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Council Building
2 High Street
Perth
PH1 5PH

10 November 2020

A Virtual Meeting of the **Licensing Committee** will be held via Microsoft Teams on **Thursday, 19 November 2020 at 10:00.**

If you have any queries please contact Committee Services - Committee@pkc.gov.uk.

KAREN REID
Chief Executive

Those attending the meeting are requested to ensure that all notifications area silent on their device and other devices are in silent mode.

Please note that the public section of the meeting will be broadcast live via Microsoft Teams.

Members:

Councillor Chris Ahern (Convener)
Councillor David Illingworth (Vice-Convener)
Councillor Kathleen Baird
Councillor Rhona Brock
Councillor Audrey Coates
Councillor Roz McCall
Councillor Andrew Parrott
Councillor John Rebbeck
Councillor Fiona Sarwar
Councillor Colin Stewart
Councillor Richard Watters
Councillor Mike Williamson

Licensing Committee

Thursday, 19 November 2020

AGENDA

MEMBERS ARE REMINDED OF THEIR OBLIGATION TO DECLARE ANY FINANCIAL OR NON-FINANCIAL INTEREST WHICH THEY MAY HAVE IN ANY ITEM ON THIS AGENDA IN ACCORDANCE WITH THE COUNCILLORS' CODE OF CONDUCT.

- 1 WELCOME AND APOLOGIES**
- 2 DECLARATIONS OF INTEREST**
- 3 MINUTE OF MEETING OF THE LICENSING COMMITTEE OF 8 OCTOBER 2020 FOR APPROVAL AND SIGNATURE 5 - 6**
(copy herewith)
- 4 LICENSING OF SEXUAL ENTERTAINMENT VENUES - CIVIC GOVERNMENT (SCOTLAND) ACT 1982 7 - 38**
Report by Head of Legal and Governance Services (copy herewith 20/221)
- 5 VARIATION OF A LATE HOURS CATERING LICENCE NO LH119 39 - 40**
Report by Head of Legal Services (copy herewith 20/224)

IT IS RECOMMENDED THAT THE PUBLIC AND PRESS SHOULD BE EXCLUDED DURING CONSIDERATION OF THE FOLLOWING ITEM(S) IN ORDER TO AVOID THE DISCLOSURE OF INFORMATION WHICH IS EXEMPT IN TERMS OF SCHEDULE 7A TO THE LOCAL GOVERNMENT (SCOTLAND) ACT 1973

- P1 SUSPENSION OF A SECOND HAND DEALER LICENCE SD377**
- P2 GRANT OF TAXI/PRIVATE CAR HIRE DRIVER LICENCE TD88**

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All Council Services can offer a telephone translation facility.

LICENSING COMMITTEE

Minute of Meeting of the Licensing Committee held virtually via Microsoft Teams on Thursday 8 October 2020 at 11.00am.

Present: Councillors C Ahern (Convener), D Illingworth (Vice-Convener), K Baird (up to Item 3), R Brock (up to Item P2), A Coates, R McCall, A Parrott and C Stewart.

In Attendance: PC L Gregge, PC K Thomson-Craig and Sgt J Gordon (all Police Scotland); M McLaren, S Michie, A Taylor and A Brown (all Corporate and Democratic Services).

Apologies for Absence: Councillors J Rebbeck, F Sarwar, R Watters and M Williamson.

Councillor C Ahern (Convener), Presiding.

. **WELCOME AND APOLOGIES**

The Convener welcomed all present to the meeting. Apologies for absence were noted as above.

. **DECLARATIONS OF INTEREST**

There were no declarations of interest in terms of the Councillors' Code of Conduct.

. **MINUTES**

The Minute of Meeting of the Licensing Committee of 27 August 2020 (Arts.) was submitted and approved as a correct record.

COUNCILLOR BAIRD LEFT THE MEETING AT THIS POINT DUE TO CONNECTIVITY ISSUES.

IT WAS AGREED THAT THE PUBLIC AND PRESS SHOULD BE EXCLUDED DURING CONSIDERATION OF THE FOLLOWING ITEMS IN ORDER TO AVOID THE DISCLOSURE OF INFORMATION WHICH IS EXEMPT IN TERMS OF SCHEDULE 7A TO THE LOCAL GOVERNMENT (SCOTLAND) ACT 1973.

. **RENEWAL OF TAXI / PRIVATE HIRE CAR DRIVER LICENCE NO. TD1630**

There was submitted a report by the Head of Legal and Governance Services (20/176) together with a letter of representation dated 21 September 2020 from Police Scotland regarding Renewal of Taxi/Private Hire Car Driver's Licence No. TD1630.

The applicant was in attendance. The representative of Police Scotland addressed the Committee and answered Members' questions.

FOLLOWING A SHORT ADJOURNMENT, THE COMMITTEE RECONVENED.

Resolved:

Consideration of renewal of Taxi/Private Hire Car Driver's Licence No TD1630 be deferred to a future meeting of the Licensing Committee as soon as possible following the applicant's scheduled court date in February 2021.

COUNCILLOR BROCK LEFT THE MEETING AT THIS POINT DUE TO CONNECTIVITY ISSUES.

SUSPENSION OF TAXI/PRIVATE HIRE CAR DRIVER LICENCE NO. TD1711

There was submitted a report by the Head of Legal and Governance Services (20/177) together with (1) letters requesting suspension dated 10 July 2020 and 24 August 2020 from Police Scotland; (2) a letter of support from the licence holder; (3) letter from North Cumbria Magistrates' Court; (4) character reference submitted on behalf of the licence holder by his employer; and (5) email from Fair City School of Motoring, regarding Suspension of Taxi/Private Hire Car Driver's Licence No. TD1711.

The applicant was in attendance, accompanied by his employer.

The representative of Police Scotland addressed the Committee and answered Members' questions. The applicant and his employer also addressed the Committee and answered Members' questions.

FOLLOWING A SHORT ADJOURNMENT, THE COMMITTEE RECONVENED.

Resolved:

Taxi/Private Hire Car Driver Licence No. TD1711 be suspended for the duration of the licence i.e. to 7 January 2022, on the grounds that the licence holder is no longer a fit and proper person to be the holder of the licence.

COUNCILLOR STEWART REQUESTED THAT HIS DISSENT TO THE DECISION TAKEN BE RECORDED.

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# **PERTH AND KINROSS COUNCIL**

## **Licensing Committee**

**19 November 2020**

### **Licensing of Sexual Entertainment Venues – Civic Government (Scotland) Act 1982**

#### **Report by Head of Legal & Governance Services (Report 20/221)**

#### **PURPOSE OF REPORT**

To provide the Licensing Committee with the results of the public consultation, and to make proposals for further action.

#### **1. BACKGROUND / MAIN ISSUES**

- 1.1 The Air Weapons and Licensing (Scotland) Act 2015 added new sections to the Civic Government (Scotland) Act 1982 and introduced an optional licensing scheme for local authorities to licence Sexual Entertainment Venues (SEVs) in their area. It is for local authorities to decide whether they wish to licence SEVs. If they are to be licensed, local authorities then decide whether to limit their number and determine individual applications.
- 1.2 This report provides information to the Committee to consider whether to introduce SEVs into Perth and Kinross Council's licensing regime by way of Resolution. This follows the preliminary consideration of this matter at Licensing Committee meeting on 22 August 2019.
- 1.3 If the Committee decides not to licence SEVs then such premises may operate without any licensing requirements relating to the activities and the Council will have no power to regulate permissible types of premises nor limit their number in any locality.
- 1.4 A SEV is defined as any premises at which sexual entertainment is provided before a live audience. The most common examples are lap dancing or strip clubs, but the definition is sufficiently wide to cover other premises where sexual entertainment is provided. Premises where sexual entertainment is provided on no more than 4 occasions in a twelve-month period are exempt e.g. premises that cater for the occasional stag or hen party.
- 1.5 Sexual entertainment means (a) any live performance, or (b) any live display of nudity, which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

- 1.6 The Scottish Government Guidance recommends that local authorities engage with local people, businesses and relevant stakeholders before deciding whether to pass a resolution to bring SEVs into the licensing regime. An initial consultation with interested groups was sent out in the form of an email questionnaire followed by a subsequent consultation document which was published on the Council's Consultation Hub on 16 January 2020.
- 1.7 The consultation document was also sent directly to Police Scotland, Community Councils, Perth & Kinross Violence Against Women Partnership Rape and Sexual Abuse Centre, Perth and Kinross, Equalities Strategic Forum, Safer Communities Team, Child Protection Inter Agency Co-ordinator and all Councillors.
- 1.8 The consultation concluded on 6 April 2020. A copy of the questions asked is attached at Appendix 1 and a summary of the results is attached at Appendix 2. A total of 12 responses were received, with all 12 in favour of adopting a licensing regime. In terms of general comments, concerns were expressed that SEVs would increase sexual violence towards women. As there are currently no SEVs in Perth and Kinross, no statistics are available on this point.

## **2. PROPOSALS**

- 2.1 It is proposed that the Licensing Committee consider the responses to the consultation exercise and in light of those responses, pass a resolution to licence sexual entertainment venues in Perth and Kinross.
- 2.2 In considering whether to pass a resolution to license SEVs the Committee may take account of the key aims of the civic government licensing, namely:
- The preservation of public safety and order; and
  - The prevention of crime.
- 2.3 In considering whether to pass a resolution to licence SEVs in Perth and Kinross, the licensing authority must also consider other relevant factors and legislation, including the EU Service Directive, and the European Convention on Human Rights (ECHR) which require local authorities to operate proportionate and justifiable licensing regimes.
- 2.3.1 The EU Service Directive prohibits a local authority from implementing an "Authorisation Scheme" (such as a new Licensing regime) unless it can be shown (a) it does not discriminate against a provider of a service; (b) the need for the scheme is justified by an overriding reason relating to the public interest; and (c) the objective being pursued cannot be achieved by a less restrictive measure. It is considered that these criteria are met and therefore the EU Services Directive does not prevent the Council from establishing a regime of SEV licensing.

- (a) is satisfied as the regime would be open to anyone who meets the statutory criteria;
- (b) is satisfied as the overarching aim of the regime is to protect the public as well as the workers involved in the services and this can be achieved through the licence and imposition of conditions to any licence granted which would govern issues such as safety, health and hygiene, work permits. The regime would also allow members of the public and Police Scotland to make objections and representation in response to any application, the latter being able to look into matters including people trafficking, money laundering and Proceeds of Crime.
- (c) is satisfied as there is no less restrictive measure available to the Council – there is either a licensing regime or there isn't. The Brightcrew case involving the City of Glasgow Licensing Board brought about the change in the legislation following an unsuccessful attempt to control SEVs through alcohol licensing.

2.3.2 The ECHR protects the rights of SEV operators who have existing businesses. There are no SEVs currently operating in the Perth and Kinross area. Accordingly, the Convention does not prevent the Council from establishing a system of SEV licensing.

2.4 Licensing Authorities are therefore required to consider whether the decision to licence SEVs in their area is proportionate and justifiable. It is considered that none of the relevant legislation prevents the Council from establishing a licensing system for SEVs, and it would also be consistent with the Scottish Government Guidance to do so.

2.5 There are currently no SEVs operating within the Perth and Kinross area. The Committee may resolve to license SEVs even if no such premises currently exist. A specific licensing regime for SEVs will allow the Committee to consider local circumstances in setting the number of premises able to operate in Perth and Kinross. This could be nil. It will also allow the Committee to regulate these premises appropriately by attaching conditions to SEV licenses

2.6 If the Committee decides to introduce SEV licensing in Perth and Kinross, it requires to make a Resolution specifying a date from which this will take effect. This date requires to be at least 12 months from the date on which the Resolution was passed. Then, not less than 28 days prior to the commencement date, the Council must publish a notice advertising that they have passed a Resolution to licence SEVs in its area. The notice must state the general effect of the licensing procedure and provisions at Schedule 2 of the 1982 Act (which set out the procedure for grant, refusal and variation of licences among other things) as modified for SEVs. This must be published either electronically or in a local newspaper.

- 2.7 It is proposed that the Committee should make a Resolution to require that SEVs hold a licence in the following terms:

*“The Committee resolves that, from and after 19 November 2021, Schedule 2 of the Civic Government (Scotland) Act 1982 (as modified by Section 76 of the Air Weapons and Licensing (Scotland) Act 2015) is to have effect in the Perth and Kinross Council area in relation to Sexual Entertainment Venues.”*

- 2.8 In this 12-month period the Council is required to draft and publish a SEV policy statement. The policy statement will provide details of the licensing system, including the types of premises to be licensed, the appropriate number of premises and such like. The statement must consider the impact of SEVs in Perth and Kinross and how it will affect the following:

- Preventing public nuisance, crime and disorder
- Securing public safety
- Protecting young children and young women from harm
- Reducing violence against women.

- 2.9 In order to formulate the policy, further consultation and evidence gathering exercises will be undertaken. This would include the public and relevant interest groups. The draft policy would then be considered at a future meeting of the Committee.

### **3. CONCLUSION AND RECOMMENDATION(S)**

- 3.1 It is recommended that the Licensing Committee:

- (i) Note and consider the responses to the consultation exercise.
- (ii) Decide whether to license SEVs in Perth and Kinross.
- (iii) Make a resolution that from and after 19 November 2021, Schedule 2 of the Civic Government (Scotland) Act 1982 (as modified by Section 76 of the Air Weapons and Licensing (Scotland) Act 2015) is to have effect in the Perth and Kinross Council area in relation to Sexual Entertainment Venues.
- (iv) Requests the Head of Legal and Governance Services to prepare a SEV Policy Statement in terms of Section 45C of the 1982 Act, consult on that Policy Statement and bring a subsequent report to Committee for approval prior to November 2021.

#### **Author(s)**

| <b>Name</b> | <b>Designation</b> | <b>Contact Details</b>                                         |
|-------------|--------------------|----------------------------------------------------------------|
| D. Gilkison | Licensing Manger   | <a href="mailto:dgilkison@pkc.gov.uk">dgilkison@pkc.gov.uk</a> |

#### **Approved**

| <b>Name</b>  | <b>Designation</b> | <b>Date</b>     |
|--------------|--------------------|-----------------|
| Sarah Rodger | Legal Manager      | 4 November 2020 |

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Council Text Phone Number 01738 442573

## 1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

| <b>Strategic Implications</b>                       | <b>Yes / None</b> |
|-----------------------------------------------------|-------------------|
| Community Plan / Single Outcome Agreement           | <b>None</b>       |
| Corporate Plan                                      | <b>Yes</b>        |
| <b>Resource Implications</b>                        |                   |
| Financial                                           | <b>Yes</b>        |
| Workforce                                           | <b>Yes</b>        |
| Asset Management (land, property, IST)              | <b>None</b>       |
| <b>Assessments</b>                                  |                   |
| Equality Impact Assessment                          | <b>Yes</b>        |
| Strategic Environmental Assessment                  | <b>None</b>       |
| Sustainability (community, economic, environmental) | <b>None</b>       |
| Legal and Governance                                | <b>Yes</b>        |
| Risk                                                | <b>None</b>       |
| <b>Consultation</b>                                 |                   |
| Internal                                            | <b>Yes</b>        |
| External                                            | <b>Yes</b>        |
| <b>Communication</b>                                |                   |
| Communications Plan                                 | <b>None</b>       |

### 1. Strategic Implications

#### 1.1 Corporate Plan

- 1.2 The Council's Corporate Plan 2018 – 2022 lays out five outcome focussed strategic objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. They are as follows: -

- (i) Giving every child the best start in life;
- (ii) Developing educated, responsible and informed citizens;
- (iii) Promoting a prosperous, inclusive and sustainable economy;
- (iv) Supporting people to lead independent, healthy and active lives; and
- (v) Creating a safe and sustainable place for future generations.

The Licensing function supports the strategic objective 'Creating a safe and sustainable place for future generations' theme of the Corporate Plan, specifically, 'Support communities to feel safe': -

'We will work with partners to ensure all agencies will be identifying and reporting any adult concerns as well as implementing additional measures to identify people in vulnerable circumstances, so people feel safer'.

## **2. Resource Implications**

### Financial

- 2.1 There will be additional licensing revenue from application fees if the local authority decides to pass a resolution to introduce the licensing of SEVs in Perth and Kinross. Fees will be included within the draft policy and brought before the licensing Committee at a later date.

### Workforce

- 2.2 Considerable staff time will be utilised with developing a licensing regime for SEVs. This will be managed within existing resources.

## **3. Assessments**

### Equality Impact Assessment

- 3.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Council to demonstrate that it is meeting these duties.
- 3.2 An equality impact assessment has been carried out for this stage in the process and was found to be relevant. The positive impact of licensing of SEVs will allow the Council to control both the number and location of venues and impose conditions on operators to prevent discrimination, victimisation, harassment and exploitation of predominantly women who may work in or live/work near such venues. A further equality impact assessment will be carried out as part of any future SEV policy development resulting from the consultation and evidence gathering process.

### Strategic Environmental Assessment

- 3.3 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.
- 3.4 Under the provisions of the Local Government in Scotland Act 2003 the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. In terms of the Climate Change Act, the Council has a general duty to demonstrate its commitment to sustainability and the community, environmental and economic impacts of its actions.
- 3.5 The information contained within this report has been considered under the Act. However, no action is required as the Act does not apply to the matters presented in this report.

#### **4. Legal**

- 4.1 The licensing of SEVS is optional under the 1982 Act. This report sets out the process to be followed to bring SEVS within the licensing regime. There is no legal barrier to doing so.

#### **5. Consultation** Internal

- 5.1 Consultation exercise has been undertaken with interested parties.

#### External

- 5.2 A public consultation exercise has been undertaken.

### **2. BACKGROUND PAPERS**

- 2.1 Scottish Government Guidance on SEVs  
<https://www.gov.scot/publications/guidance-provisions-licensing-sexual-entertainment-venues-changes-licensing-theatres/>
- 2.2 Briefing Note issued to the Licensing Committee (22 August 2019).

### **3. APPENDICES**

- 3.1 Consultation Document (Consultation of future policy development of Sexual Entertainment Venues) – Appendix 1
- 3.2 Results of consultation – Appendix 2



## **CIVIC GOVERNMENT (SCOTLAND) ACT 1982**

### **Consultation of future policy development of Sexual Entertainment Venues**

## What do we want to know?

Recently, the Scottish Government passed legislation giving Local Authorities a discretionary power to licence Sexual Entertainment Venues.

The main changes introduced by the recent legislation are summarised below:

A discretionary power for Local Authorities to pass a resolution, if it so wishes, in relation to the licensing of SEVs in its area;

- If a resolution is passed by the Local Authority:
  - it must determine the appropriate number of SEVs for their area;
  - it must prepare a SEV Policy Statement in respect of its functions in relation to the licensing of SEVs taking into account the licensing objectives of public nuisance, crime and disorder, public safety, protecting children and young people from harm and violence against women;
  - there are various grounds for the refusal of a SEV licence including that the number of SEVs in the Local

Authority area or the relevant locality at the time the application is made is equal to or exceeds the number which the Local Authority consider is appropriate for that locality;

- all SEVs would require a SEV licence to operate;
- the resolution must not come into force any earlier than one year from the date the resolution is made by the Local Authority; and
- a SEV Policy Statement must be published by the Local Authority 28 days prior to the resolution coming into effect.

## Statutory Duty

- 1.1 Perth and Kinross Council is the licensing authority for the whole of Perth and Kinross in relation to a wide range of activities. The responsibility of licensing certain activities is delegated to the Licensing Committee (“the **Committee**”).
- 1.2 The Air Weapons and Licensing (Scotland) Act 2015 (the “**2015 Act**”) which came into force on 5 August 2015 provided for changes to be made to the Civic Government (Scotland) Act 1982 (the “**1982 Act**”). Not all the changes to the 1982 Act were introduced immediately.
- 1.3 Recently, the Scottish Government brought into force The Air Weapons and Licensing (Scotland) Act 2015 (Commencement No.9 and Transitional Provisions) Order 2019 which commences a change to the 1982 Act to introduce a new discretionary licensing regime for sexual entertainment venues (“**SEVs**”). This change came into effect on 26 April 2019. As of a result, the Committee now has a discretionary power to determine whether SEVs in its area should be licensed.
- 1.4 As it is a discretionary licensing regime, it is for local authorities to determine whether they wish to license SEVs. If a local authority chooses to license SEVs it must determine what the appropriate number of SEVs in its area should be.
- 1.5 The responsibility for determining policy in relation to SEVs and applications is delegated to the Council’s Licensing Committee. Further information on the Committee, including its membership and terms of reference, is available online:

## What is a SEV?

- 2.1 The 1982 Act defines a SEV at section 45A (2) of the 1982 Act 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*.
- 2.2 Sections 45A(3) and (4) of the 1982 Act provide the following definitions:
  - ‘*audience*’ includes an audience of one;
  - ‘*financial gain*’ includes financial gain arising directly or indirectly from the provision of sexual entertainment;
  - ‘*organiser*’ means either the person who is responsible for the management of the premises or the organisation or management of the sexual entertainment or where that person exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise), that other person;
  - ‘*premises*’ includes any vehicle, vessel or stall but does not include any private dwelling to which the public is not admitted;
  - ‘*sexual entertainment*’ means any live performance or any live display of nudity which is of such a nature, ignoring financial gain, must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience; and
  - “*display of nudity*” means: in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus; and, in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals and anus.

- 2.3 However, section 45A(9) of the 1982 Act provides that 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.

### Current Position

- 3.1 At present there is no legal requirement for SEVs to be licensed in Scotland. If the premise in which the sexual entertainment is taking place sells alcohol then, at present, the premises would only require a Premises Licence under the Licensing (Scotland) Act 2005, which would include “*adult entertainment*” as an activity on the approved operating plan.
- 3.2 However, case law in this area has set a precedent that the licensing regime in the 2005 Act is limited to the regulation of the sale of alcohol only and cannot extend to matters not directly linked to the sale of alcohol. Therefore, there is currently no direct licensing or regulation of this particular type of activity in Scotland.
- 3.3 In consultation with the elected members of the Committee, it was agreed that the Licensing Manager should carry out a public consultation and evidence gathering process in order to establish views on the following: -
- (a) whether SEVs in Perth and Kinross should be licenced;
  - (b) if licensed, what the appropriate number of SEVs for Perth and Kinross should be; and
  - (c) if licensed, what should be included in a SEV policy statement.

### Potential Impact

- 4.1 If following the consultation and evidence gathering process the Committee decides to licence SEVs, section 45B of the 1982 Act requires the local authority to pass a resolution in order for SEV licensing to have effect in its area. If such a resolution is passed, any perspective SEVs in Perth and Kinross would require to apply for a SEV licence under the 1982 Act.
- 4.2 If the Committee does not adopt the discretionary power available to it under the 1982 Act to licence SEVs, these venues would not require to be licensed could be established and operate without any direct regulation from the local authority.
- 4.3 A local authority which chooses to licence SEVs is obliged to publish a SEV policy statement.
- 4.4 Local authorities who pass a resolution to licence SEVs must periodically determine the appropriate number of SEVs for both their area and for each relevant locality within their area. Such determination would be made after a period of consultation.
- 4.5 There are various grounds for refusal of a SEV licence grant or renewal application under the 1982 Act, including that the number of SEVs in the local authority area at the time the application is made is equal to or exceeds the number which the local authority consider is appropriate for that locality.

### Seeking Your Views

- 5.1** This consultation and evidence gathering process is undertaken to seek views on the licensing and regulation of SEVs, with the purpose of determining whether SEVs should be licensed within Perth and Kinross.
- 5.2** In particular, we are seeking views on:
- Whether a licensing regime should be adopted to licence and regulate SEVs;
  - What the appropriate number of SEVs in Perth and Kinross should be, if SEVs were to be licensed; and
  - If the Committee were to decide to pass a resolution to licence SEVs, what matters should be taken into consideration in the development of a SEV policy statement.
- 5.3** This current consultation is an important stage in the future decision making process and possible development of a SEV policy statement and is essential in establishing the evidential basis as to whether or not SEVs in Perth and Kinross should be licensed.
- 5.4** We are therefore seeking your views on a range of issues associated with SEVs. We are particularly keen to hear about the impact SEVs may have upon residents and businesses.

### How to Respond

- 6.1** Appendix A sets out further information on the Committee's discretionary powers to licence SEVs, and the process by which they would be licensed and regulated should a resolution be passed.
- 6.2** Appendix B sets out the matters which would be taken into consideration when considering what the appropriate number of SEVs should be within the city.
- 6.3** Appendix C considers the matter of developing a SEV licensing policy statement and standard licence conditions if SEVs were to be licensed and regulated.
- 6.4** You can respond to as many or as few of the issues as you choose depending upon your particular area of interest or experience. Where possible, please try to explain why you have a certain view, providing any evidence you have in support of that view.
- 6.5** Your response should be sent either:

**By Post:** Licensing Manager  
Legal Services  
2 High Street  
Perth  
PH1 5PH

**By Email:** [civlicensing@pkc.gov.uk](mailto:civlicensing@pkc.gov.uk)

**6.6** Please indicate in your response the capacity in which you are responding, for example, a member of the public, elected member, Community Council, SEV operator or someone who works within a SEV.

**6.7** Your response should be received by no later than **Monday 6 April 2020** in order to ensure that your views are considered as part of the consultation exercise.

### Next Steps

**7.1** Once this consultation exercise has been completed, the Committee intends to hold evidence sessions with a representative cross section of those who have taken part in the consultation in order to further explore the views expressed and to assess the evidence available to support any decisions that are made by the Committee.

**7.2** Following the consultation and evidence gathering process, the Committee will consider the views and evidence provided to it. If considered appropriate, it may agree a resolution and set an appropriate number of SEVs within Perth and Kinross. If a resolution is passed, a SEV draft policy statement will be issued for further consultation.

**7.3** All of the feedback received will be reviewed and evaluated before a final decision is made by the Committee regarding whether or not a resolution should be passed requiring SEVs to be licensed in Perth and Kinross.

### Further Information

**8.1** If you would like further information on the consultation exercise or to discuss any other aspect of the approach to SEV Licensing, please contact:

Debra Gilkison, Licensing Manager, Legal and Governance Service

#### Email:

civiclicensing@pkc.gov.uk

### Confidentiality & Data Protection

**9.1** The local authority will process any personal data you provide in your response appropriately in accordance with the Data Protection Act 2018. The information provided by you will be used by Perth and Kinross Council to record details of your comments on the proposal. Your personal information will not be disclosed to third parties except as described below. The Council may check information provided by you, or information about you provided by a third party, with other information held by us. We may also get information from certain third parties or share your information with them in order to verify its accuracy, prevent or detect crime, protect public funds or where required by law. For further information, please look at our website [www.pkc.gov.uk/dataprotection](http://www.pkc.gov.uk/dataprotection) Email [dataprotection@pkc.gov.uk](mailto:dataprotection@pkc.gov.uk) or phone 01738 477933.

- 9.2** The local authority intends to publish a summary of responses received to the consultation exercise.
- 9.3** The Freedom of Information (Scotland) Act 2002 gives the public a right of access to information held by the local authority; this includes any responses we receive to the consultation exercise.
- 9.4** The local authority may disclose your response to third parties on request. In disclosing responses, the local authority will take appropriate steps to redact personal data subject to the relevant provisions of the 2018 and 2002 Acts.
- 9.5** The local authority will hold your response for a period of 5 years from the date it is received. At the end of this period your response will be destroyed unless there are exceptional circumstances that require the response to be retained for a longer period.

### A

#### Appendix A: Should SEVs be licensed?

- A.1** The local authority now has the discretionary power to pass a resolution requiring SEVs to be licensed. If a resolution not setting the limit at zero was passed by the Committee, all SEVs would require to apply for a licence and the Committee would have to determine the appropriate number of SEVs.
- A.2** If the Committee were to pass such a resolution it would not come into effect until at least a year after the date on which the resolution is passed. As detailed above, if a resolution were passed, any SEVs wishing to open in Perth and Kinross would require a SEV licence. The process which SEVs would then be required to complete to apply for such a licence would be as follows:
1. The applicant would apply to the local authority for a licence to operate a SEV.
  2. A Site Notice would require to be displayed in the immediate vicinity of the premises where it can be conveniently read by the public for a total of 21 days.
  3. A copy of the SEV licence application must be given to Police Scotland, Scottish Fire and Rescue, Planning, Environment Services and any other relevant consultees.
  4. At this stage, there would be a period of time during which objections to the application and representations in favour of the application could be made to the local authority.
  5. If after consideration the Committee was to decide to grant a SEV licence, various conditions could be attached to the licence to impose control over the running of the SEV.
- A.3** The Committee would be entitled to refuse the grant of a SEV licence on the following grounds:
- unsuitability of the applicant having been convicted of an offence or for any other reason;
  - that the business would be carried on for the benefit of someone other than the applicant (who would have been refused the licence if they had applied themselves);

## SEEKING YOUR VIEWS

- that the number of SEVs in the local authority area at the time the application is made is equal to or in excess of the number which the local authority has deemed to be appropriate; or
- that the grant of the licence would be inappropriate considering the character of the locality, use to which any premises in the vicinity are put, layout, character or condition.

**A.4** There is a right of appeal against a decision of the Committee not to grant a SEV licence. An appeal could be made on the grounds that the local authority erred in law, based their decision on an incorrect material fact, acted contrary to natural justice or exercised their discretion unreasonably.

**A.5** As noted previously, if following this consultation the Committee were to decide not to pass a resolution providing for the licensing of SEVs, then no licence would be required to operate a SEV. Existing SEVs could continue to operate and new SEVs could be established without the need for a SEV licence. The local authority would continue to have no direct control or regulation over the provision of sexual entertainment within SEVs.

**A.6** When deciding whether to pass a resolution requiring SEVs to be licensed, the Committee will require to consider potential implications that this may have in relation to the European Convention of Human Rights (ECHR). The Committee is required to take account of the competing ECHR rights of individuals alongside those of the community.

**A.7** The Committee will require to consider the rights which SEV operators may have under the ECHR, particularly under Article 1, Protocol 1 (peaceful enjoyment of possessions) and Article 10 (freedom of expression) and should consider whether a decision to licence SEVs is proportionate and justifiable in accordance with these ECHR rights.

**A.8** In addition to the ECHR, the Committee is required to give due regard to their Public Sector Equality Duty when making any decisions on the discretionary powers available to it under the 1982 Act.

**A.9** The Committee must also have regard to the EU Services Directive and the Regulatory Reform (Scotland) Act 2014 when considering whether to pass a resolution to licence SEVs and if so, the appropriate number of SEVs in its area.

**A10.** When determining the appropriate numbers of SEVs and which localities (if any) would be suitable for SEVs to be located, the local authority may have regard to the following factors:

## SEEKING YOUR VIEWS

- Whether there are any SEVs already operating in the locality;
- The character of the locality, e.g. principally residential, night-time economy, etc.;
- The location of schools, places of worship, women's refuges or other services focussed on supporting women, children and young people;
- Whether the locality is of historical or cultural importance;
- Whether the locality contains premises or areas which are frequented by children, young persons or families for example parks, libraries or swimming pools; and
- Whether there have been incidents involving anti-social behaviour, sexual assaults, prostitution or more minor harassment reported within the locality.

### Appendix B:

#### B

If SEVs are to be licensed, what should the appropriate number be?

- B.1** If the Committee were to pass a resolution to licence SEVs, they have to determine and publicise the number of SEVs that they consider appropriate for the local authority area. When reaching this decision, the Committee would be required to take specific local circumstances into consideration when determining the appropriate number of SEVs.
- B.2** The Committee would be required to review the set number of SEVs deemed appropriate from time to time and update this if necessary.
- B.3** The number, taking into account ECHR and the grounds of reasonableness can be set at nil.

### C

#### Appendix C:

#### Developing a policy on the licensing and regulation of SEVs

- C.1** If the Committee were to pass a resolution to licence SEVs, they would be obliged to develop and publish a SEV policy statement which would provide the public with a clear indication of the Committee's policy with regards to the licensing and regulation of SEV. A draft SEV policy statement, as detailed above, would be subject to a separate consultation.
- C.2** The Committee should have regard to its policy statement when exercising any functions in relation to the licensing of SEV. It is also required, from time to time, to review the policy statement, revise it as appropriate and publish the revised statement.
- C.3** When preparing a SEV policy statement, section 45C(3) of the 1982 Act provides that a local authority must consider the impact of the licensing of SEV in their area, having particular regard to how it will affect the objectives of:
- preventing public nuisance, crime and disorder;
  - securing public safety;
  - protecting children and young people from harm; and
  - reducing violence against women.
- C.4** In addition to preparing a SEV policy statement, the Committee may develop licence conditions, i.e. specific requirements that the licence holder must comply with or risk having their licence suspended or revoked. The Committee would have the authority to attach standard conditions for all licences granted for SEV, and also to impose individual conditions to licences. If the Committee were to impose standard conditions for SEV licences, these would be set out within the SEV policy statement.
- C.5** The following examples are all potential standard conditions which could be adopted as part of the SEV policy statement, should the Committee pass a resolution to licence SEVs:
- list of full names, dates of birth, nationality and contact details (address or telephone number) for all performers to be available on the premises for immediate production if requested by authorised local authority officers;
  - ensure immigration status is in order and actively seek to identify performers who may have been the victim of human trafficking;

## SEEKING YOUR VIEWS

- provision of hygienic changing and showering facilities and a toilet with access to hot water exclusively for the use of the performers;
- regulation of the display of advertisements on or connected to the venue;
- the interior of the SEV not to be visible to passers-by;
- the licence holder to ensure no physical contact between performers and customers;
- the licence holder to ensure no photographs or video recordings are taken of the performers.
- days and times to be provided when the premises is to be used as an SEV.

**C.6** The purpose of imposing standard conditions for SEV licences is to help protect the safety and wellbeing of performers, customers and the wider public.

## **CONSULTATION RESPONSE**

**1. What is your name?**

---

**2. What is your e-mail address?**

---

**3. What is your organisation (if relevant)?**

---

**4. Please choose which of the following most applies to you.**

☐ Resident

☐ Community Council representative

☐ Trade organisation (please give details below).

☐ Other business (please give details below).

☐ Other (please give details below).

**Further details**

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**Do you agree/disagree that the Council should licence SEVs within Perth and Kinross? You should note that if the Council does not adopt these powers then SEV's will operate without regulation by the Council.**

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree
- ☐ Neither agree or disagree

### **CONTROLLING NUMBERS OF SEV'S**

**If Perth and Kinross Council choses to adopt this licensing scheme, it can choose a limit to the number of SEV's.**

**Presently, there are currently no SEV's operating within Perth and Kinross.**

**The limit can be set at zero upwards.**

- 6. Do you strongly agree, agree, disagree, strongly disagree, neither agree or disagree that the Council should set a maximum number of SEV's within Perth and Kinross.**

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree
- ☐ Neither agree or disagree

- 7. What number of SEV's do you think the Council should set for Perth and Kinross? (Please circle)**

0 1 2 3 4 5 6 7 8 No  
Limit

## VICINITY

We would like your views on whether SEVs if licenced, should be allowed to operate near particular areas and types of buildings.

8. Please consider the type of areas if licenced where a SEV might operate, and tell us whether you strongly agree, agree, strongly disagree, disagree, neither agree or disagree that the following areas would normally be suitable for SEV's to operate.

|                                                  | Strongly agree | Agree | Strongly disagree | Disagree | Neither agree or disagree |
|--------------------------------------------------|----------------|-------|-------------------|----------|---------------------------|
| The city centre                                  |                |       |                   |          |                           |
| A rural area                                     |                |       |                   |          |                           |
| A busy late night economy area e.g. High Street. |                |       |                   |          |                           |
| A residential area outwith the town/city centre  |                |       |                   |          |                           |
| An industrial or commercial area                 |                |       |                   |          |                           |

9. Do you strongly agree, agree, strongly disagree, disagree, neither agree or disagree that it would be acceptable to have a SEV in the following places or near to the following types of area or landmark?

|                                | Strongly agree | Agree | Strongly disagree | Disagree | Neither agree or disagree |
|--------------------------------|----------------|-------|-------------------|----------|---------------------------|
| Residential areas              |                |       |                   |          |                           |
| Late night entertainment areas |                |       |                   |          |                           |
| Retail shopping areas          |                |       |                   |          |                           |
| Places of worship              |                |       |                   |          |                           |

## SEEKING YOUR VIEWS

|                                                                    |  |  |  |  |  |
|--------------------------------------------------------------------|--|--|--|--|--|
| Family Leisure facilities such as swimming pools and concert halls |  |  |  |  |  |
| Places used for celebration or commemoration                       |  |  |  |  |  |
| Historic buildings                                                 |  |  |  |  |  |
| Play areas or parks                                                |  |  |  |  |  |

## CONDITIONS

If the Council adopts powers to licence SEV's, it can add reasonable conditions to any licence granted. For instance, a condition may restrict the allowed trading hours of a SEV; it might regulate the display of advertisements on or about the venue; or restrict the visibility of the interior of the premises to passers-by.

- 10. What conditions (if any) should the Council consider for SEV licences? (See above paragraph for examples)**

## FURTHER INFORMATION

- 11. Is there anything else you wish to add?**

Your response should be sent either:

**By Post:** Licensing Manager  
Legal Services  
2 High Street  
Perth  
PH1 5PH  
**By Email:** [civiclicensing@pkc.gov.uk](mailto:civiclicensing@pkc.gov.uk)



### **All Consultation responses received**

Q4 - Four Residents, Community Council Representative, Police Scotland, Perth and Kinross Councillor, Rape and Sexual Abuse Centre Representative, Safer Communities Representative, Violence Against Women Partnership Representative, Equalities Representative, Child Protection Inter-Agency Coordinator.

#### **Q5 - Do you agree/disagree that the Council should licence SEVs within Perth and Kinross? 6 strongly agree and 6 agree**

100% agree that the Council should licence SEVs.

#### **Q6 - Do you strongly agree, agree, disagree, strongly disagree, neither agree or disagree that the Council should set a maximum number of SEV's within Perth and Kinross. 5 strongly agree, 4 agree, 1 no response, 1 neither agrees or disagrees and 1 disagrees.**

75% agree that the Council should set a maximum number of SEV's, with the remaining 25% neither agrees nor disagrees, disagrees and no response.

#### **Q7 - What number of SEV's do you think the Council should set for Perth and Kinross?**

12 responses were as follows: -

8 – zero, 1 very small amount, 2 nil response and 1 no limit.

67% want the limit to be set at zero, 8% very small amount, 17% nil response and 8% no limit.

#### **Q8 - Please consider the type of areas if licenced where a SEV might operate, and tell us whether you strongly agree, agree, strongly disagree, disagree, neither agree or disagree that the following areas would normally be suitable for SEV's to operate.**

Out of the 12 responses, 6 answered this question with 2 strongly disagreeing that any type of areas would be suitable to operate an SEV. The remaining results were as follows: -

City Centre - 2 strongly disagreed (50%), 1 agreed (25%) and 1 disagreed (25%).

Rural Area - 3 disagreed (75%) and 1 agreed (25%).

Busy late night economy area - 2 strongly disagreed (50%), 1 disagreed (25%) and 1 agreed (25%)

Residential area outwith the town/city centre - 3 strongly disagree (75%) and 1 neither agreed or disagreed (25%)

Industrial or commercial area - 3 strongly disagreed (75%) and 1 agreed (25%)

**Q9 - Do you strongly agree, agree, strongly disagree, disagree, neither agree or disagree that it would be acceptable to have a SEV in the following places or near to the following types of area or landmark?**

Out of 12, 6 consultees answered this question with 2 strongly disagreeing that any places or near to landmarks would be suitable for an SEV to operate. The remaining four consultees answered as follows: -

Residential areas – 3 strongly disagreed (75%) and 1 neither agreed or disagreed (25%).

Late night entertainment areas – 2 strongly disagreed (50%), 1 disagreed (25%) and 1 agreed (25%).

Retail shopping area – 3 strongly disagreed (75%) and 1 agreed (25%).

Places of worship – 3 strongly disagreed (75%) and 1 agreed (25%).

Family leisure facilities such as swimming pools and concert halls – 3 strongly disagreed (75%) and 1 neither agree or disagreed (25%).

Places used for celebration or commemoration – 3 disagree (75%) and 1 neither agrees or disagrees (25%).

Area/place/landmark - Historic buildings – 3 strongly disagree (75%) and 1 agree (25%).

Area/place/landmark - Play areas or parks – 3 strongly disagree (75%) and 1 neither agrees or disagrees (25%).

**Q10 - What conditions (if any) should the Council consider for Sexual Entertainment Venue licences? (See above paragraph for examples)**

One consultee suggested that all the standard conditions listed within the consultation document be used which are: -

- list of full names, dates of birth, nationality and contact details (address or telephone number) for all performers to be available on the premises for immediate production if requested by authorised local authority officers;
- ensure immigration status is in order and actively seek to identify performers who may have been the victim of human trafficking;
- provision of hygienic changing and showering facilities and a toilet with access to hot water exclusively for the use of the performers;
- regulation of the display of advertisements on or connected to the venue;
- the interior of the SEV not to be visible to passers-by;
- the licence holder to ensure no physical contact between performers and customers;
- the licence holder to ensure no photographs or video recordings are taken of the performers.
- days and times to be provided when the premises is to be used as an SEV.

Other suggestions included: -

- restrict trading hours, regulate the display of advertisements on or about the venue;

- restrict the visibility of the interior of the premises to passers-by;
- High quality CCTV and identification provision as part of a sign-in system is a requirement within the licence conditions. This will assist in maximising public safety.

#### **Q11 - Other comments: -**

**Individual** - Given that sex and sexual thoughts are inherent to all beings, attempting to cover up the existence or appearance of Sexual Entertainment Venues at certain places or times seems pointless. What would be the purpose other than so as to not offend people's socially constructed sensibilities of what is 'proper'? Sex and biology are ingrained human traits, unlike society's idea of what is 'acceptable', which changes at a faster rate than ever before in history.

The human body is the human body. Issues around Sexual Entertainment will emerge due to humanity's idiocy. It can be anticipated that there will be violence (physical and sexual) and aggression because people are generally herded into behaviours accentuated by alcohol.

In theory there should be no limit or restriction on the activities of the human body, nor censorship of it, amongst consenting adults. In practice, however, this is an impossibility. Humans cannot, or choose not to, control themselves.

**Organisation** - The Perth and Kinross Violence Against Women Partnership, supported and funded by Perth and Kinross Council, is fully aligned to the Scottish Governments and COSLA's strategy for preventing and eradicating violence against women and girls, Equally Safe. The vision statement set out in Equally Safe is

"A strong and flourishing Scotland where all individuals are equally safe and respected and where women and girls live free from all forms of violence and abuse – and the attitudes that help perpetuate it."

The strategy specifically includes in its definition of violence against women

"Violence against women encompasses commercial sexual exploitation, including prostitution, lap dancing, stripping, pornography and trafficking".

NOT to require SEV's to be licensed and NOT to set the number at licences at ZERO would effectively be supporting violence against women, as defined. This would be anathema to the above statements and to the stance that Perth & Kinross Council has taken so far given its support of the PKWAVP and its funding of organisations specifically focused on survivors of gender based and sexual violence – RASAC, Perthshire Women's Aid, Barnardo's.

To allow the establishment of SEV's in Perth & Kinross would, on the contrary, be a very visible statement of support of behaviour which exploits and disrespects women – this does not reflect a majority view of the type of society which the Council has thus far sought to promote.

**Organisation** - Assessment that Sexual Entertainment Venues may increase criminality in the area. Later operating hours may attract persons who have already consumed large quantities of alcohol. There may be increased instances of anti-social behaviour, including noise, litter and violence as a result.

Assessment that this may exploit vulnerable members of the Community.

That background checks which provide sufficient information to enable a 'fit and proper' assessment of those applying for such a licence with a focus on public protection. This should apply to companies or persons applying for this type of licence who should provide evidence as part of the application process.

**Individual** - Why sex is such a controversial topic that so many seem to feel shame about is beyond me. We're all here, are we not?

**Individual** - I agree with the following statement.

The Scottish Government definition of commercial sexual exploitation notes that it is harmful "irrespective of whether individual women claim success or empowerment from the activity".

**Individual** - I agree with the following policy.

The Scottish Government definition of commercial sexual exploitation notes that it is harmful "irrespective of whether individual women claim success or empowerment from the activity".

**Organisation** – The Rape and Sexual Abuse Centre Perth and Kinross, strongly recognise SEV as a form of commercial sexual exploitation / violence against women. We would support the capped number to be at 0 in line with a zero tolerance to such offences. We consider that anything more than this would legitimize this form of exploitation. At RASAC P&K we would strongly recommend capping the number at 0, we consider the activities that are undertaken within these venues such as stripping and lap dancing as commercial sexual exploitation and therefore a form of violence against women (VAW). Furthermore, to allow a SEV to operate in our community would directly contradict and challenge Equally Safe, Scotland's strategy for preventing and eradicating violence against women and girls where it clearly defines such activities as a form of VAW. Additionally, to allow an SEV to operate in our community would normalise and even promote the idea that women's bodies are a commodity to be bought and sold, therefore rejecting the vision of Equally Safe where:

*'All individuals are equally safe and respected, and where women and girls live free from all forms of violence and abuse - and the attitudes that help perpetuate it.'*

The licensing of these venues would also negatively impact on P&K as a community. Research indicates a link between SEV's and organised crime, including human trafficking and prostitution, an increase in other forms of both violent and non-violent crime, anti-social behaviour and also links to a reduction in the public's sense of safety.

**Organisation** - Following a discussion at a recent Earn Community Council meeting, I have been advised to inform P&KC that "ECC encourages P&KC to adopt powers to licence SEV'S".

**Organisation** - SEV is sexual exploitation and provides a gateway to prostitution and serious organised crime.

**Individual** - Lap dancing, stripping etc. are forms of sexual exploitation and that these activities are incompatible with gender equality.

**Organisation** - Recommendation that demand for Sexual Entertainment Venues as well as relevant core operating hours are considered based on locality and other similar venues already in existence in the vicinity.



**PERTH AND KINROSS COUNCIL**  
**Licensing Committee – 19 November 2020**

**VARIATION OF A LATE HOURS CATERING LICENCE NO. LH119**

**Report by Head of Legal Services**  
 (Report no 20/224)

|                               |                                                                                                                                                                                                                                                                                                                     |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Name and Address:</b>      | WM Supermarkets PLC<br>Hilmore House<br>Gain Lane<br>Bradford<br>BD3 7DL<br><br>Premises: Morrisons Supermarket<br>Caledonian Road<br>Perth<br>PH1 5XD                                                                                                                                                              |
| <b>Expiry Date:</b>           | 1 December 2021                                                                                                                                                                                                                                                                                                     |
| <b>Reason for Report:</b>     | The applicant has applied for a Variation of Late Hours Catering Licence to extend the current licence to 5am, Sundays to Saturdays inclusive. This application is out with current policy. The premises is currently licensed from 6am to midnight, 7 days a week.<br><br>Compliance notice has not been returned. |
| <b>Background Information</b> | The current policy is 11pm until 1am.                                                                                                                                                                                                                                                                               |

**Contact Officer: D Gilkison**

