



WARNING: In June 2015 the Scottish Parliament passed an Act containing substantial amendments to the Theatres Act 1968, including the abolition of Theatre licences. However, these amendments are not yet in force. This circular will be amended when the law changes. In the meantime the existing provisions will continue to apply.

THEATRE LICENCES (Theatres Act 1968)

PUBLIC ENTERTAINMENT LICENCES (Civic Government (Scotland) Act 1982)

In certain circumstances, some uses of church premises require a licence and the object of this circular is to provide guidance as to when it may be necessary to apply for a licence (issued by the local authority within whose area the premises lie) under either the 1968 or 1982 Acts.

It must be emphasised that where a church or church hall is used simply for ordinary congregational purposes, **no** licence or certificate under either of these Acts is necessary. Such ordinary congregational purposes may be described - using the statutory definition of the Use Classes Order under the Town and Country Planning Acts - as "Use, not including residential use, for, or in connection with, public worship or religious instruction, or for the social or recreational activities of a religious body".

1. THEATRES ACT 1968

The Act deals *inter alia* with the licensing of premises for public performances of plays. The term "premises" is comprehensive and includes such buildings as churches, church halls, etc; the term "public performance" includes any performance which the public or any section thereof are permitted to attend, whether on payment or otherwise; and the term "play" includes, as well as plays in the ordinary sense, such dramatic pieces as opera, ballet, etc. The Licensing Authority is the Council within whose area the premises are situated.

In terms of the Act, no premises are to be used for the public performance of any play except under and in accordance with the terms of a licence granted under the Act by the Licensing Authority. It should be pointed out that the Licensing Authority has no power to impose any conditions or restrictions as to the nature of the plays which may be performed under the licence or as to the manner in which a play is performed.

It should be particularly noted when applying for a licence that a period of notice, which is variable but which is at least 21 days for a new application and 28 days for a renewal days, requires to be given to the Licensing Authority; in practice, applications should be lodged well before the date of projected performances. A licence may be granted for a period of up to a year or for one or more particular occasions. Fees are generally payable on making application. However the legislation specifically provides that no fee is payable on an application for the grant or transfer of a licence in respect of one or more particular occasions, if the Licensing Authority is satisfied as regards the

occasion or each of those occasions that the play is to be performed is “of an educational or other like character or is to be performed for a charitable or other like purpose”.

There are provisions for an appeal to the Sheriff in the event of the Licensing Authority refusing to grant a licence or imposing a condition to which the applicant takes exception.

In the event of a public performance of a play being given in premises not licensed for this purpose or, in the event of a contravention of the terms and conditions of a licence, a punishable offence is committed. This affects or can affect licence-holders, persons making premises available, and persons concerned in the organisation or management of the performance. Therefore, although it would be usual to expect the Group putting on the play to apply for the licence, Ministers and also Financial Boards having the oversight of church premises should ensure that, in the event of any play being performed, the licence has been duly obtained and that its terms are complied with.

Church Drama Groups will also have to exercise similar care - irrespective of whether the performance takes place in ecclesiastical or other premises.

2. CIVIC GOVERNMENT (SCOTLAND) ACT 1982

This Act makes provision for the licensing *inter alia* of premises used as places of public entertainment.

It is to be noted first of all that such licensing is not an automatic matter under the Act but becomes a requirement only if and in so far as the Council concerned has resolved on licensing. Almost all Councils however now require the obtaining of such licences. Information can be obtained on this point from the Director of Administration (or equivalent) of the Council concerned. Many Councils now operate useful web-sites which contain licensing information, including information on fees. It should also be noted that some Councils offer discounts on licensing fees to charities.

Assuming that licensing has thus been made a legal requirement then a "public entertainment Licence" is required for the use of premises as "a place where members of the public are admitted or may use any facilities for the purpose of entertainment or recreation". There are however **excluded** from the definition *inter alia*:-

- (i) Premises belonging to or occupied by any religious body while being used wholly or mainly for purposes connected with that body and
- (ii) Premises licensed under the Theatres Act 1968.

Until 1 April 2012, a licence was only required where the public was admitted “on payment of money or money's worth” i.e. there had to be some form of admission charge. This proviso has however been repealed with effect from 1 April 2012 although the two exemptions noted at (i) and (ii) above are still applicable. In addition, it is anticipated that a number of local authorities may resolve to exempt certain categories of free events. As an example of this, see the note at the end of this Circular for the position within the City of Edinburgh Council area.

Accordingly, if a licence has been obtained for the premises under the Theatres Act 1968, then, so long as it remains in effect, the need for a public entertainment licence will be excluded. Otherwise, it depends on the circumstances of the particular case whether the use intended requires the licensing of the premises under the 1982 Act.

Particularly where the "entertainment" is being organised by a congregational organisation it may be difficult to determine whether or not it falls within the definition of use "wholly or mainly for purposes connected with" the congregation. The following view on this has been expressed in a legal textbook on the Act:-

*"..the church youth club would be excluded from requiring a public entertainment licence, provided they were not staging a play or another form of entertainment to which the public generally were admitted. An evangelical meeting, coffee morning or other discrete festivity would probably not require a s.41 (i.e. public entertainment) licence. Note however that if the church hall is being hired out to an outside body for an exhibition, review or discotheque, then it may well be an activity for which a licence may be required."*¹

With respect to applications for licences the Licensing Authority is required to consider each application within three months of its having been made to them and to reach a final decision upon it within six months, subject to the power of the Sheriff to extend that period. Ample time therefore requires to be allowed in making application. The Licensing Authority is required to charge such reasonable fees as it may determine. A licence maybe granted for a period of up to three years or be a "temporary licence" i.e. for a period not exceeding six weeks.

A Licensing Authority may attach conditions to a public entertainment licence *inter alia* -

- (a) restricting the use of the premises to a specified kind or specified kinds of entertainment or recreation.
- (b) limiting the number of persons to be admitted to the premises
- (c) fixing the days and times when the premises may be open for the purposes of the entertainment or recreation.

There are provisions for an appeal to the Sheriff in the event of the Licensing Authority making an unfavourable decision.

Any person who without reasonable excuse does anything for which a licence is required, without having such a licence and any licence-holder who does not comply with any conditions attached to a licence, commits a punishable offence. Therefore, although it would be usual to expect the Group staging the entertainment to apply for the licence, Ministers and also Financial Boards will wish to ensure that in appropriate circumstances the premises are licensed and that the terms of the licence is complied with.

¹ "Scottish Civic Government Licensing Law" by A Hajducki, Q.C. & S Stuart, Advocate W Green/Sweet & Maxwell

3. Cinema Licences

The use of premises to show films to members of the public is likely to require to be licensed whether or not the intention is to make a profit or even to charge for admission. For further information, you should check with the Licensing Department of your Council.

ADDITIONAL NOTE

Public Entertainment Licences for free events in the City of Edinburgh Council Area

The City of Edinburgh Council has agreed to exempt from 20 April 2012, the following places where (a) members of the public are admitted or may use the facilities for the purposes of entertainment or recreation without payment of money or money's worth and (b) the capacity does not exceed 500 persons:-

- premises used for functions held by charitable, religious, youth, sporting, community, political or similar organisations;
- premises used for exhibitions of art work;
- premises in which live music is being provided incidentally to the main purpose or use of the premises where that main purpose or use is not as a place of public entertainment; and
- premises used for oral recitals including poetry reading and story-telling.