



## **COUNCIL EXECUTIVE**

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

### **SEXUAL ENTERTAINMENT VENUE LICENSING**

### **REPORT BY HEAD OF CORPORATE SERVICES**

#### **A. PURPOSE OF REPORT**

To inform the Council Executive of changes to legislation enabling the council as licensing authority to introduce a licensing scheme for sexual entertainment venues (SEVs) and to ask the Council Executive to consider undertaking a public consultation regarding the licensing of SEVs in West Lothian.

#### **B. RECOMMENDATION**

It is recommended that the Council Executive

1. Notes the new legislative power for the council as Licensing Authority to introduce a licensing scheme for SEVs;
2. Considers undertaking a public consultation and evidence gathering process to establish views on the following:
  - Whether SEVs in West Lothian should be licensed;
  - If licensed, what the appropriate number of SEVs for West Lothian should be; and
  - If licensed, what should be included in a SEV policy statement
3. Notes that a report containing the responses to the consultation and all evidence gathered will be referred to the Environment PDSP for its comments before the Council Executive considers whether an SEV licensing scheme should be introduced.

#### **C. SUMMARY OF IMPLICATIONS**

##### **I Council Values**

- focusing on our customers' needs;
- being honest, open and accountable;
- providing equality of opportunities;
- working in partnership

<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Sections 45A – 45F of Part III and Schedule 2 of the Civic Government (Scotland) Act 1982
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	None
<b>IV</b>	<b>Impact on performance and performance Indicators</b>	None
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	None
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	None
<b>VII</b>	<b>Consideration at PDSP</b>	Environment PDSP – 3 September 2019
<b>VIII</b>	<b>Other consultations</b>	None

## **D. TERMS OF REPORT**

### **D.1 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 more than three occasions within a 12 month period then the premises cannot be treated as a SEV.

### **D.2 Current Position in relation to licensing of Sexual Entertainment Venues**

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.

### **D.3 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.

### **D.4 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 which takes account of 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.

#### **D.5 Consultation**

The Council Executive 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.

#### **D.6 Consideration at Environment PDSP**

A report regarding the introduction of a licensing scheme for SEVs was considered at the Environment PDSP on 3 September 2019. There was a lengthy discussion regarding the issues raised in the report and PDSP members felt strongly that in considering the licensing of SEVs the safety of women should be paramount. The PDSP agreed that the report and its recommendations be forwarded to the next appropriate meeting of the Council Executive for consideration.

#### **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 Executive is asked to note that legislation and is asked to consider whether a public consultation and evidence gathering process should be undertaken.

The results of that consultation will be considered by the Environment PDSP and Council Executive prior to the Executive considering whether the council 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

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