Community Council dated 26 September 2012
- 7.6 Email of objection to proposal dated 28 September 2012

AUTHOR'S NAME	Morag Ferguson
DESIGNATION	Corporate Legal Advisor
CONTACT INFO	Ian Forrest, x7389
DATE	27 September 2012

RESOLUTION RE PUBLIC ENTERTAINMENT LICENSING

Notice is hereby given that East Lothian Council proposes, in exercise of its powers under Section 9 of the Civic Government (Scotland) Act 1982, to amend their current resolution relative to the licensing of Public Entertainment activities to reflect changes to the law introduced by the Criminal Justice and Licensing (Scotland) Act 2010. The wording of the proposed amendment is as undernoted.

Any person or body wishing to make objections or representations in relation to this intended amendment should do so in writing; all such objections or representations should be received at the undernoted address by no later than 28 September 2012.

PROPOSED AMENDMENT TO RESOLUTION:

“East Lothian Council, as Licensing Authority for East Lothian do hereby resolve in terms of Section 9 of the Civic Government (Scotland) Act 1982 that, under Section 41 of the Civic Government (Scotland) Act 1982 with effect from x throughout the whole area of the Licensing Authority the previous resolution made by the Licensing Authority relative to Public Entertainment licensing, which resolution came into effect on 1 July 1984, shall be amended in the following terms:

- (A) The words “on payment of money or money’s worth” shall be delete.
- (B) The sixteen classes of activity listed in the said resolution shall be delete and the following shall be substituted in place thereof:

1. Public dance halls including disco dancing establishments
2. Billiard, snooker and pool halls
3. Any exhibition to which the Hypnotism Act 1952 applies
4. Exhibitions of persons
5. Saunas, massage parlours, health clubs or gymnasia
6. Circuses (human performers only)
7. Fun fairs, including merry-go-rounds, roundabouts, swings, switchback railways, skittle alleys, coconut shies, hooplas, shooting galleries, paintball, clay pigeon shooting, archery, mechanical riding, driving or boating apparatus or anything similar to any of the foregoing
8. Indoor or open air music or variety concerts, shows or performances
9. Video machine parlours or other parlours with automatic or other machines intended for entertainment or amusement

- (C) The following public events/activities DO NOT require a licence under the said Section 41:-

1. Small scale non-profit functions held by charitable, religious, youth, sporting, community, political or similar organisations
2. Small scale exhibitions of art work

3. Small scale performance of live music which is incidental to the main purpose of the premises where the performance takes place
4. Small scale oral recitals including poetry reading and story telling
5. Village fetes, treasure hunts, dirt derbys and galas

In respect of the foregoing, "small scale" is understood to mean less than 50 persons."

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 460.00 pcm. Refs and
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el. 01620 842153

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 6. Circuses (human performers only)
 7. Fun fairs, including merry-go-rounds, roundabouts, swings, switchback railways, skittle alleys, coconut shies, hooplas, shooting galleries, paintball, clay pigeon shooting, archery, mechanical riding, driving or boating apparatus or anything similar to any of the foregoing
 8. Indoor or open air music or variety concerts, shows or performances
 9. Video machine parlours or other parlours with automatic or other machines intended for entertainment or amusement
- (C) The following public events/activities DO NOT require a licence under the said Section 41:-
 1. Small scale non-profit functions held by charitable, religious, youth, sporting, community, political or similar organisations
 2. Small scale exhibitions of art work
 3. Small scale performance of live music which is incidental to the main purpose of the premises where the performance takes place
 4. Small scale oral recitals including poetry reading and story telling
 5. Village fetes, treasure hunts, duck derbys and galas

In respect of the foregoing, "small scale" is understood to mean less than 50 persons."

East Lothian Council, Law & Licensing, John Muir House, Brewery Park, Haddington, East Lothian, EH41 3HA.



East Lothian Council Councillors' Surgeries

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Visit our website:
www.eastlothian.gov.uk
 or call us on:
01620 827 827

Individual councillor's surgeries are publicised

NOTICE OF ELECTION COMMUNITY COUNCILS WITHIN EAST LOTHIAN

- 1 Elections are to be held on Thursday 4 October 2012 for the return of Community Councillors for the following Community Councils within East Lothian.

Cockenzie & Port Seton	Macmerry & Gladsmuir
Dunbar	Musselburgh & Inveresk
Dunpender	North Berwick
East Lammermuir	Ormiston
Garvald & Morham	Pencaitland
Gifford	Prestonpans
Gullane Area	Tranent & Elphinstone
Haddington & District	Wallyford
Humbie, East & West Saltoun and Bolton	West Barns
Longniddry	Whitecraig
- 2 Forms of nomination and withdrawal may be obtained from any Local Area Office, Library or Community Centre or downloaded from East Lothian Council's website www.eastlothian.gov.uk from 27 August 2012.
 Local Area Offices: phone: 01620 827827
 John Muir House, Haddington
 Bleachingfield Centre, Dunbar
 Quality Street, North Berwick
 Sanderson's Wynd, Tranent
 Aldhammer House, High Street, Prestonpans
 Brunton Hall, Musselburgh
- 3 Nomination papers must be delivered to the office of the Returning Officer, John Muir House, Haddington or any Local Area Office by not later than 4 pm on Thursday 13 September 2012. Forms of withdrawal of persons nominated must be returned by the same date and time.
 A candidate for nomination must be 16 years of age or over and must reside, work, own or lease property, or be registered as a local government elector, in the relevant Community Council area for the whole of the previous 12 months. Nominations require a witness to the Candidate's signature.
- 4 A separate election will be held for each Community Council Ward within the Community Council area unless the election is uncontested in any Ward. If insufficient nominations to allow for the election of more than half of the required number of Community Council Councillors have been lodged, then no Community Councils will be formed.
- 5 The Counting of Votes will take place and election results will be announced on, or as soon as possible, after 1 pm Thursday 4 October 2012.
 ANGELA LEITCH, Returning Officer

John Muir House
 HADDINGTON
 20 August 2012

East Lothian Council

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Royal Burgh of North Berwick Community

Chairman

Mrs Patricia Burton
The Coach House,
Marly Knowe, Windygates Road,
North Berwick,
East Lothian,
EH39 4QP
Tel. 01620893310
e-mail patburton@btinternet.com



Secretary

Miss Kathryn Smith
11, St. Baldred's Road
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East Lothian
EH39 4QA
Tel. 01620 892341
e-mail elcua@talktalk.net.co.uk

Council

May 16, 2012

Councillor John McNeil,
Chairman, Licensing Sub-Committee,
East Lothian Council,
John Muir House, Haddington, EH41 3HA

I understand you have just been appointed as the Chairman of the Licensing Sub-Committee, I am therefore addressing this letter to you in that capacity.

I am writing about the changes to the powers of local authorities to require entertainment licences that came into effect on 1 April as a result of the amendment to the Civic Government (Scotland) Act 1982 which changed the definition of 'place of public entertainment' for the purpose of such licensing.

When it met in April, the North Berwick Community Council discussed the changes and shared the concern that has been expressed widely that, potentially, the licensing scheme would threaten a large number of events run by charities and voluntary organisations for community benefit if it were extended to cover all admission free events of the kind listed in the resolution relating to entertainment licences passed in 1983. It found it very surprising that the Council official's report to the Licensing sub-committee, when it met to discuss the changes, should state that there were no policy implications to extending it in this way.

The Community Council understands that at the meeting of the sub-committee given the very serious concerns that had been expressed by organisers of the 3 Harbours Arts Festival as to the viability of their festival if all its events had to be licensed, the sub-committee decided that officials should be asked to draw up a list of possible exemptions from the licensing requirements that sub-committee could consider before an amending resolution was drafted and advertised

The Community Council also heard that some Councils had proceeded on a different basis in considering the action appropriate following this legislative change. In particular Perth & Kinross Council had taken the view that since the list of events that were to be subject to licensing had been drawn up in the 1980s, some 30 years ago, it would now be appropriate to have a full review of the existing scope of the licensing requirement and to consider what free activities, *if any*, should now be brought within the licensing regime. Perth & Kinross propose to consult widely in conducting this review.

The Community Council took the view that this way of proceeding represented a fairer and more rational approach to an area of discretionary licensing and that simply to draw up a list of possible exemptions for free events, as the ELC licensing sub-committee appear to have agreed, did not represent an appropriate manner for ELC to exercise its discretion in this matter. It appeared fundamental to decisions to impose a new licensing requirement that the Council should examine carefully the case for such a requirement, taking account of both protection of the public but also the financial and practical effects of such a requirement on the ability of individuals, charities and voluntary organisations to continue holding legitimate and worthwhile events that contribute hugely to community life and wellbeing. Events should only be covered by the discretionary licensing regime where a proper case has been made out for their inclusion rather than requiring a case being made out for their exemption. There have been misleading suggestions made that the change results from the change in primary legislation but it is quite clear there is no legal obligation to extend the licensing regime.

We accordingly ask the Council to proceed now with a comprehensive review of both the present scope of discretionary entertainment licensing and of the case for extending it to any admission free events and to consult widely upon the results before proceeding to implement any extension of the licensing requirements in its area.

I shall look forward to hearing your response to this request.

(Mrs) Pat Burton

cc Cllrs. W. Innes, D. Berry, T. Day, J. Goodfellow

From: pat burton [<mailto:patburton@btinternet.com>]

Sent: 26 September 2012 08:22

To: McNeil, John - Councillor

Cc: Goodfellow, Jim; Anderson, David - Legal

Subject: Fwd: Letter to Chairman of ELC Licensing Sub-Cttee re. impact of Entertainment Licences

Dear Councillor McNeil, I refer to your letter sent to me dated 19 September concerning the Resolution of Public Entertainment Licensing which you asked me to pass on to my Community Council colleague Robin MacEwen who had been pursuing this matter. Since then he has outlined his concerns to me, copied to you and Cllr. Goodfellow, and I share his concerns about the less than transparent way this appears to have been dealt with thus far.

It is true, you have not responded formally to the letter I wrote to you in May suggesting a full review of these matters. I acknowledge you telephoned me to discuss it, but there is no evidence since to suggest that the proposals we put forward in relation to the impact of Entertainment Licences on community fundraising have been formally considered at all by East Lothian Council. I agree with Robin MacEwen that if you seek the views of the community we should at least be satisfied that they have been taken into account through ELC's formal business process.

Yours sincerely, Pat Burton

(Mrs) Pat Burton

Chairman

Royal Burgh of North Berwick Community Council

From: Robin MacEwen [<mailto:robin@macewen.org.uk>]

Sent: 28 September 2012 08:29

To: Licensing; Anderson, David - Legal; McNeil, John - Councillor

Cc: Goodfellow, Jim; Berry, David; Day, Tim; 'pat burton'

Subject: Entertainment Licensing under the Civic Government (Scotland) Act 1982

I write to object to the adoption of the draft resolution published on behalf of the Council that would amend the scope of the licensing regime applying to entertainment licences

My objection is on 4 grounds:

1. The licensing regime is elective but the Council has in its public comment on recent changes in primary legislation implied that it is only carrying out changes that are required of it. In so doing it has misled the public and those who would be subject to licensing and therefore undermined the consultation on the changes that it has conducted. As it is an elective regime the Council should have re-considered the need for entertainment licensing in relation to all classes of entertainment potentially included, published its consideration and consulted those potentially affected on its proposals before producing a draft resolution.
2. The terms of the undated draft resolution as published in the local press do not appear to have been considered by the Council. The meeting of the licensing sub committee that considered possible changes in the application of licensing of entertainment in East Lothian did not have before it the terms of the resolution as published. Nor did it discuss all the significant changes in licensing that would result from adoption of the draft resolution. While the sub committee did discuss some of the elements reflected in the draft resolution as published there were elements, such as the deletion of educational establishments, community centres, sports centres, village halls and religious bodies that do not appear to have been discussed. Or, if they were discussed the discussion has not been recorded in the minutes of the meeting. Potentially very important changes have therefore appeared in the draft resolution without having been considered by the Council. If it was the intention of the licensing sub committee to delegate to officials to consider and draft changes to the resolution they could only do so lawfully so far as the changes reflected the decisions of the sub committee. Any delegation to determine changes in the classes of entertainment that were not discussed would be unlawful sub-delegation. The changes appearing in the draft resolution appear to go far beyond those considered by the Council and insofar as they do so are not competent. Adoption of the resolution would therefore be unreasonable and incompetent.
3. Even had the Council considered the terms of the draft resolution as published, it has failed to conduct a proper consultation on its terms in that it has failed to bring the significance of the changes to the attention of organisations within the Council area that might be affected by it or might reasonably be expected to have an interest in it. Responses to the consultation cannot therefore reasonably be expected to reflect the views of those affected. The procedure adopted by the Council is thus fundamentally flawed and does not fulfil the requirements of the governing legislation.
4. The wording of the resolution is flawed and likely to introduce uncertainty: Under (C) in the draft resolution are listed events and activities that will not require a licence if they are "small scale". However included in this list are activities eg "exhibitions of art work" that would not appear to have been included under the activities subject to licensing listed at (B). Furthermore the definition of "small scale" is unclear as it does not indicate whether it refers to exhibitors, performers or those attending and does not indicate whether it would relate to all those who attend during the course of the exhibition or only to the number in attendance at any one time.

I would ask that the Council abandon the present proposal and now carry out a proper review of entertainment licensing before consulting on proposals with relevant organisations upon the terms of possible changes.

I am sending a copy of my objection for information to local Councillors for North Berwick and to North Berwick Community Council.

Robin MacEwen