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## NORTH AYRSHIRE COUNCIL

8 May 2019

Licensing Committee

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| <b>Title:</b>          | Licensing of Sexual Entertainment Venues - Civic Government (Scotland) Act 1982   |
| <b>Purpose:</b>        | To advise the Committee of a change in the Law, and to make proposals for further action.   |
| <b>Recommendation:</b> | <ol style="list-style-type: none"><li>1. That the Committee should note this Report.</li><li>2. That the Committee should consider whether or not the Council should adopt a scheme of licensing Sexual Entertainment Venues;</li><li>3. That, if the Committee has decided that, in principle, there should be a licensing scheme, the Committee should:<ol style="list-style-type: none"><li>(a) give directions as to the form and duration of public consultation, and</li><li>(b) Continue consideration of this matter until after that consultation has taken place.</li></ol></li></ol> |

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### 1. Executive Summary

- 1.1 The Licensing Committee's remit is to exercise the Council's licensing functions. These functions arise under many statutes, mainly the Civic Government (Scotland) Act 1982.
- 1.2 This Report is intended to inform the Committee of a change in the Law related to the Scottish Government Policies:

'Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls'

'Trafficking and Exploitation Strategy'

### 2. Background

- 2.1 At present lap-dancing clubs do not require to be licensed anywhere in Scotland. There are no lap-dancing clubs in North Ayrshire, or in most of Scotland. There are about 19 clubs in Scotland (mostly in Glasgow, Edinburgh, Dundee and Aberdeen).
- 2.2 These clubs hold a Premises Licence under the Licensing (Scotland) Act 2005. This Act regulates the sale of alcohol and that Licence is granted by a Licensing Board (as opposed to a Licence granted by the Council under the Civic Government (Scotland) Act 1982). The Court of Session has decided that Licensing Boards are not entitled to place conditions regulating lap-dancing clubs (for example, regulating the working

environment in the Premises, requiring CCTV coverage of staff-only areas, and prohibiting physical contact between workers and customers). The Court held that the licensing regime in the 2005 Act was limited to the regulation of the sale of alcohol and could not extend to matters not linked to the sale of alcohol.

- 2.3 Accordingly the Scottish Parliament amended the 1982 Act so as to enable Licensing Authorities to adopt a new Licensing system to require that "Sexual Entertainment Venues" ("SEVs") should obtain a Licence granted by the Council. This was done by the Air Weapons and Licensing (Scotland) Act 2015, which added new provisions to the Civic Government (Scotland) Act 1982. These provisions came into force on 26 April 2019. The Committee Meeting on 8 May 2019 is the earliest Meeting after then.
- 2.4. Premises are classed as an SEV where "sexual entertainment" is provided 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. However, premises where sexual entertainment is provided on no more than 4 occasions in a twelve month period are not to be treated as SEVs (so would not need a Licence).
- 2.5. The new licensing system does not apply automatically. Instead of the Scottish Parliament simply prohibiting new lap-dancing clubs altogether, individual Councils throughout Scotland have to decide whether or not to apply the new licensing system in their area, even if there is no likelihood of a lap-dancing club being planned in their area.
- 2.6. Before deciding whether or not to make a Resolution, the Council must also have cognisance of other relevant legislation such as the EU Services Directive, the Regulatory Reform (Scotland) Act 2014 and the Convention rights of SEV operators. Local authorities should consider whether the decision to licence SEV is proportionate and justifiable. The Council is a "Regulator" under the Regulatory Reform (Scotland) Act 2014 and therefore has a duty, in exercising its regulatory functions, to contribute to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of those functions to do so.
- 2.7. The Scottish Government recognises that there are competing considerations. In exercising their functions under the new legislation, the Council is obliged to have regard to the Guidance issued by the Scottish Government in March 2019, which includes:

*"19. The Scottish Government accepts the freedom of adults to engage in legal activities and employment. However, it will continue to promote, through all relevant means, gender equality and actions that tackle out-dated attitudes that denigrate or objectify particular groups or individuals."*

*20. 'Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls' was first published in 2014 and updated in 2016 and again in 2018. It sets out a definition of violence against women and girls which includes 'commercial sexual exploitation, including prostitution, lap dancing, stripping, pornography and human trafficking'.*

21. *Whilst recognising the conflict between this definition and the licensing of SEV, this guidance will help to ensure that such activities take place in safe and regulated environments. When deciding whether to licence, and whether to limit, SEV in their area, local authorities will need to consider the interaction with their own local policies and strategies, as well as the legal implications around limiting a legitimate business activity to minimise the risk of legal challenge.*

22. *Equally Safe's aim is to work collaboratively with key partners across all sectors to prevent and eradicate all forms of violence against women and girls and the attitudes which perpetuate them. Its priorities are: achieving gender equality; intervening early and effectively to prevent violence; and maximising the safety and wellbeing of women, children and young people. 'Equally Safe: A Delivery Plan for Scotland's strategy to prevent and eradicate violence against women and girls' was published in November 2017. It will help to ensure that the ambitions of the Equally Safe Strategy make a tangible difference.*

23. *The 'Trafficking and Exploitation Strategy' required under section 35 of the Human Trafficking and Exploitation (Scotland) Act 2015 was published on 30 May 2017. It sets out the Scottish Government's strategy to work with partners to make Scotland a more hostile place for human trafficking. The aims of the strategy are to identify victims and support them to safety and recovery; identify perpetrators and disrupt their activity; and address the conditions that foster trafficking and exploitation.*

24. *In developing the licensing regime, care has therefore been taken to balance the freedom of individuals to engage in legal employment and activities with the right of local authorities to exercise appropriate control and regulation of SEV that operate within their areas."*

2.8. The Guidance also contains:

"32. *In considering whether to pass a resolution to licence SEV, local authorities may wish to look carefully at their localities and consider a range of issues such as:*

- whether there are any sexual entertainment venues already operating;*
- 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 reported in any particular area; and*
- whether there have been incidents of human trafficking or exploitation locally."*

2.9. The consequences of the Council's decision are:

- (a) *if the Council chooses not to require new lap-dancing clubs to hold Licences, then an operator could open a club anywhere in North Ayrshire.*

(b) if the Council chooses to require new lap-dancing clubs to hold Licences, this is done by making a Resolution. The Resolution for SEVs does not follow the usual procedure for introducing new Licensing systems, where the new system commences one month after the Resolution. A SEV Resolution takes effect at least 12 months after it is made. In that period, the Council must publish a SEV Policy Statement, developed in consultation with relevant interest groups (including violence against women partnerships).

2.10. Any SEV Policy Statement is to be published at least 28 days before the Resolution takes effect (so at least 11 months after the Resolution is made). The Council is entitled to set a limit to the number of SEVs in localities throughout North Ayrshire (for example, the Council might prohibit SEVs within a set distance of schools, residential areas and places of worship). This would be done by the Policy Statement.

2.11. Applications would be referred to the Licensing Committee whether or not they appeared to be excluded by that Policy, and delegated powers would not be used to grant a SEV Licence (once granted, delegated powers would be used for renewal of a SEV Licence in the same way that those powers would be used for any other type of Licence).

### **3. Proposals**

3.1 If the Committee decide that, in principle, SEVs should be licensed, the Committee should consider a further matter. The Committee is invited to give directions on how public consultation is to be carried out. The Committee might proceed by publishing a notice on the Council's website, informing the public that the Council is considering whether or not to make a Resolution. The notice would be accompanied by a summary of the new legislation, referring to the Scottish Government Guidance.

The notice would:

(a) invite the public to make written representations to the Council in the period up to one week before the Committee Meeting on 21 August 2019,

(b) inform the public that when the Committee meets to decide the Resolution question, that part of the meeting would be open to the public and the Committee would accept oral representations;

(c) the notice would also say that, if there was to be a Resolution, there would be further consultation on the content of a SEV Policy Statement.

3.2 The matter would then be before the Committee Meeting on 21 August 2019, or a later Meeting, and the Committee would then consider any representations received and decide whether or not a Resolution should be made.

#### 4. Implications/Socio-economic Duty

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| <b>Financial:</b>       | There are no financial implications at this preliminary stage, but if a licensing scheme is adopted there may be financial implications arising from the determination of any Application. |
| <b>Human Resources:</b> | None.  |

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| <b>Legal:</b>                              | There may be legal implications whenever a Licence is granted, refused, revoked or suspended. Depending on the legislation, there may be a right of appeal. A failure to consult prior to making a decision to license SEVs may lead to a judicial challenge.   |
| <b>Equality/Socio-economic Duty:</b>       | <p>Equality Act 2010 imposes duties on the Council:</p> <p>Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council "must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."</p> <p>Section 149(1) ("Public sector equality duty") the Council "must, in the exercise of its functions, have due regard to the need to—</p> <ul style="list-style-type: none"> <li>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];</li> <li>(b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;</li> <li>(c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it."</li> </ul> <p>The "Relevant Protected Characteristics" are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.</p> <p>The impacts to be considered at the preliminary stage of deciding whether or not to require SEV licensing are outlined in the Report. The legislation directs the Local Authority in deciding whether or not to make a SEV Resolution, and when preparing a SEV Policy Statement, to consider a number of factors, including reducing violence against women.</p> |
| <b>Children and Young People:</b>          | The legislation directs the Local Authority in deciding whether or not to make a SEV Resolution, and when preparing a SEV Policy Statement, to consider a number of factors including the protection of children and young people from harm.  |
| <b>Environmental &amp; Sustainability:</b> | None.   |

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| <b>Key Priorities:</b>     | An effective licensing system, for example monitoring the 'fit and proper' status of licence-holders and the suitability of premises, helps progress towards one of the "priority areas" of the "NAC Community Planning Partnership Local Outcomes Improvement Plan 2017 – 2022 (LOIP): "A Safer North Ayrshire". |
| <b>Community Benefits:</b> | Not applicable, as the Report does not relate to tendering or procurement exercises.  |

## 5. Consultation

- 5.1 At this point there is no requirement for consultation, but the Committee should carry out consultation before deciding whether or not to make a SEV Resolution. If there are Licence Applications later these will be referred to the Committee after appropriate consultation with Police Scotland, Scottish Fire and Rescue, and Council Directorates.

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## Background Papers

N/A