

Agenda item	6
Report no	HLC/058/21

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 26 October 2021

Report title: Sex Entertainment Venues

Report by: The Principal Solicitor – Regulatory Services

1. Purpose/Executive summary

- 1.1** This report seeks to invite the Committee to consider the responses received following the consultation carried out in relation to the provision of a new licensing regime for Sex Entertainment Venues in the Highlands, and in light of those responses to decide whether Sex Entertainment Venues should be licensed.

2. Recommendation

- 2.1** This Report invites the Committee to:

- (i) note and consider the views expressed in response to the public consultation exercise which was carried out between 17 August 2021 and 21 September 2021;
- (ii) determine whether a licensing regime for Sexual Entertainment Venues should be introduced by way of resolution under the Civic Government (Scotland) Act 1982 and if appropriate instruct the Acting Principal Solicitor to publish a draft notice of the resolution as required either electronically or in a newspaper circulating locally;
- (iii) In the event that a resolution is passed by the Licensing Committee, instruct the Acting Principal Solicitor to prepare a draft SEV Policy Statement for public consultation and carry out an evidence gathering process on the draft SEV Policy Statement.

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.

5.0 Public Consultation Response

- 5.1** Following consideration of a report at its meeting on 3 August 2021, the Licensing Committee (“the Committee”) instructed the Acting Principal Solicitor to carry out a public consultation to establish views on whether SEVs should be licensed and if so, what the appropriate number should be together with some policy statement considerations, if a resolution were to be passed.
- 5.2** On 17 August 2019, a consultation was published seeking views on the future policy development of SEVs. The consultation document provided an explanation of the changes to the 1982 Act and the discretionary power for Local Authorities to determine whether SEVs in their Local Authority should be licensed. The consultation document also included information on:
- The definition of SEVs under the 1982 Act;
 - The current legal position in relation to SEVs; and
 - The potential impact the 1982 Act could have on SEVs.

A link to an online questionnaire was also provided. The online questionnaire was split into three sections. The first section examined a number of issues for respondents to consider in relation to whether SEVs in Highlands should be licensed. These included:

- The current impact of SEVs on the local community;
- The positive or negative impact on SEV operators and sex workers;
- The positive or negative impact on the community if SEVs were licensed; and
- The location of where SEVs could open if they were licensed.

The responses received in respect of the first section can be found at **APPENDIX 1**.

5.3 The second part of the consultation, focused on Highland's local circumstances, if a resolution was passed to licence SEVs. These following issues were considered:

- If SEVs were licensed, where their location would be most/least compatible in terms of the following types of area or building:
 - Mainly residential areas;
 - Rural areas;
 - Industrial areas;
 - Late night economy areas;
 - Historic buildings;
 - Schools
 - Family leisure facilities
 - Mainly retail areas;
 - Cultural facilities
 - Youth facilities
 - Places of worship
- What localities if any, within Highlands would be an appropriate location for a SEVs?
- What localities within Highland would be an inappropriate location for SEVs?
- What the maximum number of SEVs (this number could be zero) within any particular locality should be?

The responses received in respect of the second section can be found at **APPENDIX 2**.

5.4 Section 45C of the 1982 Act requires a local authority to develop and publish a SEV Policy Statement if the local authority decides to licence SEVs. The third and final section of the online questionnaire considered which issues the policy should address and included:

- The suitability of the applicant and those connected to them.
- Operating rules for the SEV
- The interior layout and facilities available
- The character of the local area and its compatibility with an SEV

A summary of the responses received in respect of the first section can be found at **APPENDIX 3**.

5.5 The consultation document was available on the Council' online consultation platform from 17 August 21 to 28 September 21. The consultation document was also sent to Elected Members, an SEV operator, Community Councils, Women's groups, and organisations, including Inverness Women's Aid, NHS Highland, Social Care and Health Department at Highland Council, the NHS, Police Scotland, Religious groups and organisations and Youth groups and organisations.

6.0 Responses to Public Consultation

6.1 A total of 442 responses was received to this consultation which reflects the level of interest in considering whether SEVs should be licensed.

6.2 In response to the question of whether the licensing of SEVs should be introduced in the Highlands, 286 (64%) responses were in favour of licensing SEVs and 159 (36%) respondents were not in favour of introducing a licensing regime. Of those respondents who were in favour of the licensing regime being introduced, some respondents stated a licensing regime would:

- Allow for better monitoring and protection of those working in the industry. Reduce the exploitation of vulnerable women;
- Bring various towns and cities within the Highlands in line with other cities in Scotland;
- Encourage the diversity of night-life entertainment within the Highlands;
- Assist in regulating the working conditions of SEVs for workers
- Generate community engagement in terms of any proposed future SEVs

For those not in favour of the licensing regime, their responses must be viewed in the light of other responses below. The additional comments that were made suggest a lack of understanding of the consequences of choosing not to license SEVs. Some respondents appeared to assume that choosing to license the activity would be permissive rather than the primary means of control. They therefore appeared to answer “no” to licensing the activity when they wanted the activity restricted or completely prevented.

6.3 In fact, of the 159 respondents who advised that they were not in favour of licensing SEVs, 126 (79%) respondents advised that they did not believe any areas were suitable for SEVs or the areas that any SEVs operated in, should be restricted. These inconsistencies drawn from the data received suggest that a larger proportion of respondents who wanted to restrict the potential for SEVs to operate within Highlands, also wanted them to be licensed.

6.4 The Impact of SEVs

6.5 In relation to the perceived nature of the impact of SEVs on the local community, SEV operators and workers the following responses are summarised below:

6.6	Number Respondents	of	Do you think that SEVs have a positive or negative impact on the community?
	93		Positive
	289		Negative
	57		Don't know

6.7	Number Respondents	of	Would the impact on SEVs and SEV workers be positive or negative if SEVs were licensed by the Committee
	217		Positive
	157		Negative
	67		Don't know

Number of Respondents	Do you think there would be a positive or negative impact on the communities and surrounding vicinity to SEVs if they were licensed?
196	Positive
200	Negative
44	Don't know

6.9 Suitable Location

6.10 In terms of the areas that respondents felt were inappropriate for an SEV, the majority of respondents felt that most areas (with the exception of late-night economy areas), but particularly places of worship, youth facilities, family leisure centres, schools and residential areas near families would not be appropriate locations. **APPENDIX 2** provides further consideration of the compatibility and suitability of SEVs near various locations.

6.11 In terms of whether there were any areas within the Highlands that would be appropriate for an SEV, 210 respondents (48%) believed that there were no appropriate areas in the Highlands for an SEV to be located. 76 (17%) respondents suggested that Inverness or the City Centre was the most appropriate location, while 52 (11%) respondents suggested town centres. Further suggestions for appropriate locations were provided by 51 (12%) respondents and include the following:

- Anywhere in the Highlands
- Late night economy areas.
- Industrial or rural areas
- Nightclubs
- Secluded areas

6.12 Maximum Number of SEVs

6.13 In relation to the question of what an appropriate number of SEVs would be, if the Committee were minded to pass a resolution to licence SEVs, the responses received are as follows:

- 299 (51%) respondents believed that the Committee should set a maximum number for SEVs in the Highlands, although they did not specify what this number should be.
- 1 respondent suggested setting the maximum number at 3.
- 1 respondent suggesting setting the maximum number at 5

91 (21%) respondents believed that the Committee should not set a maximum number for SEVs. Respondents provided some of the following reasons for this position:

- Setting a maximum number for SEVs would minimise any future opportunity for an SEV business to open within Highland which in turn may affect employment opportunities for women within the council boundaries and the more worrying effect of driving the stripping industry underground. This latter effect would undermine the Council's aims to preserve public safety and the prevention of crime and disorder, by forcing workers into unsafe and unregulated spaces.
- SEVs encourage night-time tourism, and this is evident in cities such as Glasgow and Edinburgh.

55 (12%) respondents believed that the maximum number of SEVs should be set to zero; Of the respondents who wished the SEV limit to be set at 0, some of the reasons provided for this position were as follows:

- SEVs are intrinsically negative and problematic.
- Setting the limit to zero will prevent crime and putting minors at risk.
- A stand against the exploitation of women and girls needs to be taken.
- SEVs are not compatible with the aims of protecting young people and reducing violence against women.
- The limit should be set to zero to protect the family orientated values of the Highlands.

6.14 The following additional comments were provided by a number of respondents:

- It depends on the locality;
- There should be no limit unless numbers become a problem;
- There is no need for the Committee to set a limit due to SEVs falling into a very niche market and in all likelihood the economy would not support more than 2 within any locality. Inverness has had a SEV for a number of years and it does not appear to be busy.
- Any maximum number of SEVs should have due regard to other licensing policies which limit the number of other licensed premises, it should not be at odds with any other licensing policy, or maybe review the existing policies to be all encompassing;

6.15 Policy

6.16 The consultation also considered the content of any SEV policy that would be formulated if the Committee chose to licence SEVs. Over 60% of the responses received in terms of question 9 of the survey attracted a large degree of support from respondents who were in favour of creating policies that considered the following: the suitability of the applicant and those connected to them; detailed operating rules for managing SEVs, the interior layout of the premise, the character of the locality and its compatibility with an SEV; and the particular use of the local area.

6.17 Additional Comments

6.18 The consultation also attracted further comments from 269 respondents. These additional comments can be found at **APPENDIX 3** of this report. Of the 269 responses received a number of common themes can be clearly identified, most notably the concern of SEVs contributing to an industry of commercial sexual exploitation, which includes prostitution, lap dancing, stripping, pornography and trafficking. Many of the responses received highlighted the link between the objectification of women, sexual violence and harassment which is believed to be consistently associated with each other. SEVs normalise the representation of women and girls as sexual objects, who are always sexually available. They make sexual harassment seem normal within an establishment, that would otherwise be considered harassment in any other context. Portraying women as sexual objects normalises sexual violence and for many respondents this form of entertainment runs counter cultural to the culture of the Highlands and the advancement of women's equalities.

- 6.19** In addition, many of the responses highlighted the issue of SEVs and women's sense of safety. This issue of safety was not limited to the safety of workers but also to the negative impact on women's safety in wider society. For some respondents, the presence of SEVs makes women and girls feel threatened and uncomfortable, which in turn creates the perception that these areas are 'no go' areas as women seek to minimise risks to their safety and wellbeing.
- 6.20** Many of these issues highlighted above form the basis of strategies introduced by Scottish Government and further information is provided below:

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/>

6.21 Considering local circumstances-A Police Scotland Perspective

- 6.22** As part of the consultation process and in accordance with Scottish Government guidance, Police Scotland and in particular Highland's Human Trafficking Champion was consulted to provide an understanding of the current local circumstances in particular issues relating to human trafficking and exploitation within the Highlands and its correlation (if any) to SEVs and key considerations to ensure that these venues should have to meet the highest standards in relation to:

- Preventing Crime and Disorder
- Securing Public Safety
- Preventing Public Nuisance
- Protecting and Improving Public Health; and
- Protecting Children and Young Persons from Harm.

- 6.23** In terms of current local circumstances, Police Scotland advised that instances of human trafficking do occur. Most often Police Scotland come across victims of trafficking within the Inverness area, but occasionally in the wider Highland area. These instances tend to be individual cases rather than groups of people. It is rare that Police Scotland come across groups of people that have been trafficked. The persons they come into contact with who have been trafficked into the Highland area are often also victims of labour exploitation and/or sexual exploitation. Although Police Scotland do not have any information linking human trafficking with any SEV's in the Highland area, it is important to note the potential correlation between labour and/or sexual exploitation and SEV's.

- 6.24** Police Scotland's role in society is to uphold the law and in so doing they seek to improve the wellbeing of the community in the Highlands. Therefore, when it comes to licensing of SEV's, the most important aspect from their perspective is that employees in such

establishments are not exploited. This would include sexual exploitation and labour exploitation. As such, careful consideration needs to be given to ensure that licence holders have clear accountability around their employee 'supply chains'. Where do they employ their staff from? What records do they keep around about those they employ? Some of those who work in SEV's often live a transient lifestyle, it would be important that licence holders are required to keep clear records around addresses of employees, employee's immigration status, copy of their passport and/or other identification documents. Record keeping of this nature will ensure that those involved in criminal behaviour and those who seek to use SEV's for exploitative purposes will find it more difficult to do so, whilst also ensuring a duty of care on the licence holder as an employer to ensure the welfare of their staff.

7.0 Next Steps

- 7.1 Following consideration of the responses received from the public consultation, the Committee must first decide based on the evidence made available to it, whether SEVs should be licensed. If the Committee decided to licence SEVs within the Highlands, Section 45B of the 1982 Act requires the Committee to pass a resolution for SEV licensing to have effect in the Highlands. The resolution must specify the date that these changes will take effect. This must be at least one year from the date the resolution is passed. The Committee are invited to determine a date from which the requirement to license will have effect being no earlier than the 26 October 2022. 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. A copy of the draft resolution is set out in **APPENDIX 4** of this report. 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 to allow for any representations to be made. If no representations are received, Officers can proceed to publish the final notice.
- 7.2 If the Committee is minded to pass a resolution licensing SEVs, it is suggested that a further report be submitted to this Committee recommending a process for applications, including details about the application forms and fees. Furthermore, this report will provide, for the Committee's approval, a draft Licensing Statement which is required in terms of the Act. The draft Licensing Statement will be prepared in consultation with interested groups as set out in the Recommendations.
- 7.3 In addition, if the Committee resolve to licence SEVs a mapping exercise will be carried out to assist the Committee with a wide range of issues including:
- 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;

This mapping exercise will also assist Members, as part of the licensing policy, to determine the relevant localities and allow the local authority to set the appropriate number (this could be nil) of SEVs within each locality. It is open to the local authority to consider using the 21 Ward areas within the Highland area as the "relevant localities". It is recommended by Officers that any further discussion of localities and setting the appropriate number be considered as part of the development of the licensing policy.

7.4 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.

8 Financial Implications

8.1 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.

9.0 Equality Act Implications

9.1 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: 5 October 2021

Author: Rhoda Banfro

Background Papers: Appendix 1- Part 1 of the Consultation
Appendix 2- Part 2 of the Consultation
Appendix 3-Part 3 of the Consultation
Appendix 4-Proposed Draft Resolution