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| <b>Report To:</b>       | <b>General Purposes Board</b>  | <b>Date:</b>       | <b>9 December 2020</b> |
| <b>Report By:</b>       | <b>Head of Legal &amp; Property Services</b>   | <b>Report No:</b>  | <b>LP/135/20</b>       |
| <b>Contact Officer:</b> | <b>Lindsay Carrick</b>   | <b>Contact No:</b> | <b>01475 712114</b>    |
| <b>Subject:</b>         | <b>Air Weapons and Licensing (Scotland) Act 2015<br/>Repeal of Theatres Act 1968</b> |                    |                        |

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## 1.0 PURPOSE

- 1.1 The purpose of this report is to provide 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). The Theatres Act 1968 (the 1968 Act) will be repealed on 27 January 2021 and the current exemption within the Civic Government (Scotland) Act 1982 (the 1982 Act) will be removed, thereby enabling a local authority to resolve under section 9 of the 1982 Act to licence theatres under the public entertainment licensing regime.

## 2.0 SUMMARY

- 2.1 The Theatres Act 1968 (the 1968 Act) provides a licensing regime for premises which are used for the public performance of plays. Section 41 of the 1982 Act provides a discretionary licensing regime for places of public entertainment. The definition of a place of public entertainment in section 41(2) specifically excludes premises which are licensed under the 1968 Act. Prior to the commencement of section 74 of the 2015 Act, theatres were required to be licensed under the 1968 Act and were therefore exempt from the licensing regime under the 1982 Act.
- 2.2 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 excluded from the 1982 Act including athletic or sports grounds and premises licensed for the sale of alcohol, gaming or cinema.
- 2.3 Licensing of public entertainment in terms of the 1982 Act is an optional class of activity for licensing authorities. Licences are only required if a licensing authority resolves that the relevant activity should be licensed. In relation to public entertainment licences, the authority must describe the type of premises which will require to be licensed.
- 2.4 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. The guidance from the Scottish Government has 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.
- 2.5 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.

- 2.6 It is proposed to start a consultation exercise to seek public opinion on whether or not the use of premises for the public performance of plays should be included within the Council's list of licensable public entertainment activities.
- 2.7 After the period of consultation, the responses would be circulated at a future meeting which would allow members to make a decision as to whether they make a resolution to include the performance of plays within the public entertainment licensing regime, and if so, the exact terms of the resolution. Members should note that if they are minded to include the performance of plays within the public entertainment regime a statutory consultation must be followed. A proposed timeline for any potential inclusion of theatres within the public entertainment resolution is set out in Appendix 1 to the report.
- 2.8 The procedures for varying a resolution to include additional licensable activities are set out at section 9 of the 1982 Act. This includes formal publication of the proposal to vary followed by a 28 day consultation period. Where 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.
- 2.9 The procedures for varying a resolution to include additional licensable activities are set out at section 9 of the 1982 Act. This includes formal publication of the proposal to vary followed by a 28 day consultation period. Where 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.
- 2.10 In these challenging and unprecedented times and restrictions in place due to the coronavirus pandemic, it is highly unlikely that another theatre will open within the area in the near future. 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.
- 2.11 The Board should note that there are currently two theatres within the Inverclyde area namely the Beacon Arts Centre and The Albany. In addition to a licence under the Theatres Act 1968 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.

Gerard Malone  
Head of Legal & Property Services

### **3.0 RECOMMENDATION**

- 3.1 That the Board note the changes to the Civic Government (Scotland) Act 1982 repealing the existing requirement for theatrical performances to be licensed under the Theatres Act 1968 and that the Head of Legal & Property Services be authorised to carry out a public consultation in order to gather views in determining whether the public performance of plays should be included within the Council's list of licensable public entertainment activities.

## 4.0 BACKGROUND

- 4.2 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 by removing the exemption of theatres from the definition of “place of public entertainment”. A local authority can now resolve under Section 9 of the 1982 Act to licence theatres under its public entertainment licensing regime.
- 4.3 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 licensing regime. The guidance from the Scottish Government suggests 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.
- 4.4 The Board Should note that due to the requirement to deal with urgent prioritised matters arising directly from the Coronavirus pandemic this is the first opportunity to bring the matter to the attention of the Board.

## 5.0 IMPLICATIONS

### 5.1 Finance

The loss of income fee created by the repeal of Theatres Act 1968. The current fee under the 1968 Act will no longer apply and the activity will fall under the current Public Entertainment Licence fees should this be considered appropriate following consultation. 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         |                |                  |                   |                               |                |

### 5.2 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.

### 5.3 Human Resources

There are no HR implications arising from this report.

### 5.4 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  |

### 5.5 Repopulation

There are no repopulation implications arising from this report.

## 6.0 CONSULTATIONS

6.1 The Board is asked to authorise the Head of Legal & Property Services to carry out a consultation exercise in order to allow a decision to be made regarding whether the use of premises for the public performance of plays should be included within the Council's list of licensable public entertainment activities.

## 7.0 BACKGROUND PAPERS

7.1 None

Report to General Purposes Board inviting members to go out to public consultation  
(9 December 2020)

Should the Council licence theatres under the public entertainment licensing regime and if so what  
type of premises

Consultation Period

14 December 2020 - 25 January 2021

Report back to General Purposes Board with consultation responses  
(February 2021)

Produce draft conditions for Members to consider should they resolve to licence theatres  
Draft resolution under Section 9 of the Civic Government (Scotland) Act 1982 for Members to  
consider should they resolve to licence Theatres

Statutory Consultation (28 days)  
(February 2021)

Newspaper publication and consultation period for resolution and conditions

Report back to the General Purposes Board to allow for any modification to the resolution and  
conditions in light of representations received  
(Date TBC)

Finalise and publish resolution  
(Date TBC)