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**REPORT TO: LICENSING COMMITTEE ON 30 SEPTEMBER 2020**

**SUBJECT: CIVIC GOVERNMENT (SCOTLAND) ACT 1982 AS AMENDED BY  
THE AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015-  
SEXUAL ENTERTAINMENT VENUES**

**BY: DEPUTE CHIEF EXECUTIVE (EDUCATION, COMMUNITIES AND  
ORGANISATIONAL DEVELOPMENT)**

**1. REASON FOR REPORT**

- 1.1 The reason for this report is to present to the Committee the Draft policy Statement for approval so it can be published for public Consultation and invite the Committee to consider this draft policy in relation to a resolution which was passed on the 6<sup>th</sup> of November 2019 for the provision of a new licencing regime for Sexual Entertainment Venues (SEVs) in Moray.
- 1.2 This report is submitted to the Committee in terms of Section III (H) (1) of the Council's Scheme of Administration relating to the exercise of the function of the Council as licensing authority for The Moray Council area.

**2. RECOMMENDATION**

**2.1 It is recommended that the Committee:-**

- i) considers the Draft policy put together by the research team at Moray Council and all attached at Appendix 1 to this report;**
- ii) decide whether they wish to restrict the number of Sexual Entertainment venues in Moray and, if so, to what number this can be set at nil;**
- iii) decide whether any further changes are required before it is published for public Consultation;**
- iv) if appropriate instruct the Head of Governance Strategy and Performance to publish a draft of the policy as required either electronically or in a newspaper circulating locally for consultation along with supporting information around the proposed processes, forms, fees and guidance;**
- v) agree to officers bringing the results of the consultation along with final drafts of the policy and supporting documentation for approval to the next meeting on 2 December.**

vi) agree a final date for the implementation of the complete licensing system for SEVs.

### 3. **BACKGROUND**

- 3.1 The Air Weapons and Licensing (Scotland) Act 2015 introduced new provisions within the Civic Government (Scotland) Act 1982 to allow local authorities to license Sexual Entertainment Venues (SEVs). This new licensing regime provides local authorities with the power to determine whether they wish to licence SEVs, whether to limit their numbers and to determine individual licence applications. However, these powers are not mandatory and will only apply where they are adopted by local authorities.
- 3.2 The Committee, at its meeting on 6 November 2019 passed a resolution saying that SEVs should be licensed in Moray. The Committee acknowledged that at present there were no SEVs within Moray; however, SEVs may decide to operate in the area in the future.
- 3.3 Where an authority determines to licence SEVs there is a corresponding obligation to produce an SEV licence policy.
- 3.4 One of the Council's Research and Information Officers has undertaken extensive research around the subject as well as taking into account information e.g. public survey collected previously by officers for the purpose of determining whether to licence the activity.
- 3.5 Based on all the evidence available officers have also produced a draft policy on how the SEV's in Moray could be regulated. Attached at **Appendix 1** is the draft Moray Council SEV Statement of Licensing Policy. The draft policy outlines the Licensing Policy vision statement. It then provides a brief overview of the strategy and Policy Objectives and Background.
- 3.6 Also attached is **Appendix 2** is the research that has been collated and analysed and is the supporting evidence for the policy.
- 3.7 The documentation includes an outline of an application process, potential fees applicable, the process of objections and how these can be made, mandatory grounds for refusal, discretionary grounds for refusal, licence conditions and the duration of Licences and waivers.
- 3.8 The documentation will be supplemented in due course with the addition of a standard application form, web pages, guidance etc.
- 3.9 Fees are a particularly difficult issue. There is no precedent. The cost is designed to be cost recovery for the council in terms of processing an application. The inspection requirements prior to determination of an application are likely to be high. Therefore the fee has been suggested at a fairly high level but it is only an estimate. Most estimates are based around alcohol licensing fees and the likely cost of processing. The original application fee estimate is more akin to a sex shop licence but with a higher level of inspection. It should be noted that any fee for an alcohol licence will be in addition to the figure suggested.

#### **4. LOCALITY**

- 4.1 One of the most important aspects of policy is localities. The research, and so the draft, breaks the Moray Council area as a whole into localities.
- 4.2 As set out in the 1982 Act under Schedule 2 provides that a Local Authority may refuse an application if it is satisfied that the number of SEVs or of a particular kind in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality. The Council is able to determine that the appropriate number for a locality is nil.
- 4.3 Sexual entertainment venues cater for a particular adult audience and by attracting those customers can affect the character of that locality in which they are situated. The policy as drafted considers that localities which are characterised by particular uses, whether by residents, visitors or workers, should not include SEVs. Therefore the number for those localities is set at zero.
- 4.4 Prior informal consultations with local residents and consideration of the geography and layout of Moray's towns and villages, has led to the conclusion as drafted that the appropriate number of SEVs in Moray is nil for all localities with the following two exceptions;
  - 4.4.1 a maximum of one SEV in the Elgin town centre, and
  - 4.4.2 a maximum of one SEV in Forres town centre.
- 4.5 Towns with fewer than 2,000 residents were, in any event, considered too small to be able to support an SEV. There would be too few local residents and tourists to make an SEV commercially viable. Furthermore, the nature of SEVs and the impact that they and their customers can have in these localities would significantly distort the character of those communities.
- 4.6 Nil may be considered as a possible appropriate number and, if so, it will form a rebuttable presumption against the granting of an SEV licence one or more localities or the Moray area. Each application would still have to be decided on its own merits but the applicant would have to show particular reason(s) why the presumption against a licence should not apply.
- 4.7 The Committee is invited to consider this initial information and amend as necessary or desired. From time to time this Committee will be required to review the appropriate number of SEVs for their area and for each relevant locality within their area.

#### **5. RESOLUTION TO LICENCE SEVS**

- 5.1 The resolution was issued to the public via Tell me Scotland a central portal where the public can view Scottish public notices issued by local councils on planning, licensing and roads on the 3 of December 2019. So the Committee should determine a date from which the requirement to licence will have effect being not earlier than the 6 November 2020. The proposal must be published for a period of at least 28 days prior to implementation to allow for any

representations to be made. If no representations are received, then Officers can proceed to publish the final resolution in the local newspaper.

- 5.2 It is suggested that if the policy is to be approved on the 2<sup>nd</sup> December, given and the policy and resolution must be published together then the start date for the licensing regime should be set at 7 January 2021.

## **6. SUMMARY OF IMPLICATIONS**

### **(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**

The provisions of licensing directly relate to the priorities within the 10 Year Plan in relation to healthier citizens, a growing and diverse economy and safer communities. Licensing exists to promote public safety, in this context for both staff and customers. Industries that undertake licensable activities can have positive effects on tourism and aid a growing economy.

### **(b) Policy and Legal**

Section 76 of the Air Weapons and Licensing (Scotland) Act 2015 provides for a new licensing regime for SEVs by amending Part III and Schedule 2 of the Civic Government Act 1982. The Council as licensing authority are now permitted to licence sexual entertainment venues. However, this new regime is not mandatory and it will be for local authorities to determine whether they wish to licence SEVs. In determining whether to licence SEVs consideration must be given to the circumstances of the local area balanced against the freedom of individuals to engage in legal employment and activities.

The licensing authority should also take cognisance of human rights issues and the rights potentially engaged. These rights include the right to freedom of expression (Article 10) which could arguably include the right to express oneself through dance as well as the right to peaceful enjoyment of possessions under Article 1 of the First Protocol. Possessions may include not only the physical property in which a business is conducted, but arguably also the goodwill of a business and all rights attached to it. Other relevant legislation such as the Provision of Services Regulation should also be considered. Regulation 24 provides that any refusals of licences under the act must not discriminate against the applicant on the basis of nationality, they must be justified on the basis of public policy, and health etc. and the refusal must be proportionate.

### **(c) Financial implications**

The costs associated with the review of licensing SEVs represents a large amount of staff time engaged in gathering and presenting information. Further considerable staff time will be required to develop a full application process and policy should the Committee decide to proceed with this licensing regime. This time is being met from existing budgets.

### **(d) Risk Implications**

Human rights implications are discussed at para (b) above. Equalities issues at para (g) below.

Currently an SEV operator would be free to open a venue in Moray without the need for a licence. There may be other regulatory requirements e.g. planning and alcohol licensing. However it should be noted that alcohol licensing cannot be used to regulate sexual entertainment itself. Alcohol licensing is to regulate the sale of alcohol. That was made clear by the Courts in the Brightcrew v Glasgow Licensing Board case. That case was precisely the reason why the Scottish Government has legislated for SEVs to potentially be licensed through the Civic Government regime.

By choosing not to licence SEVs the current status quo is maintained. By choosing to licence SEVs the Council would be imposing an additional regulatory burden on proposed operators. This may make Moray less attractive to proposed operators. Such an effect would likely be enhanced by the Council choosing to set an overall limit of zero on the number of licences to be issued.

It seems likely that neighbouring authorities, Highland, Aberdeenshire and Aberdeen City will all choose to licence SEVs. It is unknown whether such a move would make Moray even more attractive to proposed SEV operators if Moray chose not to implement the licensing system.

The relative merits of opening an SEV in Moray are unknown. It may boost the night time economy. Equally some respondents were of the view it may be damaging to the current tourist economy.

In choosing to licence SEVs, a lot more staff time and resource will be required to develop a licensing system, for this licence type, that may never be used. However the development of a licence system will be a one off cost.

**(e) Staffing Implications**

Staff time is being met from existing resources.

**(f) Property**

There are no property implications arising from this report.

**(g) Equalities/Socio Economic Impact**

Attached at **Appendix 3** is an equality impact assessment to inform members in this respect.

**(h) Consultations**

Consultation was carried out on the proposals as detailed in Section 4-7 of the report.

The Equal Opportunities Officer has been consulted on the equality impact assessment attached to this report.

**7. CONCLUSION**

- 7.1 The Committee is invited to consider the policy and whether SEVs should be licensed in Moray, considering any responses received in the initial consultation process.

- 7.2 If SEVs are to be licensed then the Committee is invited to consider the issue of localities and/or the whole area and determine whether to set a limit on the number of licences to be issued in any given locality or the Moray area and to publicise that as the Committee sees fit. This can be set to nil.
- 7.3 The Comittess is invited to consider the draft policy together with the appendices and determine whether they are happy for this to be published for Public Consultation.

Author of Report: Sean Hoath

Background Papers:

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