

Air Weapons and Licensing (Scotland) Act 2015

**Consultation on:
Guidance on the Provisions for Licensing of
Sexual Entertainment Venues and Changes
to Licensing of Theatres**

Summary of Responses

July 2018

CONSULTATION ON GUIDANCE ON THE PROVISIONS FOR LICENSING OF SEXUAL ENTERTAINMENT VENUES AND CHANGES TO LICENSING OF THEATRES – SUMMARY OF RESPONSES

Background

1. Section 76 of the Air Weapons and Licensing (Scotland) Act 2015 (the “2015 Act”) establishes a specific licensing regime for the regulation of Sexual Entertainment Venues (SEV). The provisions, when commenced, will allow local authorities to licence such venues under the Civic Government (Scotland) Act 1982 (the “1982 Act”). This allows for greater local control over the provision of such venues by allowing local authorities to licence SEV and to set the number able to operate in their area taking account of local circumstances.
2. In carrying out its functions in relation to SEV, a local authority must have regard to non-statutory guidance issued by Ministers. The prime intention of the draft non- statutory *Guidance on the Provisions for Licensing of Sexual Entertainment Venues and Changes to Licensing of Theatres* is to assist local authorities in taking forward work in relation to licensing SEV and to help ensure that such activities take place in safe and regulated environments.
3. The *Consultation on Guidance on the Provisions for Licensing of Sexual Entertainment Venues and Changes to Licensing of Theatres*¹ was published on 1 November 2017 and welcomed comments on :
 - a) any areas within the draft non-statutory guidance which were unclear or not easily understood
 - b) other issues which should be taken into account within the guidance.
4. The consultation specifically advised that views were not being sought on the legislation relating to the licensing of SEV which was fully explored during the parliamentary passage of the 2015 Act.

Overview of responses

5. The consultation period ended on 07 February 2018. In total, 31 responses were received and 29 respondents agreed to the publication of their response. These published responses can be viewed on the Citizen Space website².
6. The majority of the responses received were from organisations with 4 of the 13 responses reflecting the views of Violence Against Women Partnerships (VAWP); 4 reflecting the views of voluntary organisations, and 5 reflecting the views of entertainment venue operators and the Association of Licensed Adult Entertainment Venues Scotland (the Association). Responses were also received from 6 local authorities, the Convention of Scottish Local Authorities (COSLA),

¹ <https://consult.gov.scot/justice/licensing-of-sexual-entertainment-venues/>

²https://consult.gov.scot/justice/licensing-of-sexual-entertainment-venues/consultation/published_select_respondent

the Law Society of Scotland (the Society), the Equality and Human Rights Commission (the Commission) and 9 individuals.

Summary of responses

7. A brief summary of the responses received is provided below. This has been set out by category of respondent.

Local authorities and COSLA (7)

8. The responses received from local authorities and their representative body, COSLA offered mixed views in relation to areas within the guidance which are unclear or not easily understood.
9. Some of the respondents considered that the guidance is readable, is good at explaining the background and that no areas are unclear or difficult for a professional person dealing with licensing procedures to understand.
10. Others offered suggestions for improving the clarity of the guidance. Some considered that a flowchart would be helpful in providing a clearer timeline. Others indicated that the complexity of the issues that local authorities may face could be expanded and that further clarity was required on exemptions and the refusal of a licence. It was also suggested that the section *Relationship with other strategies* needs strengthened with regard to the conflict between the definition of violence against women and girls provided in *Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls* and the licensing of sexual entertainment venues.
11. Several suggestions were made in relation to other issues which should be taken into account within the guidance. Some respondents indicated that more guidance is required on how to approach the identification of localities, on the likely challenges and the factors requiring particular attention in the Policy Statement.
12. It was recommended that consideration of whether to pass a resolution to licence SEV should include reflecting on the council's priorities, values and ambitions. Also that more information should be provided on the preparation of, consultation on and content of the Policy Statement, along with more advice on how to arrive at the number of SEV to be licensed.
13. In relation to the European Convention of Human Rights (ECHR) some respondents were of the view that there was an over emphasis in the guidance about the potential of legal challenge under Article Protocol 1 of ECHR. It was suggested that this could be counterbalanced by referencing ECHR Articles which support the case for protecting citizens from potential exploitation.

14. It was indicated that clarification was required in relation to:

- the alignment of the review of the resolution and policy statement
- local authorities not having a duty to engage in full neighbourhood notification or a power to require applicants to do so
- the power of the local authorities to allow applicant to publish notice electronically instead of in a newspaper
- the test of necessity licensing conditions are required to meet
- entitlement to appeal a decision not to grant a licence
- the power of Scottish Ministers to set mandatory conditions
- who is to supervise the 4 events over a twelve month period exemption to ensure it is not breached.

Sexual Entertainment Operators and the Association (5)

15. Responses received from sexual entertainment operators raised some concerns about the legislation providing that a local authority can set the number of sexual entertainment venues at nil; that it did not provide for “grandfather rights” to enable existing venues to continue operating; and that it was a threat to livelihood. These points fall out with the scope of the consultation.

16. Some concerns were raised in relation to the tenor of the guidance and it was suggested that it does not make sufficiently clear that sexual entertainment venues are legitimate businesses and are akin to other restricted activities, such as gambling, which are not unlawful or immoral but do require to be regulated.

17. It was suggested that the guidance could be clearer about what local authorities should take account of in setting the number of sexual entertainment venues for their area; it should also provide advice on what the relevant factors are in setting localities; and the application process detailed required further clarification.

18. It was recommended that the guidance should detail that: local authority applications and procedures should be clear and made public in advance; local authorities should consult on their resolution; and engagement with existing SEV should take place in the development of the Policy Statement.

19. A suggestion was made that the guidance should include a reminder that it is not for local authorities to take a moral view on the operation of sexual entertainment venues and that licensing decisions cannot be based on improper purposes, including morality.

20. Data protection concerns were raised and it was proposed that licence conditions should be caveated to reflect the need to comply with data protection requirements and that local authorities should be reminded of the key aspects of a lawful licensing condition.

21. One respondent advised that their premises are currently operating with no problems being raised; they work in partnership with local police and licensing officers; the premises are fitted to a high standard and have strict codes of practice to ensure the safety and dignity of employees. Another respondent

suggested that the *Association of Licensed Adult Entertainment Venues Toolkit A Guide for Employers and Contractors* should be attached to the guidance.

Violence Against Women Partnerships (4)

22. The responses received from VAWP were similar in content, raising the same type of issues.
23. Some of the issues raised were more general points, rather than specific comments on the guidance. These included:
- disappointment that there was no national decision taken to set the number of sexual entertainment venues at nil (in line with that adopted in Iceland)
 - the Scottish Government should work with COSLA to ensure that each local authority passes a resolution to set the number of sexual entertainment venues at nil
 - concerns about the potential for existing operators to continue to operate unlicensed or for new premises to be unregulated
 - the call for the legislation to be amended to remove the exemption so that all instances of sexual entertainment require to be licensed
 - the suggestion that greater guidance is required in relation to fees and that these should reflect costs and be higher than those for other licensed activities.
24. Concerns were raised about the reference to “freedom of choice” in the *Relationship with other Strategies* section. It was suggested that this section should “clearly state that the Scottish Government recognises sexual entertainment as legitimising and perpetuating a particular form of VAW and, if it is to continue, it must occur in a regulated environment.” A recommendation was made that the guidance should reflect *Equally Safe: Scotland’s strategy for preventing and eradicating violence against women and girls* and its corresponding delivery plan.
25. Some comments were offered regarding the clarity of the guidance. VAWP suggested that the guidance should:
- include standards and conditions for use across Scotland and that these should be focussed on the requirements of an SEV operator
 - include a national application form
 - make clear that VAWP should be included in the notification list as mandatory
 - be strengthened to support local authorities to have confidence in setting the number of SEV at nil.
26. VAWP raised objections to the reference to the Trafficking Awareness Raising Alliance (TARA) at paragraph 53 and this objection was echoed in the TARA response. They also proposed additions to the model conditions set out in the guidance.

27. In relation to other issues which should be taken into account in the guidance VAWP consider that there is an over emphasis on the possibility of legal challenge which may make local authorities reluctant to set the number of sexual entertainment venues at nil and believe that it would be worth mentioning in the guidance legislation, such as Equalities and Human Rights legislation, which would support the setting of the number at nil. They also considered that the guidance should indicate that Civil Licensing Standards Officers must be trained in violence against women Issues.

Voluntary Organisations (4)

28. One of the responses received captured the views of 5 voluntary organisations, 2 of whom also responded on an individual basis. In general, these responses echoed the responses received from the VAWP. There were however some additional points made and these are detailed below.

29. It was recommended that the guidance should:

- expand on what would happen if there was no local authority resolution to licence SEV and an SEV opened in that area
- elaborate on who or what defines what is reasonable in relation to local authority decisions; encourage local authorities to share best practice
- clarify “disproportionate effect on business” at paragraph 43
- refer to the Public Sector Equality Duty to which local authorities must pay ‘due regard’ in the exercise of their functions
- give adequate focus to the key issues of Safety and Fair Employment in line with *Scotland’s Inequalities National Outcome*.

30. It was suggested that local authorities should: carry out an Equality Impact Assessment (EQIA) in developing their SEV policy (and that the Scottish Government EQIA Guidance should be attached to the SEV guidance); and consider whether prospective licence holders are fit and proper persons.

31. With regard to ECHR issues, it was proposed that the guidance should: set out the full wording of Article 1; stress that the rights in Article 10 are qualified; and consider the impact of SEV on women’s rights at Articles 2, 3, 4 and 14 of ECHR.

Equality and Human Rights Commission

32. With regard to clarity, the Commission advised that section 38 of the Human Trafficking and Exploitation Act provides for a ‘duty to notify’. This requires that local authorities must notify Police Scotland if they become aware of a person who is or appears to be a victim of an offence of trafficking or a victim of an offence of slavery, servitude or forced and compulsory labour. It suggested that the section in the guidance on *Licensing Conditions* should make this clear.

33. In relation to other issues which should be taken into account, the Commission recommended that the guidance should refer to the Public Sector Equality Duty to which local authorities must pay ‘due regard’ in the exercise of their functions. It suggested that it is likely that local authorities will be required to carry out an

EQIA in developing their SEV policy. The Commission considers that it would be helpful to include a reference, in the *Licensing Conditions* section, to the minimum standards expected of workplaces, which are contained in the current Health and Safety Regulations, and to add a model condition 'access to medical checks and sexual health advice and information is to be provided on site' to the bullet points. It also indicates that ECHR rights in the ECHR Issues paragraphs of the *Application* section of the guidance should provide more detail.

Law Society of Scotland

34. The Society's Licensing sub-committee offered general comments on the Guidance. They considered the form and style of the guidance to be complex, lengthy and repetitive and indicated that, in its current form, the guidance is difficult to follow. It suggested that the purpose of the guidance requires to be set out clearly and that a flowchart or timeline would make the chronology easier to follow.

35. The sub-committee questioned:

- who the intended audience is;
- what role, if any, morality plays in relation to the licensing of SEV;
- whether ECHR implications should be detailed in the guidance;
- if the *Legislation* section is required in full; and
- whether a general definitions section should be included.

36. It indicated that clarification was required around setting the number of SEV and that the section on *Commencement of licensing of theatres and sexual entertainment venues* should not form part of the guidance as people would be most likely to be referring to the guidance after the provisions had been commenced.

37. The sub-committee also provided observations and raised queries regarding the content of individual paragraphs under each heading within the guidance.

Individuals (9)

38. None of the individual respondents answered either of the two questions posed in the consultation.

39. The majority of individuals who responded raised concerns around the possibility of job losses following the introduction of the new regime for the licensing of sexual entertainment venues. Some of these respondents advocated women's freedom of choice and pointed out that this type of employment is legal. Several respondents mentioned that there is currently a lack of trouble at such venues. One respondent described this type of work as a "career" while another objected to the label of "sex worker".

Common themes

40. Common themes in relation to clarifying the guidance have been identified across some categories of respondents. These include:

- inserting a flow chart into the guidance to make the timeline clearer
- offering more advice about setting the number of sexual entertainment venues
- including more information on identifying and setting localities
- providing more detail on equality and human rights and ECHR issues
- strengthening the *Relationship with other Strategies* section
- providing more detail on the application and notification processes
- adding more model conditions
- diluting the emphasis on the possibility of legal challenge
- including advice on the role of morality in local authority decision making.

Next steps

41. The Scottish Government is grateful to those who responded to the consultation exercise. These responses will be considered in depth and will be of assistance in finalising the guidance. The information gathered through the consultation process will be considered along with other available evidence to help inform future policy.

42. It has not yet been decided when the relevant provisions will come into effect, but the Scottish Government will lay a commencement order in due course and will also publish the final version of the guidance to support implementation.

43. No action is currently required by local licensing authorities in relation to the licensing of SEV. However, once the commencement order has been laid we will ensure local authorities are fully aware of what further steps they should then consider.

Criminal Law, Practice and Licensing Unit
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