

Consultation on Regulation of Sexual Entertainment Venues

CONSULTATION ON REGULATION OF SEXUAL ENTERTAINMENT VENUES

Introduction

1. The key aims of civic licensing are the preservation of public safety and order and the prevention of crime. A range of premises and venues are subject currently to licensing, including pubs, clubs and other venues selling alcohol, theatres and public entertainment venues, etc. The Scottish Government considers that it is appropriate that sexual entertainment venues should be licensed in order that both performers and customers benefit from a safe, regulated environment. We also believe that the licensing of these venues would limit the risk of criminality, such as prostitution and human trafficking.

2. Sexual entertainment covers a range of different legal activity, including lap dancing, strip shows, peep shows and live sex shows. It includes entertainment provided by both male and female performers. We are clear that the licensing of sexual entertainment venues should not inadvertently hinder artistic performance. Sexual entertainment licensing would not cover or authorise currently illegal activity, such as brothel keeping or trading in prostitution.

3. By consulting on a licensing regime for legal activities, the Scottish Government does not seek to endorse or condone these activities. Indeed, the Scottish Government's definition of violence against women includes commercial sexual exploitation, which encompasses many of these sorts of activities. The proposals seek to balance individual freedom of choice with a local community's right to exercise control and regulate sexual entertainment venues that operate within its areas. Local licensing authorities are best placed to reflect the views of the communities they serve and determine whether sexual entertainment establishments should be authorised and under what conditions. Where a venue is approved, licensing conditions and enforcement should assist in protecting the safety and wellbeing of both staff and customers and the wider public.

Scottish Government National Outcomes

4. In terms of the Scottish Government's overall purpose, a successful sexual entertainment licensing regime would contribute to two [national outcomes](#):

- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others;
- We live our lives safe from crime, disorder and danger.

5. The proposals in this consultation paper also aim to support four outcomes within Scottish Ministers' *Strategy for Justice in Scotland* (2012):

- We experience low levels of crime;
- We experience low levels of fear, alarm and distress;
- We are at a low risk of unintentional harm;
- Our people and communities support and respect each other, exercising both their rights and responsibilities.

Background

6. Regulation of adult and sexual entertainment has been looked at on a number of occasions in recent years. On 24 March 2005, previous Scottish Ministers set up a Working Group on Adult Entertainment to review the scope and impact of adult entertainment activity and make recommendations to Ministers on the way forward. This followed concerns expressed about the lack of controls on adult entertainment activity.

7. The Working Group membership consisted of representatives from local government, operators and women's support workers. The remit of the group was:

- to identify all relevant activities (whilst recognising the need not to suppress artistic freedom)
- to consult with all relevant interest groups (including women's groups; and employees and employers in the adult entertainment industry)
- to commission research into the activities and associated impacts (using anonymous sources where appropriate)
- to identify and assess relevant types of controls, including the implementation and impact of any controls
- to recognise the need to balance local and national interests
- to take account of concurrent work on prostitution and regulations for lap dancing in licensed premises
- to report to Ministers in April 2006, with recommendations.

The Group adopted a definition of adult entertainment of, *"The performance in a public place of any activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification and/or titillation."*

8. The Group's research included interviews with performers in the sexual entertainment industry. They found that:

"Adult entertainment performers are generally self-employed and do not benefit from the protections afforded to employees. Performers complain of financial exploitation by operators. Performers have also raised concerns about a lack of dedicated changing facilities, a lack of refreshments away from the public area, and poor environmental conditions."

9. The Group noted the view that adult entertainment activities represent *"a commodification of sexuality and intimacy, and sexualise male dominance and the denigration of women."* The Group considered that some of these concerns could be addressed by better regulation, but that this did not reduce the need to change attitudes to the wider gender issues in society. The Scottish Government accepts the freedoms of adults to engage in legal activities and employment. However, we will continue to promote, through all relevant means, gender equality and actions that tackle out-dated attitudes that denigrate or objectify particular groups of individuals. For example, a new Violence Against Women strategy is being developed by the Scottish Government and is due to be published later this year.

10. The Working Group noted anecdotal and international evidence of links between adult entertainment and criminality. Although it did not find significant specific evidence of criminality linked to adult entertainment venues in Scotland, it concluded that regulation would assist in reducing the risk of criminal activity, including prostitution.

11. The Group made a number of recommendations aimed at improving standards in the industry, ensuring the safety of performers and customers, regulating the impact on the locality, improving local accountability and control and ensuring that there was no inadvertent impact on artistic freedoms. The full recommendations and post consultation work can be found in the Group's reports: <http://www.scotland.gov.uk/Publications/2006/04/24135036/0>
<http://www.scotland.gov.uk/Publications/2006/04/24111914/0>

12. At the time, it was felt that as sexual entertainment venues also sold alcohol and therefore required alcohol licenses, it was best left to local licensing boards to regulate adult entertainment via the licensing system of alcohol. It would be up to local boards to consider the situation in their locality and set policies accordingly. They would have the discretion to use the recommendations of the Working Group as a template.

13. A specific system of licensing for sexual entertainment was considered by Parliament in 2010 as part of the Criminal Justice and Licensing (Scotland) Act 2010. These proposals largely mirrored those that had been introduced in England and Wales by the Policing and Crime Act 2009. Whilst the Scottish Government supported such a move, Parliament rejected these proposals due to concerns around the effect of operating a dual licensing system with sexual entertainment being regulated under a regime of its own as well as under the alcohol licensing system. In addition, there was concern that the proposals were introduced late in the Bill process and had not had the opportunity for scrutiny.

14. However, the regulatory context has changed since 2010. Recent court judgements have called into question the ability of licensing boards to set conditions that stray from a tight focus on the sale of alcohol. This leaves uncertainty in the regulation of sexual entertainment, with many licensing boards believing that the alcohol licensing system is not, as currently constructed, able to provide adequate control, and that there is no effective alternative in place.

15. The view of the Scottish Government is that a specific licensing regime for sexual entertainment venues (of which we believe there are around 20 in Scotland) is the best solution for future regulation of the industry. It removes uncertainty around attempting to regulate under alcohol licensing matters that go beyond the remit of that scheme. It offers local licensing authorities the ability to consider local circumstances and develop approaches appropriate to those circumstances. This would include the ability to set a desired number of sexual entertainment premises for their area (and for that number to be zero). It would also include the ability to set conditions that control the conduct of activities on premises in their area.

Purpose of Consultation

16. The purpose of this consultation is to invite views on the establishment of a licensing regime for sexual entertainment venues along the lines considered by Parliament in 2010. Such a regime would be introduced by inserting provisions into the Civic Government (Scotland) Act 1982 and using the architecture provided by that Act to set conditions and determine the process for dealing with applications. It would be at the discretion of the local licensing authority as to whether or not a licensing regime was needed in their area.

The Alcohol Licensing Regime

17. Licensing Boards imposing conditions on premises selling alcohol can impose conditions that they consider expedient or necessary for the furtherance of the licensing objectives. They may not however set conditions which relate, 'to a matter (such as planning, building control or food hygiene) which is regulated under another enactment.' (Section 27 of the Licensing (Scotland) Act 2005 refers.

18. If a separate regime for licensing of sexual entertainment premises were established then it would no longer be open to a Board to set conditions relating to sexual entertainment as it would be regulated under that enactment. Nevertheless a Licensing Board may wish to be aware in considering an application for a premises licence that sexual entertainment is offered. The operating plan would therefore (as is the case currently) make clear what activities are offered on the premises.

Q. Should sexual entertainment and the sale of alcohol be licensed separately? If so, what impact, if any, would a parallel regime for sexual entertainment venues have on alcohol licensing?
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The Public Entertainment Licensing Regime

19. Currently, it is theoretically possible for sexual entertainment to be licensed under the public entertainment licensing arrangements that exist under the Civic Government (Scotland) Act 1982. However, this is unlikely as premises with an alcohol licence would not normally need a further public entertainment licence.

20. The Scottish Government believes that the particular regulatory needs for sexual entertainment premises requires a dedicated regime of its own.

Q. Do you agree that sexual entertainment premises should be licensed separately from other forms of public entertainment?

Draft Legislative Provisions

21. **Annex A** attached provides draft legislative provisions to allow for the establishment of local licensing regimes for sexual entertainment venues. The draft provisions are the same as those submitted to Parliament in 2010.

Definitions

22. Section 4 of the draft provisions proposes that the definition of an audience at an adult entertainment venue should include an audience of just one person.

Q. Is the definition of an audience as including ‘an audience of one’ appropriate?

23. The section further proposes the definition of “sexual entertainment” meaning any live performance or live display of nudity (as defined), which would reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating the audience.

24. There is a fine line to be drawn between adult shows and certain forms of artistic entertainment, including burlesque and theatrical performances. It is therefore important that regulation adequately protects artistic activity and does not inadvertently hinder clearly artistic types of performance.

Q. Is the definition of sexual entertainment sufficiently clear? Are additional measures required to protect the position of artistic performances including, for example, exotic dancing?

Venues

25. The draft provisions identify a number of venues as not being classified as sexual entertainment venues. These are mainly venues subject to alternative licensing regimes, specifically:

- venues with a public entertainment licence;
- sex shops which are licensed under separate provisions within the 1982 Act; and
- premises licensed under the Theatres Act 1968;

The provision would allow Scottish Ministers to define other exempted premises, by Order.

Q. Are there any other venues which should be exempt?

26. The draft provisions would exclude from the licensing requirement any venue which is used for sexual entertainment on less than three occasions per year. The purpose of this exclusion is to avoid drawing into the licensing regime venues where the primary purpose is clearly not to provide regular sexual entertainment.

Q. Is it appropriate that premises that are used for sexual entertainment on less than three occasions per year should be exempt from licensing?

Overall Impact

27. The effect of these proposals would be to establish a specific, locally administered licensing scheme for sexual entertainment venues under the Civic Government (Scotland) Act 1982. Local authorities would be able to determine whether to license venues to provide sexual entertainment, taking account of local circumstances.

28. A local authority would have the option to use provisions in the 1982 Act that currently apply to sex shops to set an appropriate number of sexual entertainment venues for their locality and, if it chose, for that number to be zero.

Q. Is it appropriate that local authorities be allowed to decide that there should be no sexual entertainment venues in their area?
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29. We would welcome the views of responders as to whether these proposals provide a suitable basis for establishing a new licensing regime for sexual entertainment.

Q. Does the approach detailed above offer an adequate regulatory regime to provide control of sexual entertainment and provide local licensing authorities with the powers to determine the nature of the activities they wish to allow in their areas?
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30. We are happy to receive any other comments on the draft provisions which responders consider would be relevant to the potential introduction of a licensing regime for adult sexual entertainment venues.

Q. Are there any other issues which Scottish Ministers should take into account in considering possible legislation to provide for the licensing of sexual entertainment venues?

Summary of Questions

31. We would welcome views on the following questions:

Q1. Should sexual entertainment and the sale of alcohol be licensed separately? If so, what impact, if any, would a parallel regime for sexual entertainment venues have on alcohol licensing?

Q2. Do you agree that sexual entertainment premises should be licensed separately from other forms of public entertainment?
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Q3. Is the definition of an audience as 'an audience of one' appropriate?
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Q4. Is the definition of sexual entertainment sufficiently clear? Are additional measures required to protect the position of artistic performances including, for example, exotic dancing?
Q5. Are there any other venues which should be exempt?
Q6. Is it appropriate that premises that are used for sexual entertainment on less than three occasions per year should be exempt from licensing?
Q7. Is it appropriate that local authorities be allowed to decide that there should be no sexual entertainment venues in their area?
Q8. Does the approach detailed above offer an adequate regulatory regime to provide control of sexual entertainment and provide local licensing authorities with the powers to determine the nature of the activities they wish to allow in their areas?
Q9. Are there any other issues which Scottish Ministers should take into account in considering possible legislation to provide for the licensing of sexual entertainment venues?

ANNEX A

LEGISLATIVE PROPOSALS

The proposals that were considered by Parliament in 2010 were as follows:

Licensing of sexual entertainment venues

(1) The 1982 Act is amended as follows.

(2) In section 41(2) (definition of place of public entertainment), after paragraph (aa) insert—

“(ab) a sexual entertainment venue (as defined in section 45A) in relation to which Schedule 2 (as modified for the purposes of section 45B) has effect, while being used as such;”.

(3) The title of Part 3 becomes “Control of sex shops and sexual entertainment venues”.

(4) After section 45 insert—

“45A Licensing of sexual entertainment venues: interpretation

(1) This section applies for the purposes of the interpretation of section 45B and Schedule 2 (as modified for the purposes of section 45B).

(2) “Sexual entertainment venue” means any premises at which sexual entertainment is provided before a live audience for the financial gain of the organiser.

(3) For the purposes of that definition—

“audience” includes an audience of one;

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

“organiser”, in relation to the provision of sexual entertainment in premises, means—

(a) the person who is responsible for the management of the premises;
or

(b) 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—

(a) any live performance; or

(b) any live display of nudity,

which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

(4) For the purposes of the definition of “sexual entertainment”, “display of nudity” means—

(a) in the case of a woman, exposure of her nipples, pubic area, genitals or anus;

(b) in the case of a man, exposure of his pubic area, genitals or anus.

(5) Sexual entertainment is provided if (and only if) it is provided (or allowed to be provided) by or on behalf of the organiser.

(6) References in Schedule 2 (as modified for the purposes of section 45B) to the use of any premises by a person as a sexual entertainment venue are to be read as references to their use by the organiser.

(7) The following are not sexual entertainment venues—

(a) premises being used in accordance with a public entertainment licence;

(b) a sex shop (within the meaning of paragraph 2(1) of Schedule 2);

(c) premises licensed under the Theatres Act 1968;

(d) such other premises as the Scottish Ministers may by order specify.

(8) An order under subsection (7)(d) may make—

(a) different provision for different cases or descriptions of case;

(b) different provision for different purposes.

(9) Premises at which sexual entertainment is provided as mentioned in subsection (2) on a particular occasion (“the current occasion”) are not to be treated as a sexual entertainment venue if sexual entertainment has not been provided on more than 3 previous occasions which fall wholly or partly within the period of 12 months ending with the start of the current occasion.

(10) For the purposes of subsection (9)—

(a) each continuous period during which sexual entertainment is provided on the premises is to be treated as a separate occasion; and

(b) where the period during which sexual entertainment is provided on the premises exceeds 24 hours, each period of 24 hours (and any part of a period of 24 hours) is to be treated as a separate occasion.

(11) The Scottish Ministers may by order provide for—

(a) descriptions of performances; or

(b) descriptions of displays of nudity, which are not to be treated as sexual entertainment for the purposes of this section.

(12) An order under subsection (7)(d) or (11) is to be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.

45B Licensing of sexual entertainment venues

(1) A local authority may resolve that Schedule 2 (as modified for the purposes of this section) is to have effect in their area in relation to sexual entertainment venues.

(2) If a local authority passes a resolution under subsection (1), Schedule 2 (as so modified) has effect from the day specified in the resolution.

(3) The day mentioned in subsection (2) must not be before the expiry of the period of one month beginning with the day on which the resolution is passed.

(4) A local authority must, not later than 28 days before the day mentioned in subsection (2), publish notice that they have passed a resolution under this section—

- (a) on their website; or
- (b) if they do not have a website, in a newspaper circulating in their area.

(5) The notice is to state the general effect of Schedule 2 (as modified for the purposes of this section).

(6) For the purposes of this section, paragraphs 1 and 3 to 25 of Schedule 2 apply with the following modifications—

(a) references to a sex shop are to be read as references to a sexual entertainment venue;

(b) references to the use by a person of premises, vehicles, vessels or stalls as a sexual entertainment venue are to be read as references to their use by the organiser;

(c) in paragraph 1—

(i) sub-paragraph (b)(ii) and the word “or” immediately preceding it is omitted; and

(ii) sub-paragraph (c) is omitted;

(d) in paragraph 7—

(i) in sub-paragraph (2), at the beginning insert “Subject to subparagraph (3A),”; and

(ii) after sub-paragraph (3) insert—

“(3A) If a local authority consider it appropriate to do so in relation to an application, the local authority may

dispense with the requirement to publish an advertisement
under sub-paragraph (2) and may instead publish notice of the
application on the authority's website.

(3B) Publication under sub-paragraph (3A) must be not
later than 7 days after the date of the application.”;

(e) in paragraph 9, after sub-paragraph (6) insert—

“(6A) A local authority may refuse an application for the
grant or renewal of a licence despite the fact that a
premises licence under Part 3 of the Licensing (Scotland) Act
2005 is in effect in relation to the premises, vehicle, vessel or stall to which the application
relates.”;

(f) in paragraph 12, for sub-paragraph (2) substitute—

“(2) Subject to the provisions of this paragraph, licences granted
by a local authority under this Schedule have effect for the period
(including an indefinite period) that the local authority
determine.”;

(g) in paragraph 19, sub-paragraph (1)(e) is omitted;

(h) in paragraph 20(2)(a)(iv), the words from “or” in the first place where
it occurs to the end are omitted; and

(i) in paragraph 25, for “45” in both places where that word occurs
substitute “45B”.

(7) In carrying out functions under this section, a local authority must have regard
to any guidance issued by the Scottish Ministers.”.

ANNEX B

THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

1. Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

2. The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

3. Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses (<http://www.scotland.gov.uk/consultations>). Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (where the individual or organisation has given us permission to publish their response) are placed in the Scottish Government Library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4556).

4. The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:
indicate the need for policy development or review;
inform the development of a particular policy;
help decisions to be made between alternative policy proposals; and/or
be used to finalise legislation before it is implemented.

5. Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

6. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

7. All Scottish Government consultation papers and related publications (eg analysis of response reports) can be accessed at: Scottish Government consultations (<http://www.scotland.gov.uk/consultations>).

8. The Scottish Government now has an email alert system for consultations – SE Consult – which can be found on the Scottish Government website at <http://www.scotland.gov.uk/Consultations/seConsult>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new SG consultations (including web links).

SEconsult complements, but in no way replaces, SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

This consultation, and all other Scottish Government consultation exercises, can be viewed on the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone free phone 0800 77 1234 to find out where your nearest public internet access point is.

9. You are invited to respond before the closing date of 24 September 2013, in writing to:

Walter Drummond-Murray
Criminal Law & Licensing Team
Scottish Government
Area 2W, St Andrews House
Regent Road
Edinburgh EH1 3DG
Email: licensing.consultation@scotland.gsi.gov.uk

Handling your response

10. We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form, which is enclosed with this consultation paper, as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and treat it accordingly.

11. All responders should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would, therefore, have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

12. Where responders have given permission for their response to be made public (see the attached Respondent Information Form – page 16), these will be made available to the public in the Scottish Government Library and on the Scottish Government web pages by the end of April 2012. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the

website. You can make arrangements to view responses by contacting the SG Library on 0131 244 4556. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

13. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on how to move forward.

Comments and complaints

14. If you have any comments about how this consultation exercise has been conducted, please send them to the address above.



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