



CIVIC GOVERNMENT (SCOTLAND) ACT 1982

Consultation of future policy development of Sexual Entertainment Venues

What do we want to know?

Recently, the Scottish Government passed legislation giving Local Authorities a discretionary power to licence Sexual Entertainment Venues.

The main changes introduced by the recent legislation are summarised below:

- A discretionary power for Local Authorities to pass a resolution, if it so wishes, in relation to the licensing of SEVs in its area;
- If a resolution is passed by the Local Authority:
 - it must determine the appropriate number of SEVs for their area;
 - 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;
 - 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 the application is made is equal to or exceeds the number which the Local Authority consider is appropriate for that locality;

- all SEVs would require a SEV licence to operate;
- the resolution must not come into force any earlier than one year from the date the resolution is made by the Local Authority; and
- a SEV Policy Statement must be published by the Local Authority 28 days prior to the resolution coming into effect.

Statutory Duty

- 1.1 Perth and Kinross Council is the licensing authority for the whole of Perth and Kinross in relation to a wide range of activities. The responsibility of licensing certain activities is delegated to the Licensing Committee (“the **Committee**”).
- 1.2 The Air Weapons and Licensing (Scotland) Act 2015 (the “**2015 Act**”) which came into force on 5 August 2015 provided for changes to be made to the Civic Government (Scotland) Act 1982 (the “**1982 Act**”). Not all the changes to the 1982 Act were introduced immediately.
- 1.3 Recently, the Scottish Government brought into force The Air Weapons and Licensing (Scotland) Act 2015 (Commencement No.9 and Transitional Provisions) Order 2019 which commences a change to the 1982 Act to introduce a new discretionary licensing regime for sexual entertainment venues (“**SEVs**”). This change came into effect on 26 April 2019. As a result, the Committee now has a discretionary power to determine whether SEVs in its area should be licensed.
- 1.4 As it is a discretionary licensing regime, it is for local authorities to determine whether they wish to license SEVs. If a local authority chooses to license SEVs it must determine what the appropriate number of SEVs in its area should be.
- 1.5 The responsibility for determining policy in relation to SEVs and applications is delegated to the Council’s Licensing Committee. Further information on the Committee, including its membership and terms of reference, is available online:

<https://www.pkc.gov.uk/committee>

What is a SEV?

- 2.1 The 1982 Act defines a SEV at section 45A (2) of the 1982 Act as *any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.*
- 2.2 Sections 45A(3) and (4) of the 1982 Act provide the following definitions:

‘*audience*’ includes an audience of one;

‘*financial gain*’ includes financial gain arising directly or indirectly from the provision of 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 and anus.

- 2.3** However, section 45A(9) of the 1982 Act provides that premises where sexual entertainment is provided on no more than 4 occasions in a twelve month period are not to be treated as a SEV.

Current Position

- 3.1** At present there is no legal requirement for SEVs to be licensed in Scotland. If the premise in which the sexual entertainment is taking place sells alcohol then, at present, the premises would only require a Premises Licence under the Licensing (Scotland) Act 2005, which would include “*adult entertainment*” as an activity on the approved operating plan.
- 3.2** However, case law in this area has set a precedent that the licensing regime in the 2005 Act is limited to the regulation of the sale of alcohol only and cannot extend to matters not directly linked to the sale of alcohol. Therefore, there is currently no direct licensing or regulation of this particular type of activity in Scotland.
- 3.3** In consultation with the elected members of the Committee, it was agreed that the Licensing Manager should carry out a public consultation and evidence gathering process in order to establish views on the following:-
- (a) whether SEVs in Perth and Kinross should be licenced;

- (b) if licensed, what the appropriate number of SEVs for Perth and Kinross should be; and
- (c) if licensed, what should be included in a SEV policy statement.

Potential Impact

- 4.1** If following the consultation and evidence gathering process the Committee decides to licence SEVs, section 45B of the 1982 Act requires the local authority to pass a resolution in order for SEV licensing to have effect in its area. If such a resolution is passed, any perspective SEVs in Perth and Kinross would require to apply for a SEV licence under the 1982 Act.
- 4.2** If the Committee does not adopt the discretionary power available to it under the 1982 Act to licence SEVs, these venues would not require to be licensed could be established and operate without any direct regulation from the local authority.
- 4.3** A local authority which chooses to licence SEVs is obliged to publish a SEV policy statement.
- 4.4** Local authorities who pass a resolution to licence SEVs must periodically determine the appropriate number of SEVs for both their area and for each relevant locality within their area. Such determination would be made after a period of consultation.
- 4.5** There are various grounds for refusal of a SEV licence grant or renewal application under the 1982 Act, including that the number of SEVs in the local authority area at the time the

application is made is equal to or exceeds the number which the local authority consider is appropriate for that locality.

Seeking Your Views

- 5.1** This consultation and evidence gathering process is undertaken to seek views on the licensing and regulation of SEVs, with the purpose of determining whether SEVs should be licensed within Perth and Kinross.
- 5.2** In particular, we are seeking views on:
- Whether a licensing regime should be adopted to licence and regulate SEVs;
 - What the appropriate number of SEVs in Perth and Kinross should be, if SEVs were to be licensed; and
 - If the Committee were to decide to pass a resolution to licence SEVs, what matters should be taken into consideration in the development of a SEV policy statement.
- 5.3** This current consultation is an important stage in the future decision making process and possible development of a SEV policy statement and is essential in establishing the evidential basis as to whether or not SEVs in Perth and Kinross should be licensed.
- 5.4** We are therefore seeking your views on a range of issues associated with SEVs. We are particularly keen to hear about the impact SEVs may have upon residents and businesses.

How to Respond

- 6.1** Appendix A sets out further information on the Committee's discretionary powers to licence SEVs, and the process by which they would be licensed and regulated should a resolution be passed.
- 6.2** Appendix B sets out the matters which would be taken into consideration when considering what the appropriate number of SEVs should be within the city.
- 6.3** Appendix C considers the matter of developing a SEV licensing policy statement and standard licence conditions if SEVs were to be licensed and regulated.
- 6.4** You can respond to as many or as few of the issues as you choose depending upon your particular area of interest or experience. Where possible, please try to explain why you have a certain view, providing any evidence you have in support of that view.
- 6.5** Your response should be sent either:
- By Post:** Licensing Manager
Legal Services
2 High Street
Perth
PH1 5PH
- By Email:** civiclicensing@pkc.gov.uk

SEEKING YOUR VIEWS

- 6.6** Please indicate in your response the capacity in which you are responding, for example, a member of the public, elected member, Community Council, SEV operator or someone who works within a SEV.
- 6.7** Your response should be received by no later than **Monday 6 April 2020** in order to ensure that your views are considered as part of the consultation exercise.

Next Steps

- 7.1** Once this consultation exercise has been completed, the Committee intends to hold evidence sessions with a representative cross section of those who have taken part in the consultation in order to further explore the views expressed and to assess the evidence available to support any decisions that are made by the Committee.
- 7.2** Following the consultation and evidence gathering process, the Committee will consider the views and evidence provided to it. If considered appropriate, it may agree a resolution and set an appropriate number of SEVs within Perth and Kinross. If a resolution is passed, a SEV draft policy statement will be issued for further consultation.
- 7.3** All of the feedback received will be reviewed and evaluated before a final decision is made by the Committee regarding whether or not a resolution should be passed requiring SEVs to be licensed in Perth and Kinross.

Further Information

- 8.1** If you would like further information on the consultation exercise or to discuss any other aspect of the approach to SEV Licensing, please contact:

Debra Gilkison, Licensing Manager, Legal and Governance Service

Email: civlicensing@pkc.gov.uk

Confidentiality & Data Protection

- 9.1** The local authority will process any personal data you provide in your response appropriately in accordance with the Data Protection Act 2018. The information provided by you will be used by Perth and Kinross Council to record details of your comments on the proposal. Your personal information will not be disclosed to third parties except as described below. The Council may check information provided by you, or information about you provided by a third party, with other information held by us. We may also get information from certain third parties or share your information with them in order to verify its accuracy, prevent or detect crime, protect public funds or where required by law. For further information, please look at our website www.pkc.gov.uk/dataprotection Email dataprotection@pkc.gov.uk or phone 01738 477933.

SEEKING YOUR VIEWS

- 9.2** The local authority intends to publish a summary of responses received to the consultation exercise.
- 9.3** The Freedom of Information (Scotland) Act 2002 gives the public a right of access to information held by the local authority; this includes any responses we receive to the consultation exercise.
- 9.4** The local authority may disclose your response to third parties on request. In disclosing responses the local authority will take appropriate steps to redact personal data subject to the relevant provisions of the 2018 and 2002 Acts.
- 9.5** The local authority will hold your response for a period of 5 years from the date it is received. At the end of this period your response will be destroyed unless there are exceptional circumstances that require the response to be retained for a longer period.

A

Appendix A: Should SEVs be licensed?

- A.1** The local authority now has the discretionary power to pass a resolution requiring SEVs to be licensed. If a resolution not setting the limit at zero was passed by the Committee, all SEVs would require to apply for a licence and the Committee would have to determine the appropriate number of SEVs.
- A.2** If the Committee were to pass such a resolution it would not come into effect until at least a year after the date on which the resolution is passed. As detailed above, if a resolution were passed, any SEVs wishing to open in Perth and Kinross would require a SEV licence. The process which SEVs would then be required to complete to apply for such a licence would be as follows:
1. The applicant would apply to the local authority for a licence to operate a SEV.
 2. A Site Notice would require to be displayed in the immediate vicinity of the premises where it can be conveniently read by the public for a total of 21 days.
 3. A copy of the SEV licence application must be given to Police Scotland, Scottish Fire and Rescue, Planning, Environment Services and any other relevant consultees.
 4. At this stage, there would be a period of time during which objections to the application and representations in favour of the application could be made to the local authority.
 5. If after consideration the Committee was to decide to grant a SEV licence, various conditions could be attached to the licence to impose control over the running of the SEV.

A.3 The Committee would be entitled to refuse the grant of a SEV licence on the following grounds:

- unsuitability of the applicant having been convicted of an offence or for any other reason;
- that the business would be carried on for the benefit of someone other than the applicant (who would have been refused the licence if they had applied themselves);
- that the number of SEVs in the local authority area at the time the application is made is equal to or in excess of the number which the local authority has deemed to be appropriate; or
- that the grant of the licence would be inappropriate considering the character of the locality, use to which any premises in the vicinity are put, layout, character or condition.

A.4 There is a right of appeal against a decision of the Committee not to grant a SEV licence. An appeal could be made on the grounds that the local authority erred in law, based their decision on an incorrect material fact, acted contrary to natural justice or exercised their discretion unreasonably.

A.5 As noted previously, if following this consultation the Committee were to decide not to pass a resolution providing for the licensing of SEVs, then no licence would be required to operate a SEV. Existing SEVs could continue to operate and new SEVs could be established without the need for a SEV licence. The local authority would continue to have no direct control or regulation over the provision of sexual entertainment within SEVs.

A.6 When deciding whether to pass a resolution requiring SEVs to be licensed, the Committee will require to consider potential implications that this may have in relation to the European Convention of Human Rights (ECHR). The Committee is required to take account of the competing ECHR rights of individuals alongside those of the community.

- A.7** The Committee will require to consider the rights which SEV operators may have under the ECHR, particularly under Article 1, Protocol 1 (peaceful enjoyment of possessions) and Article 10 (freedom of expression) and should consider whether a decision to licence SEVs is proportionate and justifiable in accordance with these ECHR rights.
- A.8** In addition to the ECHR, the Committee is required to give due regard to their Public Sector Equality Duty when making any decisions on the discretionary powers available to it under the 1982 Act.
- A.9** The Committee must also have regard to the EU Services Directive and the Regulatory Reform (Scotland) Act 2014 when considering whether to pass a resolution to licence SEVs and if so, the appropriate number of SEVs in its area.
- A10.** When determining the appropriate numbers of SEVs and which localities (if any) would be suitable for SEVs to be located, the local authority may have regard to the following factors:
- Whether there are any SEVs already operating in the locality;
 - The character of the locality, e.g. principally residential, night-time economy, etc.;
 - The location of schools, places of worship, women's refuges or other services focussed on supporting women, children and young people;
 - Whether the locality is of historical or cultural importance;
 - Whether the locality contains premises or areas which are frequented by children, young persons or families for example parks, libraries or swimming pools; and

- Whether there have been incidents involving anti-social behaviour, sexual assaults, prostitution or more minor harassment reported within the locality.

B**Appendix B:
If SEVs are to be licensed, what should the appropriate number be?**

- B.1** If the Committee were to pass a resolution to licence SEVs, they have to determine and publicise the number of SEVs that they consider appropriate for the local authority area. When reaching this decision, the Committee would be required to take specific local circumstances into consideration when determining the appropriate number of SEVs.
- B.2** The Committee would be required to review the set number of SEVs deemed appropriate from time to time and update this if necessary.
- B.3** The number, taking into account ECHR and the grounds of reasonableness can be set at nil.

C**Appendix C:
Developing a policy on the licensing and regulation of SEVs**

- C.1** If the Committee were to pass a resolution to licence SEVs, they would be obliged to develop and publish a SEV policy statement which would provide the public with a clear indication of the Committee's policy with regards to the licensing and regulation of SEV. A draft SEV policy statement, as detailed above, would be subject to a separate consultation.
- C.2** The Committee should have regard to its policy statement when exercising any functions in relation to the licensing of SEV. It is also required, from time to time, to review the policy statement, revise it as appropriate and publish the revised statement.
- C.3** When preparing a SEV policy statement, section 45C(3) of the 1982 Act provides that a local authority must consider the impact of the licensing of SEV in their area, having particular regard to how it will affect the objectives of:
- preventing public nuisance, crime and disorder;
 - securing public safety;
 - protecting children and young people from harm; and
 - reducing violence against women.
- C.4** In addition to preparing a SEV policy statement, the Committee may develop licence conditions, i.e. specific requirements that the licence holder must comply with or risk having their licence suspended or revoked. The Committee would have the authority to attach standard conditions for all licences granted for SEV, and also to impose individual conditions to licences. If the Committee were to impose standard conditions for SEV licences, these would be set out within the SEV policy statement.
- C.5** The following examples are all potential standard conditions which could be adopted as part of the SEV policy statement, should the Committee pass a resolution to licence SEVs:
- list of full names, dates of birth, nationality and contact details (address or telephone number) for all performers to be available on the premises for immediate production if requested by authorised local authority officers;

- ensure immigration status is in order and actively seek to identify performers who may have been the victim of human trafficking;
- provision of hygienic changing and showering facilities and a toilet with access to hot water exclusively for the use of the performers;
- regulation of the display of advertisements on or connected to the venue;
- the interior of the SEV not to be visible to passers-by;
- the licence holder to ensure no physical contact between performers and customers;
- the licence holder to ensure no photographs or video recordings are taken of the performers.
- days and times to be provided when the premises is to be used as an SEV.

C.6 The purpose of imposing standard conditions for SEV licences is to help protect the safety and wellbeing of performers, customers and the wider public.

CONSULTATION RESPONSE

1. What is your name?

2. What is your e-mail address?

3. What is your organisation (if relevant)?

4. Please choose which of the following most applies to you.

- Resident
- Community Council representative
- Trade organisation (please give details below).
- Other business (please give details below).
- Other (please give details below).

Further details

- 5. Do you agree/disagree that the Council should licence SEVs within Perth and Kinross? You should note that if the Council does not adopt these powers then SEV's will operate without regulation by the Council.**

- Strongly agree
 - Agree
 - Disagree
 - Strongly disagree
 - Neither agree or disagree
-

CONTROLLING NUMBERS OF SEV'S

If Perth and Kinross Council chooses to adopt this licensing scheme, it can choose a limit to the number of SEV's.

Presently, there are currently no SEV's operating within Perth and Kinross.
The limit can be set at zero upwards.

6. Do you agree/disagree that the Council should set a maximum number of SEV's within Perth and Kinross.

Strongly agree

Agree

Disagree

Strongly disagree

Neither agree or disagree

7. What number of SEV's do you think the Council should set for Perth and Kinross? (Please circle)

0 1 2 3 4 5 6 7 8 No
Limit

VICINITY

We would like your views on whether SEVs if licenced, should be allowed to operate near particular areas and types of buildings.

8. Please consider the type of areas if licenced where a SEV might operate, and tell us whether you agree/disagree that the following areas would normally be suitable for SEV's to operate.

	Strongly agree	Agree	Disagree	Strongly disagree	Neither agree or disagree
The city centre					
A rural area					
A busy late night economy area e.g. High Street.					
A residential area outwith the town/city centre					
An industrial or commercial area					

9. Do you agree/disagree that it would be acceptable to have a SEV in the following places or near to the following types of area or landmark?

	Strongly Agree	Agree	Disagree	Strongly Disagree	Neither agree or disagree
Residential areas					
Late night entertainment areas					
Retail shopping areas					
Places of worship					
Family Leisure facilities such as swimming pools and concert halls					
Places used for celebration or commemoration					
Historic buildings					
Play areas or parks					

CONDITIONS

If the Council adopts powers to licence SEV's, it can add reasonable conditions to any licence granted. For instance, a condition may restrict the allowed trading hours of a SEV; it might regulate the display of advertisements on or about the venue; or restrict the visibility of the interior of the premises to passers-by.

10. What conditions (if any) should the Council consider for SEV licences? (See above paragraph for examples)

FURTHER INFORMATION

11. Is there anything else you wish to add?

Your response should be sent either:

By Post: Licensing Manager

Legal Services
2 High Street
Perth
PH1 5PH

By Email: civlicensing@pkc.gov.uk