

# **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)**

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#### **Approved**

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

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## 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