

Regulatory Committee

2.00pm, Monday, 11 March 2019

Air Weapons and Licensing (Scotland) Act 2015 – Commencement of Sexual Entertainment Venues licensing provisions

Item number	7.2
Executive/routine	
Wards	
Council Commitments	

1. Recommendations

- 1.1 Notes the possible commencement of Sexual Entertainment Venue licensing legislation and intention to carry out a consultation exercise.

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Air Weapons and Licensing (Scotland) Act 2015 – Commencement of Sexual Entertainment Venues licensing provisions

2. Executive Summary

- 2.1 This report provides the Committee with an update on the implementation and changes to the licensing regime as a result of the Air Weapons and Licensing (Scotland) Act 2015 in respect of Sexual Entertainment Venues.
- 2.2 Council Officers understand that a commencement order may be laid shortly and it will give an indicative timeline for possible implementation of legislation at a local level in respect of Sexual Entertainment Venues in early 2021

3. Background

- 3.1 Section 76 of the 2015 Act adds new sections 45A to 45C to the Civic Government (Scotland) Act 1982 in order to introduce a discretionary licensing regime for sexual entertainment venues (SEVs). Section 76 also amends section 41 of the 1982 Act to specifically exclude sexual entertainment venues from the definition of places of public entertainment so that a public entertainment licence cannot also be required for those venues. A sexual entertainment venue licence will only be required where a local authority makes a resolution in these terms under new section 45B of the 1982 Act.
- 3.2 Council Officers understand that a commencement order may be laid shortly and that the indicated timeline for consideration of the introduction of a licensing regime at a local level in respect of SEVs being included within the 1982 Act is April 2019.
- 3.3 The key aims of civic licensing are the preservation of public safety and order and the prevention of crime. A specific licensing regime for sexual entertainment venues will allow local authorities to consider local circumstances in setting the number of venues able to operate within their areas and to exercise appropriate control and regulation of these venues. A published sexual entertainment policy statement would be required to provide local communities with a clear indication of the local authority's policy and examples of licensing conditions, along with enforcement details. The policy should also demonstrate how the local authority

intends to help protect the safety and wellbeing of performers, customers and the wider public

- 3.4 Where a local authority opts to licence SEVs, the provisions at section 45A of the 1982 Act require a licence for premises operated as a SEV where the sexual entertainment is performed live, is for the direct or indirect financial benefit of the organiser and is for the sole or principal purpose of sexual stimulation of members of the audience. However, premises where sexual entertainment is provided on no more than three occasions in a twelve month period are not to be treated as SEVs.
- 3.5 Scottish Government has indicated that local authorities are best placed to reflect the views of the communities they serve and to determine whether sexual entertainment establishments should be licensed within their areas, and if so, under what conditions. To assist in the process Scottish Government intends issuing guidance at the time of the commencement of the legislation.
- 3.6 A local authority licensing SEVs will have to publish a SEV policy statement, developed in consultation with relevant interest groups (including violence against women partnerships and similar groups) which will provide local communities with a clear indication of the local authority's policy.

4. Main report

- 4.1 The purpose of regulating this type of activity is the preservation of public safety and order and the prevention of crime. The introduction of the legislation is aimed at giving local authorities powers to improve standards in the industry, ensuring the safety of performers and customers, regulating the impact on the locality, improving local accountability and control.
- 4.2 Currently local licensing boards have regulated adult entertainment via the existing licensing regime for alcohol. The introduction of this legislation removes that control.
- 4.3 Unlike many local authority areas, Edinburgh currently has a small number of venues that fall under the criteria for SEVs, should a licensing scheme be introduced.
- 4.4 Where a local authority decides to license SEVs, section 45B of the 1982 Act, requires the local authority to pass a resolution to implement SEV licensing.
- 4.5 In considering whether to pass a resolution a local authority should consider whether it will wish to control SEVs either now or in the future. If there is no resolution in place, then no licence is required to operate an SEV. If the Council does not adopt this discretionary power then SEVs will continue to operate without any direct control from the Council.
- 4.6 As part of the implementation process Scottish Government has committed to issuing guidance to assist local authorities in the development of SEV Policy statements, and intends to include draft licensing conditions as part of the documentation. This Guidance is not yet published.

- 4.7 It is proposed to start a consultation exercise in April 2019, with a view to gaining a broader understanding of community views in relation to the potential introduction of a resolution which, if implemented, would require such premises to be licensed in 2021. A proposed time line for consideration is included in Appendix 2.

5. Next Steps

- 5.1 Given the complexity of the issues involved in the introduction of a policy in respect of SEVs, it is proposed to commence a consultation exercise as outlined in Appendix 2.
- 5.2 Where a local authority passes a resolution, it must specify a date from when it is to take effect in their area. This must be at least one year from the date the resolution is passed. The local authority must also publish notice that it has passed a resolution not less than 28 days prior to the date the resolution is to take effect. The notice must state the general effect of the licensing procedure and provisions at Schedule 2 of the 1982 Act, as modified for SEVs, and be published either electronically or in a local newspaper
- 5.3 Council Officers understand that, whilst a commencement order may be laid shortly, this would be subject to Parliamentary process. Accordingly if there is a delay it could affect the indicated timeline for consideration of legislation at a local level. Any changes would be notified to committee and the time line amended.

6. Financial impact

- 6.1 The Council's scale of fees for licensing applications was approved with effect from 1 April 2018. Any costs implementing policy changes will be contained within the current ring-fenced income generated from licence application fees.
- 6.2 A new fee would need to be devised and approved by committee.

7. Stakeholder/Community Impact

- 7.1 There is a requirement to carry out a statutory consultation as part of the resolution process and the timeline is outlined in Appendix 2.
- 7.2 In developing a policy, it will be necessary to consult with a wide range of stakeholders and this should include organisations such as violence against women partnerships, child protection committees, community councils, local residents, gender groups, local business communities, existing businesses and Police Scotland.
- 7.3 It is recognised that concerns have been raised previously that such activity may be commercial sexual exploitation and encourages unhealthy attitudes to women and therefore damages society as a whole.

- 7.4 The Scottish Government stated during the passage of the 2015 Act that it acknowledges through the introduction of this legislation the freedom of adults to engage in legal activities and employment. However, it continues to promote, through all relevant means gender equality and actions that tackle out-dated attitudes that denigrate or objectify particular groups or individuals.
- 7.5 Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls was first published in 2014 and updated in 2016. It sets out a definition of violence against women and girls which includes 'commercial sexual exploitation, including prostitution, lap dancing, stripping, pornography and human trafficking'. Whilst recognising the conflict between this definition and the licensing of sexual entertainment venues, Scottish Government intends that it will help to ensure that such activities take place in safe and regulated environments
- 7.6 At the Regulatory Committee meeting on 3 February 2013, following a period of consultation the committee agreed to amend the Public Entertainment Resolution to remove premises used as 'saunas or massage parlours' from the requirement to obtain a public entertainment licence. This report and possibly regulatory regime will not apply to such premises and there is no scope to include them in any new scheme.
- 7.7 A full equalities impact assessment will be completed as part of the consultation process.

8. Background reading/external references

- 8.1 [Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls](#)
- 8.2 [The Trafficking and Exploitation Strategy](#)
- 8.3 [Item 73- Review of public entertainment licensing - Regulatory Committee Report 3 February 2014](#)

9. Appendices

- 9.1 Appendix 1 – Civic Government (Scotland) Act 1982
- 9.2 Appendix 2 - Proposed timeline

Appendix 1 – Civic Government (Scotland) Act 1982

Section 45A - Licensing of sexual entertainment venues: interpretation

- (1) This section applies for the purposes of the interpretation of section 45B and Schedule 2 (as modified for the purposes of section 45B).
- (2) “Sexual entertainment venue” means any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.
- (3) For the purposes of that definition—

“audience” includes an audience of one,

“financial gain” includes financial gain arising directly or indirectly from the provision of the sexual entertainment,

“organiser”, in relation to the provision of sexual entertainment in premises, means—

 - (a) the person (“A”) who is responsible for—
 - (i) the management of the premises, or
 - (ii) the organisation or management of the sexual entertainment, or
 - (b) where A 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—

 - (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).
- (4) For the purposes of the definition of “sexual entertainment”, “display of nudity” means—
 - (a) in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus,
 - (b) in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals or anus.
- (5) Sexual entertainment is provided if (and only if) it is provided (or allowed to be provided) by or on behalf of the organiser.

- (6) References in Schedule 2 (as modified for the purposes of section 45B) to the use of any premises by a person as a sexual entertainment venue are to be read as references to their use by the organiser.
- (7) The following are not sexual entertainment venues—
 - (a) a sex shop (within the meaning of paragraph 2(1) of Schedule 2),
 - (b) such other premises as the Scottish Ministers may by order specify.
- (8) An order under subsection (7)(b) may make different provision for different purposes.
- (9) Premises at which sexual entertainment is provided as mentioned in subsection (2) on a particular occasion (“the current occasion”) are not to be treated as a sexual entertainment venue if sexual entertainment has not been provided on more than 3 previous occasions which fall wholly or partly within the period of 12 months ending with the start of the current occasion.
- (10) For the purposes of subsection (9)—
 - (a) each continuous period during which sexual entertainment is provided on the premises is to be treated as a separate occasion, and
 - (b) where the period during which sexual entertainment is provided on the premises exceeds 24 hours, each period of 24 hours (and any part of a period of 24 hours) is to be treated as a separate occasion.
- (11) The Scottish Ministers may by order provide for—
 - (a) descriptions of performances, or
 - (b) descriptions of displays of nudity,which are not to be treated as sexual entertainment for the purposes of this section.
- (12) An order under subsection (7)(b) or (11) is subject to the negative procedure.

Section 45B Licensing of sexual entertainment venues

- (1) A local authority may resolve that Schedule 2 (as modified for the purposes of this section) is to have effect in their area in relation to sexual entertainment venues.
- (2) If a local authority passes a resolution under subsection (1), Schedule 2 (as so modified) has effect in their area from the day specified in the resolution.
- (3) The day mentioned in subsection (2) must not be before the expiry of the period of one year beginning with the day on which the resolution is passed.
- (4) A local authority must, not later than 28 days before the day mentioned in subsection (2), publish notice that they have passed a resolution under this section.
- (5) The notice must—
 - (a) state the general effect of Schedule 2 (as modified for the purposes of this section), and

- (b) be published electronically or in a newspaper circulating in the local authority's area.
- (6) or the purposes of this section, paragraphs 1 and 3 to 25 of Schedule 2 apply with the following modifications—
- (a) references to a sex shop are to be read as references to a sexual entertainment venue,
 - (b) references to the use by a person of premises, vehicles, vessels or stalls as a sexual entertainment venue are to be read as references to their use by the organiser,
 - (c) in paragraph 1—
 - (i) in sub-paragraph (b)—
 - (A) the word “or” immediately following paragraph (i) is omitted,
 - (B) paragraph (ii) is omitted, and
 - (ii) sub-paragraph (c) is omitted,
 - (d) in paragraph 7—
 - (i) in sub-paragraph (2), at the beginning insert “ Subject to sub-paragraph (3A), ”, and
 - (ii) after sub-paragraph (3) insert—
 - “(3A) If a local authority consider it appropriate to do so in relation to an application, the local authority may dispense with the requirement to publish an advertisement under sub-paragraph (2) and may instead publish notice of the application electronically.
 - (3B) Publication under sub-paragraph (3A) must be not later than 7 days after the date of the application.
 - (3C) The applicant must also, not later than 7 days after the date of the application—
 - (a) send a copy of the application to each person or body listed in the local authority's determination under sub-paragraph (3D), and
 - (b) submit to the local authority a certificate stating that the applicant has complied with this sub-paragraph.
 - (3D) For the purposes of sub-paragraph (3C), a local authority must—
 - (a) from time to time determine the persons or bodies who must receive a copy of the application, and
 - (b) publicise the determination in such manner as they consider appropriate.”,

- (e) in paragraph 9—
 - (i) in sub-paragraph (5)(c)—
 - (A) after the word “in” insert “ the local authority's area or ”,
 - (B) after the word “for” insert “ their area or ”,
 - (ii) after sub-paragraph (5) insert—
 - “(5A) For the purposes of sub-paragraph (5)(c), a local authority must—
 - (a) from time to time determine the appropriate number of sexual entertainment venues for their area and for each relevant locality, and
 - (b) publicise the determination in such manner as they consider appropriate.”,
 - (iii) after sub-paragraph (6) insert—
 - “(6A) A local authority may refuse an application for the grant or renewal of a licence despite the fact that a premises licence under Part 3 of the Licensing (Scotland) Act 2005 is in effect in relation to the premises, vehicle, vessel or stall to which the application relates.”,
 - (f) in paragraph 12(2)(b), for “shorter” substitute “ other ”,
 - (g) in paragraph 19(1)(e), for the words from “without” to the end of paragraph (e) substitute “knowingly permits any person under the age of 18 to enter the sexual entertainment venue—
 - (i) at a time when sexual entertainment is being provided, or
 - (ii) without reasonable excuse, at any other time.”, and
 - (h) in paragraph 25, in each of sub-paragraphs (1)(a) and (2), for “45” substitute “ 45B ”.
- (7) In carrying out functions conferred by virtue of this section, a local authority must have regard to any guidance issued by the Scottish Ministers.

Section 45C - Statements of policy in relation to sexual entertainment venues

- (1) This section applies where a local authority passes a resolution under section 45B(1).
- (2) The local authority must prepare a statement of their policy with respect to the exercise of their functions in relation to the licensing of sexual entertainment venues (a “SEV policy statement”).
- (3) In preparing a SEV policy statement, a local authority must—
 - (a) consider the impact of the licensing of sexual entertainment venues in their area, having regard, in particular, to how it will affect the objectives of—

- (i) preventing public nuisance, crime and disorder,
 - (ii) securing public safety,
 - (iii) protecting children and young people from harm,
 - (iv) reducing violence against women, and
- (b) consult such persons or bodies as they consider appropriate.
- (4) The local authority must publish the SEV policy statement at the same time and in the same manner as they publish the notice of the resolution under section 45B(4).
- (5) The local authority must—
 - (a) from time to time review the SEV policy statement and make such revisions as they consider appropriate (if any), and
 - (b) publish the revised statement in such manner as they consider appropriate.
- (6) Subsection (3) applies to a review of a SEV policy statement as it applies to preparing such a statement.
- (7) In exercising their functions in relation to the licensing of sexual entertainment venues, a local authority must have regard to their SEV policy statement or revised statement.
- (8) In this section—
 - “children” means persons under the age of 16,
 - “young people” means persons aged 16 or 17.]

Appendix 2 - Proposed timeline

