



ENVIRONMENT POLICY DEVELOPMENT AND SCRUTINY PANEL

CIVIC GOVERNMENT (SCOTLAND) ACT 1982

SEXUAL ENTERTAINMENT VENUE LICENSING

REPORT BY HEAD OF CORPORATE SERVICES

A. PURPOSE OF REPORT

To inform the Panel of changes to legislation enabling the council as licensing authority to introduce a licensing scheme for sexual entertainment venues (SEVs).

B. RECOMMENDATION

It is recommended that the Panel notes the new legislative power for the council as Licensing Authority to introduce a licensing scheme for SEVs and also that the Council Executive will be asked to consider undertaking a consultation and evidence gathering process to establish views on the following:

1. Whether SEVs in West Lothian should be licensed;
2. If licensed, what the appropriate number of SEVs for West Lothian should be; and
3. If licensed, what should be included in a SEV policy statement

C. SUMMARY OF IMPLICATIONS

I	Council Values	<ul style="list-style-type: none">• focusing on our customers' needs;• being honest, open and accountable;• providing equality of opportunities;• working in partnership
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Sections 45A – 45F of Part III and Schedule 2 of the Civic Government (Scotland) Act 1982
III	Implications for Scheme of Delegations to Officers	None
IV	Impact on performance and performance	None

Indicators

V	Relevance to Single Outcome Agreement	None
VI	Resources - (Financial, Staffing and Property)	None
VII	Consideration at PDSP	N/A
VIII	Other consultations	None

D. TERMS OF REPORT

D1 Background

The Air Weapons and Licensing (Scotland) Act 2015 ("2015 Act") provided for changes to be made to the Civic Government (Scotland) Act 1982 ("1982 Act"). Not all of the provisions detailed in the 2015 Act were brought into force immediately. Recently, the Scottish Government passed The Air Weapons and Licensing (Scotland) Act 2015 (Commencement No.9 and Transitional Provisions) Order 2019 which as from 26 April 2019 introduced the provisions giving local authorities a discretionary power to licence SEVs.

SEVs are defined in the legislation as any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser and where it is for the sole or principal purpose of sexual stimulation of members of the audience. It should be noted that if sexual entertainment has not been provided at a premises on no more than three occasions within a 12 month period then the premises cannot be treated as a SEV.

D2 Current Position in relation to licensing of Sexual Entertainment Venues

Prior to the above commencement order there was no legal requirement for SEVs to be licensed in Scotland. However premises not used for the sale of alcohol would have required a public entertainment licence for any adult entertainment taking place within premises. No such applications have ever been received.

Previously in relation to premises licensed for the sale of alcohol, adult entertainment could only take place if this was listed as an activity on the approved operating plan. At present there are only three premises licensed for the sale of alcohol in West Lothian which have adult entertainment included as an activity in the operating plan for their premises. Of these one would need to apply for a variation of their licence if they wanted to operate as a sexual entertainment venue as the licence does not permit the type of adult entertainment which falls within the new definition of sexual entertainment. There would not appear to be any activities falling within the definition of sexual entertainment currently taking place within licensed premises within West Lothian.

Case law under the 2005 Act has made it clear that the liquor licensing legislation is limited to the regulation of the sale of alcohol only and cannot extend to matters not linked to the sale of alcohol. In view of this the new licensing scheme has been introduced by the Scottish Government to regulate SEVs in Scotland.

D3 Guidance in relation to licensing of Sexual Entertainment Venues

In considering the new powers the council is obliged to take account of the guidance issued by the Scottish Government referred to in section in F of this report. That guidance states that the new licensing regime will allow local authorities to consider local circumstances in setting the number of venues able to operate within their areas (this could be nil) and to exercise appropriate control and regulation of these venues.

Therefore in considering whether to pass a resolution to licence SEVs in West Lothian the council 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 could operate without any direct control from the council.

The main 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.

The guidance states that the purpose of a published sexual entertainment policy statement is 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 council intends to help protect the safety and wellbeing of performers, customers and the wider public.

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. Further detail on the full statutory definition of a SEV is detailed at Appendix 1 to this report.

The 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.

A local authority which resolves to licence 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.

D3 What the council must do to introduce an SEV licensing scheme

To introduce an SEV licensing scheme the council must pass a resolution. In order to pass a resolution the council must

- consider the impact of licensing of SEVs in West Lothian having regard in particular to the licensing objectives of preventing public nuisance and crime and disorder, securing public safety, protecting children and young

- people from harm and reducing violence against women
- consult such persons or bodies as they consider appropriate
- determine the appropriate number of SEVs for West Lothian
- prepare a SEV policy statement taking into account the above licensing objectives and publish that at the same time as the resolution

The policy statement must be based on sound licensing reasons which relate to the objectives listed above. The policy statement cannot contain a restriction on the number of SEVs based on moral reasons alone.

D4 Consultation

The council is asked to consider if a public consultation and evidence gathering process should be launched to seek views on this new legislative power prior to the council making a decision as to whether it should introduce a licensing scheme for SEVs.

E. CONCLUSION

New legislation has recently been brought into effect to allow the council as licensing authority to introduce a licensing scheme for SEVs. The Panel is asked to note that legislation and also note that the Council Executive will be asked to consider whether a public consultation and evidence gathering process should be undertaken prior to making a decision as to whether it should introduce a licensing scheme for SEVs.

F. BACKGROUND REFERENCES

Guidance on the provisions for licensing of sexual entertainment venues and changes to licensing of theatres issued by the Scottish Government in March 2019

<https://www.gov.scot/publications/guidance-provisions-licensing-sexual-entertainment-venues-changes-licensing-theatres/pages/7/>

Appendices/Attachments:

Appendix 1: Definition of SEV

Contact Person: Audrey Watson, Managing Solicitor – Licensing, Legal Services (01506) 281624

Audrey.watson@westlothian.gov.uk

Julie Whitelaw, Head of Corporate Services

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