



REPORT TO: LICENSING COMMITTEE ON 2 DECEMBER 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 Policy Statement and supporting documents 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) **consider, amend as necessary and approve the statement of licensing policy attached at Appendix 1 to this report;**
- (ii) **consider and approve the full licence package including application form, fees and supporting documents to licence SEVs in Moray produced at Appendix 2.**
- (iii) **agree a final date for the implementation of the complete licensing system for SEVs as 11 January 2021.**

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 At the meeting on the 30 September 2020 (para of the minute refers) the Committee approved a draft statement of licensing policy for formal consultation. The draft policy had been prepared after an extensive initial consultation exercise as well as extensive research around the subject.
- 3.5 Officers subsequently undertook a formal, second consultation exercise on the draft policy for a further period of just under 5 weeks. There was very little response to that second consultation and the draft has not been materially amended as a result.
- 3.6 Attached at **Appendix 1** is the final draft Moray Council SEV Statement of Licensing Policy for approval.
- 3.7 Also attached is **Appendix 2** is the supporting package of documents to be placed on the licensing pages of the council's website to take effect on the agreed date, suggested to be the 11th January 2021.

4 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 in resolving to licence SEVs it will be for local authorities to give consideration 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

An equality impact assessment attached to the last report informed members in this respect.

(h) Consultations

Full consultation has been carried out as previously described

5. CONCLUSION

- 5.1 The Committee is invited to consider and approve all documents created for the new licence type of SEVs including the policy and supporting documents to be the Licensing regime to start on the 11 of January 2021.**

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Background Papers:

Ref: