



REPORT TO: LICENSING COMMITTEE ON 6 NOVEMBER 2019

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

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

1. REASON FOR REPORT

- 1.1 The reason for this report is to invite the Committee to consider the responses received to the consultation carried out in relation to the provision of a new licensing regime for sex entertainment venues in Moray, and in light of those responses to decide whether sex entertainment venues should be licensed.
- 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 responses received from the initial consultation process;**
- (ii) in light of those responses, decide whether to pass a resolution to license Sex Entertainment Venues in Moray and specify a date from when the resolution will take effect in Moray; and**
- (iii) if appropriate instruct the Head of Legal and Democratic Services to publish a draft notice of the resolution as required either electronically or in a newspaper circulating locally; and**
- (iv) if appropriate report back to the Committee with any responses to a draft resolution along with a full SEV application process for approval including forms, guidance and a draft Sex Entertainment Venue policy statement, again developed in consultation with relevant interest groups.**

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 Sex Entertainment Venues (SEVs). This new licensing regime provides local authorities with the power to determine whether they wish to license 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 A venue would be considered to be a sexual entertainment venue if it were to provide "Sexual Entertainment" before a live audience for the direct or indirect financial benefit of the Organiser. "Sexual Entertainment" is defined by the legislation as any live performance or live "Display of Nudity" provided for the sole or principal purpose of sexual stimulation of members of the audience. "Display of Nudity" is defined in the Act. However, premises where "Sexual Entertainment" is provided on no more than 4 occasions in a 12-month period are not to be treated as SEVs (so would not need a Licence).
- 3.3 It should be noted that this definition is wider than it may first seem because of the use of the word "or". This means any live performance for the primary purpose of sexual stimulation is sexual entertainment even though it may not involve nudity. Neither does it have to be professionals providing the entertainment so it might include a pole dancing competition in a bar. A similar licensing regime has been in existence in England and Wales for some time and offers useful insight and experience. The Home Office has further guidance on the definition that also deals with spontaneous activities. In England and Wales there are waivers for festivals but where activities are not recognised or caught by the licensing authority there is a danger of the authority being accused of discrimination.
- 3.4 Following an informal discussion with the Committee after its meeting on 12 June 2019 the Committee acknowledged that at present there were no obvious SEVs within Moray, however SEVs may decide to operate in the area in the future. The Committee considered it prudent to seek the views of relevant interest groups, organisations, internal consultees and residents groups within Moray in order to expand their knowledge and to assist in their decision as to whether a resolution should be passed to license SEVs.
- 3.5 On the scope of licensing, if the authority determines to pass a resolution to licence SEVs then the provisions of the Civic Government (S) Act 1982 come into play and they include s.9.
- 3.6 Officers have undertaken a full consultation and information gathering exercise to inform Members on the possible licensing of SEVs. The results appear below.

Mapping Exercise

- 3.7 The Committee instructed Officers to carry out a mapping exercise to consider a wide range of issues including:
- the location of schools;
 - the location of places of worship;
 - the location of heavily residential areas;
 - the location of women's refuges and shelters and other services focussed on supporting women, children and young people;
 - whether there have been incidents involving anti-social behaviour, sexual assaults, prostitution or more minor harassment report in any particular area; and
 - whether there have been incidents of human trafficking or exploitation locally.
- 3.8 Attached at **Appendix 1** are a series of colour coded maps detailing the main settlement areas in Moray, including larger scale maps of the main towns. The maps show, by area, the main usage of land as well as the locations of specific buildings identified in paragraph 3.4 above.
- 3.9 Should the Committee decide to license SEVs, the mapping exercise will then assist Members, as part of the licensing policy, to determine whether to consider Moray as a whole and/or split Moray into designated localities. From there Members would need to consider whether Moray as a whole or any particular locality might be suitable for an SEV. This will, in turn, provide information about the decision whether to set a limit on the number of SEV licences that may be granted.
- 3.10 A limit need not be set now and indeed it is recommended that further consideration is given to this as part of the development of the licensing policy.

4. RESPONSES TO THE CONSULTATION

- 4.1 A consultation was carried out by Officers beginning on 9 July 2019 and closing on 26 August 2019. A questionnaire, attached at **Appendix 2** was sent to internal consultees within Moray Council, religious organisations and groups, women's and children's groups, local businesses, community councils, the education authority and Police Scotland. The questionnaire was made available in both paper form and through Survey Monkey. The results have been analysed below.

License or Not?

- 4.2 The consultation received a total of 187 responses and a summary of these responses have been collated in **Appendix 3**. Please note that 176 responses were received via SurveyMonkey and 11 paper responses were also received. Of the 187 responses received, 53% were not in favour of licensing SEVs while 47% were in favour of the Committee licensing SEVs within Moray. However, this has to be viewed in the light of other responses below. The additional comments that were made suggest a lack of understanding of the

consequences of choosing not to license SEVs. Some respondents seemed to assume that choosing to license the activity would be permissive rather than the primary means of control. They therefore appeared to answer “no” to licensing the activity when they actually wanted the activity restricted or completely prevented.

- 4.3 In fact 86 out of 99 respondents who said “no” to licensing SEVs also said “no” to there being any areas they considered suitable for SEVs. It can reasonably be assumed from this that most respondents want to restrict the potential for SEVs which requires them to be licensed.

Suitable Location?

- 4.4 In terms of whether there were any areas within Moray that would be appropriate for an SEV, of the 187 responses, 57% believed that there were no appropriate areas in Moray for an SEV to be located, while 33% believed that there were a number of areas that could be considered appropriate (and 10% don't know).
- 4.5 Of the 33% of respondents in para 4.3 who considered there might be locations within Moray appropriate for SEVs, most suggestions were for larger town centres. Elgin was the most popular choice for the only appropriate area (36%). 24% of responses included suggestions about other areas within Moray, many incorporating Elgin as well, such as Forres, Buckie, Keith etc.

Maximum Figure?

- 4.6 122 responses were also received in relation to whether the Committee should set a maximum figure for SEVs within any particular locality. 68% of these responses advised that a maximum figure should be set. Out of those 58% advised that the maximum figure should be set at zero.
- 4.7 Suggestions for a positive maximum number varied widely from 1 for the whole of Moray to 1 in each town to no more than 3 per locality. All comments are detailed under Q5 of **Appendix 3**.
- 4.8 Again it should be noted that this is for information and actual guides/numbers are to be developed as part of the licensing policy. There is more information on policy at para 6 below.

What About Neighbours?

- 4.9 The questionnaire also considered whether any SEVs could be located near retail parks, residential areas or schools etc. There were 180 responses received across a range of questions about compatibility within certain areas and in proximity to certain locations. According to respondents, the most incompatible location(s) were: near a school (140 responses or 78%); closely followed by family leisure centres; and then areas that are mainly residential.
- 4.10 The most compatible location(s), according to the survey, would be areas with lots of night time entertainment (69 responses or 38%). There were not many votes in favour of any other location being favourable. The next best

compatible location was thought to be in a mainly retail area (28 votes or 16%). All answers are detailed under Q7 of **Appendix 3**.

- 4.11 The main area for night time entertainment is the centre of Elgin that has a cinema, food outlets and alcohol licensed premises including the only 2 licensed premises regularly open until 3am.

Policy and Procedure

- 4.12 The consultation also considered the content of any SEV policy that would be formulated if the Licensing Committee chose to license SEVs. Of the 179 responses received, 169 participants believed that the suitability of the applicant and those connected to them should be considered. In fact all the matters identified in Q2 of the survey attracted a large degree of support from respondents including: detail operating rules for managing SEVs; the local authority's vision for localities referencing SEVs; the particular use of the neighbourhood; and the interior layout of an SEV. Due to the number of responses received they have been attached as a separate document and not included in the appendices to the report. The responses can be accessed using the link below:

<https://moray.cmis.uk.com/moray/CouncilandGovernance/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/32/Committee/7/Default.aspx>

Any Additional Comments

- 4.13 Further comments were received and are detailed in the document using the link in paragraph 4.12.

5. RESOLUTION TO LICENSE SEVS

- 5.1 The first decision for the Committee is to determine whether to licence SEVs. The Committee previously indicated that it would be a good idea and that idea has been consulted upon as above.
- 5.2 If the Committee decide to license SEVs within Moray, section 45B of the 1982 Act requires the Licensing Committee to pass a resolution in order for SEV licensing to have effect in Moray. The initial resolution will be published as a proposal by the Licensing Committee of their intention to license the activity in the Moray area. The resolution must specify a date from when it is to take effect in the area, which must be at least one year from the date the resolution is passed. So the Committee should determine a date from which the requirement to license 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 notice of resolution in the local newspaper.
- 5.3 A draft Resolution would be as follows: The Moray Council as licensing authority for Moray pursuant to s.45B of the Civic Government (S) Act 1982 **DO HEREBY RESOLVE** that as from the 6 November 2020 the provisions of Schedule 2 of the Civic Government (Scotland Act 1982 (as modified by

Section 76 of the Air Weapons and Licensing (Scotland) Act 2015) is to have effect in the Moray Council area in relation to Sexual Entertainment Venues.

- 5.4 If such a resolution is adopted then public notice must be given at least one month before the resolution comes into effect and attached at **Appendix 4** is a draft notice. The draft notice is just for information and will be published in due course.

6. POST RESOLUTION POLICY

- 6.1 As stated, any resolution has a 12 month lead in time. That gives time for operators to get ready and for the remainder of the licence system to be put in place.
- 6.2 The Act requires the licensing authority to produce a policy on the licensing of sexual entertainment venues and that policy must be published alongside the notice referred to in paragraph 5.3 above.
- 6.3 Production of a robust policy will be a lengthy exercise involving a lot of licensing staff time.
- 6.4 The Act also requires that from time to time the Licensing Committee must determine the appropriate number of SEVs for their area and for each relevant locality within their area. The determination should be publicised in such manner as the authority consider appropriate.
- 6.5 Nil may be considered as a possible appropriate number. If so, it will form a rebuttable presumption against the granting of an SEV licence in one or more localities of the Moray area. Each application would still have to be considered and decided on its own merits but the applicant would have to show particular reason(s) why the presumption against a licence should not apply. In this way, a carefully drafted policy may become more of a rule as the Courts seem more and more willing to consider tough policies as lawful.
- 6.6 A draft policy would therefore be brought back to a future Committee for consideration and public consultation.

7. 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 sex 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 sex 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 license SEVs the current status quo is maintained. By choosing to license 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 license 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 license 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 6** is an equality impact assessment to inform Members in this respect.

(h) Consultations

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

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

8. CONCLUSION

- 8.1 The Committee is invited to consider whether SEVs should be licensed in Moray, considering any responses received in the initial consultation process.**
- 8.2 If SEVs are to be licensed then the Committee is invited to consider and approve the draft Resolution and set dates for implementation and publication of the same.**
- 8.3 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.**
- 8.4 If SEVs are to be licensed then the Committee is invited to consider the issue of a policy on SEVs and what might be included in the same and instruct officers to proceed to develop and publicise a licensing system for the proposed licence type including a policy, forms, guidance and a fee. There will be approximately 11 months to complete this process.**

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Background Papers:

Ref: