



Subject:	Consideration of Entertainments Licences with Previous Convictions
Date:	18th January, 2017
Reporting Officer:	Stephen Hewitt, Building Control Manager, ext. 2435
Contact Officer:	Patrick Cunningham, Assistant Building Control Manager, ext. 6446

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of Report/Summary of Main Issues
1.1	To consider, under the Local Government Miscellaneous Provisions (NI) Order 1985 (the Order), current enforcement procedures and consideration of Entertainments Licensing applications when the applicant has been convicted of offences under the Order.
1.2	Members will recall that, at your meeting on 21st September, 2016, you agreed that a report be submitted to a future meeting providing information on breaches and associated convictions and penalties resulting from inspections which had, during the past five years, been undertaken by Council officers under the Entertainments Licensing legislation.
1.3	The Committee agreed also that the report should outline the enforcement approach undertaken by the Council, depending upon the nature of the offence detected, together with proposals for enabling it to review those applications where there had been a conviction for a breach of the legislation which had posed a serious risk to the safety of patrons.
2.0	Recommendations
2.1	Taking into account the information presented, the Committee is requested to note the content of the report and provide comment and recommendations regarding how Officers deal with the enforcement of Entertainments Licensing legislation and any breaches found which may result in the initiation of legal proceedings.
2.2	Members may also wish to advise on how they would prefer future applications to be presented to the Committee where the applicant has been previously convicted.
2.3	As all matters pertaining to policy and legislation in relation to licensing matters are not delegated, any decision will be subject to ratification by the Council.

3.0	Main Report
	<p data-bbox="258 228 416 259"><u>Key Issues</u></p> <p data-bbox="258 293 903 324">Powers to deal with Offences under the Order</p> <p data-bbox="150 360 1410 392">3.1 Where an applicant has been convicted of an offence under the Order the Council may :</p> <ol data-bbox="309 427 1445 595" style="list-style-type: none"> 1. revoke an existing Entertainments Licence if the licence holder is convicted of an offence, or 2. refuse an application on the grounds that the applicant has been convicted of an offence under the Order within the period of 5 years immediately preceding the date when an application was made. <p data-bbox="258 631 1114 663">Powers to deal with serious threats to Public Order or Public Safety</p> <p data-bbox="150 698 1449 797">3.2 If it appears to the Council that the provision of entertainment at any place in respect of which an Entertainments Licence is in force is causing, or is likely to cause, a serious threat to public order or public safety it may order the suspension of that licence.</p> <p data-bbox="150 833 1449 967">3.3 The Council may, at any time, revoke an order to suspend an Entertainment Licence. Prior to doing so, the Committee should satisfy itself that all the matters that gave rise to the decision to suspend the licence have been satisfactorily dealt with and that provision of entertainment at the premises will no longer cause a serious threat to the public.</p> <p data-bbox="150 1003 1449 1066">3.4 Authority to revoke, refuse or suspend a licence is fully delegated to the Licensing Committee.</p> <p data-bbox="150 1102 1449 1164">3.5 If the licence is revoked, refused or suspended then the applicant may appeal the Council's decision within 21 days of notification of that decision to the County Court.</p> <p data-bbox="258 1200 959 1232">Enforcement approach undertaken by the Service</p> <p data-bbox="150 1267 1449 1469">3.6 Our role in Building Control is primarily that of ensuring that licensed premises are operated safely and in accordance with the terms and conditions of the licence and obtained through working constructively with the licensee in accordance with the principles of Good Enforcement. Where legal action is taken it is seen as a last resort to deal with those offenders either operating without a licence or found to be committing offences of a more serious nature.</p> <p data-bbox="150 1505 1449 1568">3.7 There are currently 411 premises licensed for indoor entertainment in Belfast and 44 other venues where entertainment may be held either outdoors or within a marquee.</p> <p data-bbox="150 1603 1449 1738">3.8 As part of our application process, officers engage extensively with the applicant, licensee and any other representative associated with the application in order to help ensure the respective parties understand their responsibilities and duties as a licence holder. This helps ensure compliance with the terms and conditions of the Entertainments Licence.</p> <p data-bbox="150 1774 1449 1836">3.9 All venues are inspected as part of the annual renewal application process but are also subject to further inspection as part of our During Performance Inspection (DPI) protocol.</p>

During Performance Inspection and Enforcement Protocol

3.10 The DPI is not only carried out to ensure compliance with the terms and conditions of the licence but, importantly, it enables staff to develop a good working relationship with the person in charge of the premises and to help them understand their obligations in safeguarding the public.

3.11 The Service has an established risk rating process which enables targeted inspections to be carried out when entertainment is taking place where they are needed most. The risk is subject to regular review upon the completion of any DPI and updated accordingly.

3.12 The risk rating ultimately determines the frequency and number of inspections carried out on the premises over the annual period of the Entertainments Licence. However, other inspections can be arranged, as and when required, for monitoring purposes if a complaint is made or an issue occurs.

3.13 The following table provides a breakdown of the outcomes of DPI's by the Service over the last 5 years.

Outcome	Number	Action
Satisfactory	1580	None
Part Satisfactory	587	Letters Sent – 587 Office Meetings – 81
Not Satisfactory	100	Letters Sent (inc. PACE Letter) – 100 Office Meetings and resolved outside of court – 59

3.14 Generally, the majority of licensees and premises have been found to be compliant. The nature of the breaches and offences we have uncovered over the last five years range from an emergency exit sign not being illuminated at the time of the inspection to locked exits or overcrowding of the premises.

3.15 'Part Satisfactory' decisions will normally require a letter to be sent to the licensee highlighting the problems uncovered and requesting that they be rectified as soon as possible. This is then followed up with another DPI a few weeks later to ensure the problems have been corrected.

3.16 Depending upon the severity of the problems failure to rectify them may mean an office meeting has to be arranged or legal proceedings are initiated against the licensee.

3.17 In circumstances where the inspection brings to light defects which give rise to more serious concerns about the safety of patrons a meeting will be arranged with the management of the premises to discuss how they may be resolved. The meeting also allows Officers to question the licensee and explore how well they are managing the premises.

3.18 A decision of 'Not Satisfactory' is recorded when significant defects or breaches have been found. Examples of this may be a locked exit, overcrowding of the premises or the fire alarm system being disabled. These problems and defects will normally result in legal proceedings being initiated against the premises. However each case is considered on its own merits and there are some circumstances in which, after consultation with Legal Services, an alternative solution may be offered.

<p>3.19</p>	<p>Since 2011, through the adoption of the above procedures, the Service has secured a total of 41 prosecutions. These are broken down, as follows:</p> <ul style="list-style-type: none"> • 13 in 2011/2012 • 8 in 2012/2013 • 2 in 2013/2014 • 5 in 2014/2015 • 13 in 2015/2016 <p>Initiation of Legal Proceedings</p>
<p>3.20</p>	<p>For any serious breaches discovered, we send formal correspondence in the form of a letter containing the PACE Caution to the licensee or defendant to afford them the opportunity to provide an explanation in relation to the suspected offences and any evidence or information which may be relevant.</p>
<p>3.21</p>	<p>The matter is then referred to Legal Services to consider whether legal proceedings should be initiated. Unfortunately under the terms of the 1985 Order it is not possible to take cases in the Crown Court so all cases must be brought in the Magistrates Court.</p> <p>Alternative Proceedings and resolved outside of Court</p>
<p>3.22</p>	<p>A prosecution will not always ensue, as each situation and case has to be determined on its own merits. It is unlawful to adopt a policy whereby every offence results in prosecution regardless of the circumstances.</p>
<p>3.23</p>	<p>There are a wide range of alternative resolutions available under the Council's Regulation and Enforcement Policy. These range from informal warnings through to formal cautions.</p>
<p>3.24</p>	<p>Most alternative disposals have been either by way of administering a formal caution or through a formal meeting held with the applicant/licensee which would involve a thorough review of their premises, the passive and active measures they have in place and their management arrangements to ensure the premises operates safely and effectively.</p> <p>Penalties</p>
<p>3.25</p>	<p>As Members are aware, the penalties handed down by the Court in recent years are not always considered a true reflection of the severity of the offences discovered. Members may recall that in the Council's response to the review of entertainment licensing, in June 2015, the Committee provided alternative proposals on how to deal with breaches to the legislation.</p>
<p>3.26</p>	<p>Additionally, a letter has also recently been sent to the Minister for Communities, Mr Paul Givan MLA, to request that sentencing guidelines for breaches of the entertainments licensing be provided as part of his Department's review of entertainment licensing.</p>
<p>3.27</p>	<p>A summary of the problems, breaches and convictions and subsequent penalties handed down to licensed premises since 2011 is attached.</p> <p><u>Review of Applications where the applicant has been convicted for breaches of the</u></p>

legislation and posed serious risks to the safety of patrons

3.28 Members are advised that, since 2011, the Committee has considered a total of 81 Committee reports as a consequence of legal action and previous convictions of applicants. Some of the applicants offences have been considered on more than one occasion due to the '5 year rule'.

3.29 The Service believes that it takes a fair but robust approach to ensure applicants comply with the terms, conditions and restrictions attached to their Entertainments Licence.

3.30 In addition, Members can be assured that, in cases where legal proceedings are initiated we continue to engage proactively with all licensees to work to improve their overall safety procedures.

3.31 It was apparent, at the meeting on 21st September, 2016, that Members were concerned that, in some instances, the courts were handing down penalties for offences which did not reflect the seriousness of the offence.

3.32 It is not possible for the Council to appeal sentences to the County Court. The only mechanism available to challenge the level of penalty in the Magistrates Court is by way of judicial review. The threshold for successfully challenging a decision this way is quite high. It is not enough to demonstrate that the decision was unreasonable. The Council must establish that the decision was so irrational that it clearly falls outside the broad area of the lower courts sentencing discretion.

3.33 The Council has previously successfully challenged a sentence which was considered to be too lenient and a further judicial review is currently being considered by Legal Services in relation to a recent decision.

3.34 A further deterrent action which could be taken and which, to date, has not been utilised would be for Committee to consider the revocation of an Entertainments Licence immediately after a licence holder is convicted of an offence.

3.35 This would mean that as soon as an applicant is convicted of an offence, rather than when their licence falls due for renewal, the licence holder will be invited to appear before Committee and convince Members as to why their licence should not be revoked.

3.36 This would have the benefit that, regardless of any Court penalty, Members would have the opportunity to impress upon the applicant the severity of their offence and seek assurances in relation to future management of the premises. Whilst it is not possible to attach conditions to an extant licence undertakings could be sought from a licensee in terms of additional controls to be put in place at the premises. Compliance with such an undertaking would be relevant to their fitness in any future renewal application.

Financial and Resource Implications

3.37 Officers carry out during performance inspections on premises providing entertainment which is catered for within existing budgets.

Equality and Good Relations Implications

3.38 There are no equality or good relations issues associated with this report.

4.0	Document Attached
	Summary of the problems, breaches, convictions and subsequent penalties handed down to licensed premises since 2011.