

Agenda item	6
Report no	HLC/037/21

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 3 August 2021

Report title: Sex Entertainment Venues

Report by: The Principal Solicitor – Regulatory Services

1. Purpose/Executive summary

1.1 This report seeks to advise the Committee of the amendments to the Civic Government (Scotland) Act 1982 introduced by the Air Weapons and Licensing (Scotland) Act 2015 equipping local authorities with the discretionary power to implement a licensing regime in respect of sex entertainment venues and invites the Committee to consider instructing an initial public consultation on sex entertainment venues in Highland to help inform the Committee's decision to determine whether they wish to license sex entertainment venues.

2. Recommendation

2.1 This Report invites the Committee to:

- (i) note the changes to the Civic Government (Scotland) Act 1982 which introduced provisions giving local authorities the discretionary power to licence Sexual Entertainment Venues;
- (ii) consider instructing the Principal Solicitor to undertake an initial public consultation on the Licensing of Sex Entertainment Venues in Highland to inform future decision making and that the consultation include the questions noted in **Appendix 1**.

3. Background

- 3.1** On 26 April 2019, the Air Weapons and Licensing (Scotland) Act 2015 (“the 2015 Act”) introduced new provisions into the Civic Government (Scotland) Act 1982 (“the 1982 Act”) to allow local authorities to decide whether they wish to licence sex entertainment venues (SEVs) within their local authority area.
- 3.2** The 1982 Act defines sex entertainment venues as any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser and where it is the sole or principal purpose of sexual stimulation of members of the audience.
- 3.3** However, premises where sexual entertainment is provided on no more than 4 occasions in a twelve- month period are not to be treated as a SEV. In this local authority area, there is one known premise of this type known as Private Eyes Gentlemen’s Club, located on Academy Street in Inverness.

4. Current Legal Position

- 4.1** Prior to the introduction of these provisions, there was no requirement to licence SEVs and therefore local authorities did not have the ability to regulate activities that fell within the definition of sexual entertainment. Following concerns raised about the lack of control in relation to adult entertainment activities, together with the Court of Session’s refusal to allow licensing boards to regulate these activities through legislation that regulated the sale of alcohol, a separate licensing regime was introduced.
- 4.2** Section 76 of the 2015 Act introduces a specific licensing regime into the 1982 Act that allows local authorities to determine whether to licence SEVs within their local authority area with the key aims of preserving public safety and order and preventing crime and disorder. It seeks to achieve this by providing local authorities with greater local control over the impact of these venues by allowing local authorities to limit their geographical location as well as how many SEVs can operate in any given area. It also provides local authorities with the ability to assess the impact of an SEV on a local community, ensure the safety of performers and customers and improve standards in the industry.
- 4.3** The introduction of these provisions by Scottish Government is also linked to the following strategies:

Equally Safe

A delivery plan for Scotland’s strategy to prevent and eradicate violence against women and girls.

<https://www.gov.scot/publications/equally-safe-delivery-plan-scotlands-strategy-preventviolence-against-women/>

Trafficking and Exploitation Strategy

This strategy is required under section 35 of the Human Trafficking and Exploitation (Scotland) Act 2015 and sets out the Scottish Government’s strategy to work with partners to make Scotland a more hostile place for human trafficking. The aims of the strategy are to identify victims and support them to safety and recovery; identify perpetrators and disrupt their activity.

<https://www.gov.scot/publications/trafficking-exploitation-strategy/>

5. Licensing of SEVs

5.1 Under section 76 of the 2015 Act, a local authority must decide whether they wish to licence SEVs. This licensing regime is not mandatory and as such a local authority can choose not to regulate SEVs.

5.2 If the local authority decides to licence SEVs, section 45B of the 1982 Act, requires the local authority to pass a resolution for SEV licensing to have effect in their area. If the local authority resolves not to licence SEVs, there will be no requirement to obtain a licence to operate as an SEV. Therefore, existing SEV operators can continue to operate and new SEVs can also be set up without a licence. As a result, SEVs would remain unregulated in relation to any adult entertainment activities that are carried out. If a resolution is passed, existing SEVs and any new SEVs, will require an SEV licence.

5.3 In considering whether to pass a resolution to licence SEVs, the local authority should consider a range of issues such as:

- whether there are any sexual entertainment venues already operating;
- the location of schools;
- the location of places of worship;
- the location of heavily residential areas;
- the location of women's refuges and shelters and other services focussed on supporting women, children and young people;
- whether there have been incidents involving anti-social behaviour, sexual assaults, prostitution or more minor harassment reported in any particular area;
- whether there have been incidents of human trafficking or exploitation locally; and
- whether their decision is proportionate and justifiable having regard to other relevant legislation such as EU Services Directive, the Regulatory Reform (Scotland) Act 2014 and the Convention rights of SEV operators.

5.4 The local authority is required to set the number of SEVs permitted in their area and for each relevant locality. The act defines "relevant locality" as

*the locality where the premise is located; and
that in relation to a vehicle or vessel or stall, it is any locality, where it is desired to use it as a sex establishment.*

5.5 Wide discretion is afforded to the local authority to determine the relevant locality and the appropriateness of SEVs within these areas. The breakdown of relevant localities is to be determined by the local authority. It is open to the local authority to consider using the 21 Ward areas within the Highland area as the "relevant localities". Where the local authority determines that a locality is not appropriate, the legislation specifically allows for the local authority to provide that nil be the appropriate number of SEVs in this area.

6.0 When will the resolution take effect?

6.1 Once a resolution has been passed, it must specify the date that these changes will take effect. This must be at least one year from the date the resolution is passed. This period of at least one year allows any existing operators to prepare themselves for the proposed changes and for the licensing regime to be put in place. The local authority must also publish notice that they have passed a resolution not less than 28 days prior to the date the resolution is to take effect.

7.0 Statement of Policy

7.1 Section 45C of the 1982 Act requires that where a local authority has passed a resolution under section 45B(1) that a licensing regime for SEVs will have effect in their area, they will then be required to prepare and publish an SEV policy statement. The statement should consider the appropriate areas for the operation of an SEV, how many SEVs are appropriate, the impact of SEVs within an area having regard to the relevant licensing objectives. The reasons for this policy decision should also be detailed. Developing an application process together with the relevant forms and guidance would also be considered as part of the policy process. Any draft policy statement produced would also be the subject of further consultation.

8.0 Government Guidance

8.1 The Scottish Government issued guidance to Local Authorities on 28 March 2019 in relation to the licensing of SEVs and this provides guidance to Local Authorities on the main changes detailed above. The guidance is available here: -

<https://www.gov.scot/publications/guidance-provisions-licensing-sexual-entertainmentvenues-changes-licensing-theatres/pages/2/>

8.2 Within the guidance, the Scottish Government have provided a flowchart which sets out the order of events which must take place prior to any SEV Licensing regime being implemented. A copy of this flowchart is shown at **APPENDIX 1** to this report.

9 Next Steps

9.1 Before the local authority can decide whether to pass a Resolution to licence SEVs, the Committee is invited to agree to instruct an initial public consultation which will assist in gathering the views of the local community on the licensing of SEVs. As part of the consultation process, it is recommended that views be invited from the public and interested parties including Police Scotland, Violence against Women Partnerships, Women's Act, Community Councils, Social Care and Health Department at Highland Council, the NHS, Elected Members and any other organisations which are deemed to have an interest.

9.2 It is recommended that the consultation begin on 17 August 2021 and run for a period of six weeks to allow for responses to be received and collated to allow the Committee to make an informed decision at their meeting on 26 October 2021. **APPENDIX 2** details the proposed questions that have been prepared for consideration by the Committee. Details of the consultation will be placed on the Council's website and on the Council's social media. The initial consultation period will focus on whether SEVs should be licensed. If the Committee resolve to pass a resolution, a second consultation will be required in relation to the forming of an SEV Policy Statement which will provide a clear indication of the local authorities position in regard to SEVs. **APPENDIX 3** provides the Committee with a proposed timescale if following the initial public consultation, they decide to licence SEVs.

10. Financial Implications

10.1 There are no financial implications arising directly from the consultation process. If the Council decide to pass a resolution, Officers will be required to undertake the exercise of determining the relevant fees associated with an SEV application process.

11. Equality Act Implications

11.1 There are no Human Rights issues arising directly from this Report. A full equalities impact assessment will be required as part of any future SEV policy development resulting from the consultation and evidence gathering process.

Date: 13 July 2021

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Background Papers: Appendix 1 - Scottish Government Flowchart of SEV Process
Appendix 2 - Proposed Consultation Questions
Appendix 3 – Proposed Timescale for SEV Process

Consider whether to make a resolution to licence sexual entertainment venues (local authorities may wish to seek the views of local people; businesses and Police Scotland prior to deciding whether to pass a resolution)

- Licensing can take effect no earlier than one year from the date the resolution is passed.
- No resolution means no requirement for SEV operators to obtain a licence

If a decision is taken to licence SEV

- Develop a policy statement in consultation with relevant stakeholders, including violence against women partnerships, child protection committees and community councils.
- Engage with any existing SEV operators to ensure they are aware of what action they will need to take.

Publish the resolution and policy statement no later than 28 days before the date that the resolution comes into effect.

Determine and publish a list of who is to receive a copy of an application from the SEV licence applicant.

Consider all applications received by the date specified in the resolution to licence SEV under the procedure set out at Schedule 2 of the Civic Government (Scotland) Act 1982. In granting or refusing SEV licence applications ensure that the competing interests of individuals alongside those of the community have been fairly considered and appropriately balanced.

Periodically review the number of SEV determined, policy statement and list of who is to receive a copy of an application.

Proposed Consultation Questions for whether to licence Sex Entertainment Venues

The first section will focus on the question of whether SEVs should be licensed and the impact on operators, those working in SEVs as well as local communities.

Do you think SEVs in the Highlands should be licensed?

Do you think that SEV's have a positive or negative impact on the community?

Do you think there would be a positive/negative impact on those operating SEVs and those working in SEVs if they were licensed by Highland Council?

Do you think there would be a positive/negative impact on the communities and surrounding vicinity to SEVs if they were licensed?

The second section will focus on where SEVs should be located and what the maximum number of SEVs should be within any given locality.

Highland Council can set the maximum number of SEVs for individual localities within Highland. This number could be zero. Do you think that the City should set a figure for the maximum number of SEVs within any particular locality?

Are there any localities within Highland that you consider to be inappropriate for SEVs?

We would like your views on whether SEVs should be allowed to open near particular areas and types of building. Please state how compatible an SEV would be near to the following types of area or building.

Mainly residential;

Rural areas;

Industrial areas;

Late night economy areas;

Historic buildings;

Schools;

Family leisure facilities;

Mainly retail;

Cultural facilities;

Youth facilities; and

Places of Worship

The third section will focus on the contents of any draft policy statement formulated by the Committee. This would also be subject to further consultation.

If Highland Council adopts an SEV policy, please indicate which issues the policy should address?

The suitability of the applicant and those connected to them to own and manage a SEV?

Detailed operating rules for the management of a SEV if a licence is granted.

The interior layout of the premises and the facilities available

The character of the localities and their compatibility with SEVs

Compatibility of SEVs with particular uses of that local area

Please provide us with details of any other issues you feel will be relevant.

Action	Proposed Timescale
The Council consult with relevant stakeholders to help inform their decision to licence SEVs within the local authority area.	3 August 2021
Initial Consultation is carried out for a period of 6 weeks.	17 August to 28 September 2021
A report summarising the consultations findings is brought to Committee for review and consideration. The Committee must decide whether to licence SEVs. Officers are instructed by the Committee to carry out the consultation to assist in formulating the draft policy statement.	26 October 2021
The Council will consult with relevant stakeholders including existing SEVs to assist in formulating the draft policy statement.	Early November 2021 to Mid-December 2021
A report with draft policy statement, forms relating to the application process and guidance is brought to Committee for review and consideration.	April 2022
A resolution and policy statement are published electronically or circulated in the local newspaper.	Early April/Late April 2022
The Resolution and Policy Statement come into effect on the date specified by the Committee.	No later than 26 October 2022