

REPORT TO: Licensing Sub-Committee

MEETING DATE: 14 June 2017

BY: Depute Chief Executive (Resources & People Services)

SUBJECT: Proposed Amendment of Resolution on Public Entertainment Licensing regime

1 PURPOSE

- 1.1 To advise the Sub-Committee of proposals to amend the present Resolution to licence Public Entertainment Activities.

2 RECOMMENDATIONS

- 2.1 That the Sub-Committee-
- (i) note the terms of the current resolution and the suggested amendments, and identify from the options listed at paragraph 3.5 below the preferred method of achieving the suggested change.
 - (ii) put forward any further proposed revisions which they consider appropriate
 - (iii) authorise the Service Manager (Licensing, Administration & Democratic Services) and such staff as she may designate to advertise the proposed changes to the resolution wording in the local press,
 - (iv) accept a further report in due course regarding the outcome of the public consultation on the proposed changes and thereafter consider any suggestions made in that consultation prior to adoption of the amended resolution wording.

3 BACKGROUND

- 3.1 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 In East Lothian the resolution to licence Public Entertainment activities was originally made in 1984 and has been amended and updated twice in recent years. The present resolution is attached hereto.

- 3.2 The Council has been receiving regular complaints regarding the noise being generated at motor cycle scrambling events. The Service Manager (Environmental Health) has asked whether some control could be imposed on such issues by requiring the event to be licensed as public entertainment. Licence conditions regarding noise could be imposed, which would give greater ability to deal with such matters arising in future. While the present resolution does list such activities, the current problem is that the events are generally not for profit activities.
- 3.3 The present resolution contains a list of exemptions from the requirement to obtain a licence. The first of these exemptions is in respect of “all non-profit functions held by charitable, religious, youth, sporting, community, political or similar organisations”. Events such as this are considered to be events being held by a sporting organisation and, where “non-profit”, are therefore currently exempt from the need to hold a licence.
- 3.4 This particular exemption has, in the past, caused some confusion and uncertainty. In particular, the issue of whether an event is a “charitable” or “community” event, and whether there is genuinely no commercial profit being made by the event, has been the cause of considerable difficulty. It is frequently the case that the actual organiser of the event may be making no profit, but other parties attending or providing some of the entertainment activities clearly are. Despite the definition of “non-profit” which is given in the resolution, there has continued to be argument and confusion at times as to whether a licence is required or not.
- 3.5 It is suggested therefore that the present resolution should be amended so as to tighten up on this particular exemption category. There are several potential methods of achieving this.
- (i) The list of exempt organisations could be reduced. This could however be seen as somewhat arbitrary.
 - (ii) The wording could be altered from “All” such events to something along the lines of “Such events as the Council agree”. This would potentially require many more such applications to be considered by the Sub-Committee, or delegated to officers, and would raise the question of the criteria to be applied as to which events would be exempted and which would not.
 - (iii) All such events could be required to have a licence- ie removing the exemption altogether- with or without some additional category within the licence fee regime to allow for a reduced or even nil fee for particular deserving cases. This would have the effect of ensuring that ALL such events would be captured by the licence regime, while giving the potential, if a fee category is introduced, to shield particular organisers from incurring a fee burden which they currently do not have. This would require appropriate amendment to the current fee structure.

- (iv) The Resolution could declare that certain non-profit activities will always require a licence, irrespective of the nature of the organisation running it. This could deal with the current situation for example- all bike scrambling events will require a licence even if organised as non-profit by charitable, sporting, community organisations, etc. This would require consideration of the type of activities which would be captured by such a removal from the exemption categories, but is potentially the most straightforward option.
- 3.6 The process of amending the resolution gives the opportunity to consider any other changes or additions to the present resolution which the Sub-Committee consider appropriate. There may for instance be other activities which are not currently covered which the Sub-Committee feel should be.
- 3.7 In terms of Section 9 of the 1982 Act, a resolution relative to discretionary licences requires to be advertised in the local press for public comment. Formal adoption of the resolution would be made following the 28 day consultation period and taking account of any representations made. Formal adoption also requires to be advertised. A further report will be submitted to the Sub-committee relative to formally adopting an amended resolution following the public consultation process.

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. The Council equally has the statutory power to amend and extend the terms of such resolution.

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

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RESOLUTION ON PUBLIC ENTERTAINMENT LICENSING:

East Lothian Council, as Licensing Authority for East Lothian, in terms of Section 9 of the Civic Government (Scotland) Act 1982, has decided that the present resolution regarding public entertainment licensing in East Lothian shall, from 11 June 2016 be replaced by the following resolution wording:

- 1) Section 41 of the Act relating to public entertainment licences shall continue to have effect throughout the local government area of East Lothian.
- 2) Subject to the terms of Section 41 and Schedule 1 of the said Act, a Public Entertainment licence shall be required for the use of premises as places of public entertainment for the classes of activity specified in Clause 4 hereof as from 11 June 2016.
- 3) A Public Entertainment Licence shall not be required for the classes of activity listed in Clause 5.
- 4) A Public Entertainment licence shall be required in respect of any of the following types of activity-
 - Dancing establishments
 - Billiards, snooker or pool halls
 - Any exhibition to which the Hypnotism Act 1952 applies
 - Exhibitions of objects such as paintings, sculptures, drawings or historical artefacts
 - Exhibitions of persons, including but not limited to boxing, wrestling, cage fighting or martial arts
 - Saunas, massage parlours, tanning salons, nail bars, health clubs or gymnasia
 - Circuses
 - Fun fairs, including merry-go-rounds, roundabouts, swings, switchback railways, skittle alleys, coconut shies, hooplas, mechanical riding, driving or boating apparatus or anything similar to any of the foregoing
 - Any activities involving shooting, including but not limited to archery, clay pigeon shooting, or paintball
 - Laser or war gaming
 - Motor cycle scrambling
 - Go-carting
 - Indoor or open air festivals or variety concerts, shows or performances
 - Amusement arcades with automatic or other machines, including but not limited to video gaming machines, intended for entertainment or amusement which are not licensed in terms of the Gambling Act 2005
 - Bouncy castles or similar structures, or trampoline venues
 - Internal or external children's play areas including soft play areas

- Indoor bowling alleys including ten pin bowling alleys
- Bungee jumping or catapulting
- Outdoor adventure or activity parks or anything similar to the foregoing
- Water sports activities including raft races
- Fireworks or bonfire displays
- Agricultural, equestrian or livestock shows
- Indoor skate parks
- Major Sporting events such as Golf Opens
- Highland Games

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

- All non-profit functions held by charitable, religious, youth, sporting, community, political or similar organisations
- Small scale exhibitions of art work
- Small scale performance of live music which is incidental to the main purpose of the premises where the performance takes place
- Small scale oral recitals including poetry reading and story telling
- All community non-profit 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” 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.”