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## **Consultation On New Powers To License Sexual Entertainment Venues**

**Report by Executive Director Finance and Regulatory Services**  
**SCOTTISH BORDERS COUNCIL**

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**27 AUGUST 2020**

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### **1 PURPOSE AND SUMMARY**

- 1.1 The purpose of this report is to advise and update Council on changes to legislation which introduces a discretionary licensing scheme for sexual entertainment venues in Scotland and to seek to commence the first part of a possible two stage public consultation. The outcome of this will inform a decision on whether to adopt a Resolution to licence sexual entertainment venues in the Scottish Borders.**
- 1.2 The Air Weapons and Licensing (Scotland) Act 2015 introduced a discretionary power for Local Authorities in Scotland to decide if they wish to licence sexual entertainment venues ("SEVs") within their individual areas. If Council decides to licence this activity any person wishing to operate a SEV within the Scottish Borders would require to apply for a licence. If Council do not decide to licence the activity, any person can operate a SEV without any regulation from the Local Authority.
- 1.3 If Council considers it should explore the option of licensing SEVs, it must firstly carry out a public consultation on whether it is considered necessary to licence this type of activity. If, following an initial consultation, it is felt that Council should decide to licence it then it will proceed by adopting a Resolution to do so. It will then need to produce a SEV Policy and a further public consultation will be required on the content of that Policy.

### **2 RECOMMENDATION**

- 2.1 It is recommended that Council instruct the Executive Director Finance and Regulatory Services to conduct a stage 1 public consultation on whether the Council should resolve to licence SEVs and to thereafter report to Council on those findings before determining whether to adopt a Resolution.**

### 3 BACKGROUND

- 3.1 The Air Weapons and Licensing (Scotland) Act 2015 has, from 26 April 2019, amended the Civic Government (Scotland) Act 1982 to introduce a discretionary power for Local Authorities in Scotland to licence SEVs within their individual areas.
- 3.1.1 A SEV is any premises at which sexual entertainment is provided before a live audience for financial gain and where its purpose is the sexual stimulation of members of the audience. The full definition appears as Appendix I to this report.
- 3.2 Current Position
- 3.2.1 There are no SEVs in the Scottish Borders area and as far as the Council is aware there are no plans to open one. There are SEVs in some of the cities or larger towns in Scotland, including Edinburgh.
- 3.3 Effect of the Changes to the Licensing of Sexual Entertainment Venues
- 3.3.1 The introduction of a discretionary licensing system gives Local Authorities the option to adopt a Resolution to licence SEVs in its area.
- 3.3.2 If a Resolution is adopted, any SEV wishing to operate legally would require to apply for a licence.
- 3.3.3 If a Local Authority does not adopt a Resolution, anyone can operate a SEV without any direct regulation from the Local Authority.
- 3.3.4 If a Resolution is passed by the Local Authority, the main changes can be summarised as follows:
- It must determine the appropriate number of SEVs (if any) for its area and for each relevant locality.
  - It must prepare a SEV Policy Statement in respect of its functions in relation to the licensing of SEVs taking into account the licensing objectives of public nuisance, crime and disorder, public safety, protecting children and young people from harm and violence against women.
  - Any SEVs would require a SEV Licence to operate.
  - There are various grounds for the refusal of a SEV Licence including that the number of SEVs in the Local Authority area or the relevant locality at the time that the application is made is equal to or exceeds the number which the Local Authority consider is appropriate for that locality.
  - The Resolution must not come into force any earlier than one year from the date the Resolution is made by the Local Authority.
  - A SEV Policy Statement must be published by the Local Authority 28 days prior to the Resolution coming into effect.
- 3.3.5 In relation to the above, Members should note that if sexual entertainment has not been provided at a premises on more than three occasions within a 12 month period then the premises is not to be treated as a SEV.
- 3.4
- 3.4.1 Since the new power falls within the Council's responsibilities for Civic Government Licensing, its introduction was intimated to the

Civic Government Licensing Committee at an informal meeting held on 25 October 2019. Members of the Committee expressed support for the idea that Council should consider adopting a Resolution. They were keen to explore the option of having a regulatory framework in place that would be operative if an SEV seeks to operate within the Scottish Borders area in future.

- 3.4.2 The Committee Members asked that a short term working group consisting Members, SBC Officers and multi-agency representatives be formed to ensure that the statutory objectives in relation to SEV activity are properly considered. The working group met twice and their findings form the basis of the recommendation in this report. The working group echoed elements of the advice provided in the Scottish Government Guidance (Guidance on the Provisions for Licensing of Sexual Entertainment Venues and Changes to Licensing of Theatres) appended as Appendix II to this report. That Guidance provides that the Council, in considering this matter, should also have regard to its duties under the EU Services Directive, the Regulatory Reform (Scotland) Act 2014, European Convention on Human Rights and the Equalities Act 2010. Regard should also be had to the following key strategies - Equally Safe: Scotland's Strategy for Preventing and Eradicating Violence against Women and Girls; The Trafficking and Exploitation Strategy; and Fairer Scotland.

## **4 PROCESS**

- 4.1 As part of the process for the adoption of a Resolution to licence SEVs within the Scottish Borders a possible two stage public consultation will be required.
- 4.1.1 If the Council decides that it should consider adopting a Resolution to licence SEVs, the first part of the public consultation will take place. The outcome will assist the Council in deciding whether or not a Resolution is necessary.
- 4.1.2 The first part of the public consultation will simply ask the public if the Council should adopt a Resolution which would allow SEVs to be regulated.
- 4.1.3 The consultation would be directed to the public at large but would also be highlighted to Community Councils, Adult Protection Committee, Child Protection Committee, Police Scotland, Scottish Fire and Rescue Service, NHS and Violence Against Women groups.
- 4.1.4 Responses gathered from the first part of the public consultation will then be brought back to the Council to allow it to consider whether a basis exists to adopt a Resolution to licence SEVs in the Scottish Borders.
- 4.1.5 If a Resolution is adopted, the Council has a statutory duty to publish a Policy Statement. The second part of the consultation will then ask for views on that draft Policy Statement. The policy will include matters such as the appropriate number of SEVs (if any) to be permitted in the Scottish Borders, localities considered suitable (or unsuitable) for the operation of a SEV and what measures the Council would expect applicants to have in place to address the following objectives:
- preventing public nuisance, crime and disorder;
  - securing public safety;
  - protecting children and young people from harm; and

- reducing violence against women.

4.1.6 A Resolution will come into force no earlier than a year after it is adopted.

## 5 IMPLICATIONS

### 5.1 Financial

The Consultation exercise can be undertaken from within current resources. Financial Implications of licensing SEVs will be considered and advice to Members following the consultation.

### 5.2 Risk and Mitigations

The carrying out of a consultation and evidence gathering process will allow the Council to determine whether to exercise the new discretionary power to adopt a Resolution to licence SEVs.

### 5.3 Equalities

An IIA has been carried out. Both a decision to licence and a decision not to licence SEVs have the potential to create considerations for our Fairer Scotland duties. In terms of Equalities, the decision is one which has the potential to create impact in relation to the protected characteristics of Sex and of Religious Belief. It is therefore important that any groups representing those potentially impacted are made aware of this Consultation and their views be actively sought.

### 5.4 Acting Sustainably

There are no economic social or environmental effects as a result of the proposals contained in this report.

### 5.5 Carbon Management

There is no impact on the Council's carbon emissions as a result of the proposals contained in this report.

### 5.6 Rural Proofing

Not applicable as although this is a legislative requirement a new Policy is not being proposed at this stage.

### 5.7 Changes to Scheme of Administration or Scheme of Delegation

No changes to either the scheme of administration or the scheme of delegation are required as a result of the recommendations in this report.

## 6 CONSULTATION

The Chief Financial Officer, the Chief Legal Officer (Monitoring Officer), the Chief Officer Audit and Risk, the Chief Officer Human Resources and the Clerk to the Council and any comments received have been incorporated in the final report.

### Approved by

**David Robertson**

**Executive Director Finance and Regulatory Services**

**Signature .....**

### Author(s)

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**Background Papers:** None  
**Previous Minute Reference:**

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Ron Kirk can also give information on other language translations as well as providing additional copies.

Contact us at Legal & Licensing, Scottish Borders Council, Council Headquarters, Newtown St.Boswells, Melrose, TD6 0SA, 01835-825225, [Legal@scotborders.gov.uk](mailto:Legal@scotborders.gov.uk)

“Sexual Entertainment Venue” any premises at which sexual entertainment is provided before a live audience (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.

“audience” includes an audience of one.

“financial gain” includes financial gain arising directly or indirectly from the provision of the sexual entertainment.

“organiser” means either the person who is responsible for the management of the premises or the organisation or management of the sexual entertainment or where that person exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise) that other person.

“premises” includes any vehicle, vessel or stall, *but does not include any private dwelling to which the public is not admitted.*

“sexual entertainment” means any live performance, or any live display of nudity which is of such a nature ignoring financial gain must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience; and

“display of nudity” means in the case of a woman the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus; and in the case of a man the showing of (to any extent and by any means) his pubic area, genitals or anus.