

Regulatory Committee

1.00pm, Monday, 13 March 2023

Sexual Entertainment Venues (SEVs): Update Following Judicial Review

Executive/routine	
Wards	All
Council Commitments	

1. Recommendations

- 1.1 Committee is asked to:
 - 1.1.1 Note the outcome of the Judicial Review; and
 - 1.1.2 Agree to amend the date of implementation of the resolution in terms of which the Council resolved to adopt a scheme to license Sexual Entertainment Venues to 31 December 2023.

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Executive Director of Place

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2. Executive Summary

- 2.1 The [Air Weapons and Licensing \(Scotland\) Act 2015](#) adds new sections to the [Civic Government \(Scotland\) Act 1982](#), enabling local authorities to introduce a discretionary licensing system for sexual entertainment venues (SEVs). The Council resolved to license SEVs in terms of section 45B and Schedule 2 of the 1982 Act on 31 March 2022 with an implementation date of 1 April 2023.
- 2.2 This report updates Committee in respect of a Judicial Review of the SEV licensing policy and proposes that the date on which the licensing scheme is to take effect should be changed from 1 April 2023 to 31 December 2023.

3. Background

- 3.1 Section 76 of the ('the 2015 Act') adds new sections (45A to 45C) to the ('the 1982 Act').
- 3.2 Where a local authority resolves to license SEVs, the provisions at section 45A of the 1982 Act require a SEV licence for premises where the sexual entertainment is operated 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.
- 3.3 On [31 March 2022](#), Committee considered a report on the proposed licensing of SEVs within Edinburgh. Committee agreed to adopt a SEV licensing resolution that would require the licensing of SEVs within Edinburgh, and to adopt a scheme for the licensing of SEVs effective from 1 April 2023; the Committee also determined the number of SEV premises appropriate for the city of Edinburgh to be zero; and further agreed to adopt the licensing policy statement and standard licensing conditions appended to the report all in terms of the 1982 Act.

4. Main report

Judicial Review

- 4.1 As has previously been reported to Committee, the SEV licensing policy agreed by Committee on 31 March 2022 has been the subject of a Judicial Review in the Outer House of the Court of Session. The Judicial Review was sought by SEV operators and other interested parties. The United Sex Workers, a branch of the

United Voices of the World trade union, was also granted permission to be added as an additional party.

4.2 The Judicial Review was heard in December 2022. On 10 February 2023, the Court issued its decision, which found against the Council and in favour of the petitioners. In particular, the Court found that the Council had no discretion to consider applications for a SEV licence where the Council had determined the number of SEVs appropriate for Edinburgh to be zero. Consequently, the effect of the said determination was that the Council must refuse any application for a SEV licence. Therefore, Committee's decision in relation to the determination of an appropriate number was struck down by the Court.

4.3 After careful consideration, and in consultation with Legal Services, external legal advisers, Counsels and group spokespersons, a decision has been made not to appeal against the decision of Court at the Judicial Review.

SEV Resolution

4.4 As noted above, on 31 March 2022 the Council resolved to license SEVs in terms of section 45B and Schedule 2 of the 1982 Act. The Court's decision in respect of the Judicial Review does not otherwise affect the validity of the Resolution or the wider SEV policy made by the Council to license SEVs.

4.5 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 on which the resolution is made. When Committee resolved to license SEVs, the date on which the licensing scheme was to take effect was specified as 1 April 2023.

4.6 The local authority must also publish a notice that they passed a resolution not less than 28 days prior to the date on which 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 must be published either electronically or in a local newspaper. At the same time, the Council must also publish the agreed SEV Policy.

4.7 In practical terms, the Council would have been required to publish the statutory notice and the policy on or before 4 March 2023. However, this was not possible given the extensive consideration which was given to appealing the decision of the Court within the required timescales.

4.8 This presents two immediate issues, in that, the Council does not have a number determination in place; nor has the Council published the resolution or the SEV policy as required, for the reason set out above. Therefore, it is recommended that Committee agree that the effective date for implementation of the licensing scheme, in terms of the Council's resolution, be amended to the later date of 31 December 2023. This will allow time for the Council to carry out the consultation and to reach a determination, as set out below.

SEV Consultation

4.9 At its meeting of on [6 February 2023](#), Committee agreed that officers should prepare a statutory 12 week consultation to review the licensing policy on SEVs, and in particular the determination of the appropriate number of SEVs as zero.

Committee also agreed that a consultation would only be commenced after the Judicial Review was determined and the outcome subsequently considered by elected members and officers.

- 4.10 As set out above, it is recommended that Committee agrees that the effective date for implementation of the licensing scheme in terms of the Council's resolution be amended to the later date of 31 December 2023. A report will be submitted to the next Committee meeting detailing the consultation plan with respect to a review of the SEV policy. This will also give clarity to those venues, staff and performers directly affected by the introduction of the licensing scheme.

5. Next Steps

- 5.1 Subject to Committee approval, the effective date for implementation licensing scheme will be changed to 31 December 2023.
- 5.2 A report will be submitted to the next meeting of Committee, on 1 May 2023, providing details of the proposed consultation plan with respect to the review of the SEV policy.

6. Financial impact

- 6.1 There are no direct financial implications arising from the recommendations in this report.
- 6.2 An update will be provided on the costs incurred from the judicial review to Committee on 1 May 2023.

7. Stakeholder/Community Impact

- 7.1 The report to Committee on 1 May 2023 will set out the issues that Members will be required to consider.
- 7.2 A full Equalities Impact Assessment will be completed and published as part of the statutory consultation process.

8. Background reading/external references

- 8.1 Response to Motion by Councillor Younie – Sexual Entertainment Venues (SEVs) – Regulatory Committee – [6 February 2023](#).

9. Appendices

- 9.1 Appendix 1 – Current SEV Resolution.

Appendix 1

THE CITY OF EDINBURGH COUNCIL CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (“the Act”)

CITY OF EDINBURGH SEXUAL ENTERTAINMENT VENUES RESOLUTION Number 1 of 2022

The City of Edinburgh Council, in exercise of its powers in terms of 45A-45C of the Act, hereby makes the following resolution:

- (1) Schedule 2 of the 1982 Act shall have effect throughout the Council’s area in relation to the licensing of Sexual Entertainment Venues.
- (2) Subject to the terms of the Act, a Sexual Entertainment Venue licence shall be required for the use of the premises as places of Sexual Entertainment as from **1 April 2023**
- (3) The premises in the Council’s area which require to be licensed under the Resolution include those which provide the following, as they are commonly known:

- (a) Lap dancing
- (b) Pole dancing
- (c) Table dancing
- (d) Strip shows
- (e) Peep shows
- (f) Live sex shows

The list of examples above is not intended to be exhaustive and should only be treated as indicative. The decision to licence premises as SEVs shall depend on the content of the relevant entertainment, rather than the name given to it.

In terms of the Act ‘Sexual entertainment’ means any live performance or 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).