

REPORT TO: Licensing Sub-Committee

MEETING DATE: 14 February 2013

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 resumed 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 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.

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 The current resolution is worded to match the terms of the legislation as originally enacted, and makes specific reference to the payment of money or money's worth.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 proposed wording was 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 A further report was submitted to the Sub-Committee meeting on 11 October 2012 which advised the Sub-Committee of one objection received regarding the proposals. The objector was unable to attend the meeting but Councillor Goodfellow attended on his behalf. The Sub-Committee did not accept the objections submitted, but agreed that the proposed wording of the resolution be further amended with particular reference to charitable activities and the numerical limit for "Small scale" events.
- 3.8 As a result, the proposed resolution, as amended in terms of this decision, was advertised for a further 28 day consultation period, the advert appearing in the local press on 19 October, with the consultation period ending on 16 November.
- 3.9 One further objection was received as a result of this consultation, which was considered by the Sub-Committee at the meeting on 13 December. The Sub-Committee agreed to make some further alterations to the

wording, taking account of the terms of this letter, and authorised the further amended wording to be advertised once again.

- 3.10 The current proposed wording, which is attached hereto, was duly advertised in the local press on 11 January. The consultation period is due to expire on 8 February 2013. As at the date of writing this report, no further objections have been received. If any objections are received between the date of this report and the close of the consultation period, these will be produced and reported on verbally at the meeting.
- 3.11 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 Subcommittee are requested, on the assumption that no further objections are received, to approve the current suggested wording and authorise the Corporate Legal Advisor and such staff as she may appoint to advertise the wording as approved and coming into force.

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 which have been 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 not 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 Reports to Licensing Sub-Committee dated 8 March 2012 and 11 October 2012 and 13 December 2012

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DATE	31 January 2013

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. Following previous notification of proposals in August and October, the Council has made some further adjustments to the proposals. The amended proposal is attached hereto.

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 8 February 2013.

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. All 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. All community festivals, fetes, treasure hunts, duck derbys and galas

In respect of the foregoing, "small scale" is understood to mean less than 150 persons at any one time. In respect of the foregoing, "non-profit function" is understood to mean a non-commercial event held solely for the purpose of raising funds for the organisation holding the function and NOT for the purposes of making a profit or deriving any other form of financial benefit by any person or organisation, and where ALL surplus funds raised by the event are utilised to further the aims and activities of the organisation holding the event."

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