

ANGUS COUNCIL

CIVIC LICENSING COMMITTEE – 15 AUGUST 2013

CONSULTATION ON THE PROPOSED REGULATION OF SEXUAL ENTERTAINMENT VENUES

REPORT BY THE STRATEGIC DIRECTOR - RESOURCES

ABSTRACT

This Report provides information on the Government's recent consultation on proposed legislation to regulate sexual entertainment venues and proposes a Council response to the consultation questions.

1. RECOMMENDATION

It is recommended that the Civic Licensing Committee:-

- (a) notes the contents of the Scottish Government's Consultation on Regulation of Sexual Entertainment Venues; and
- (b) agrees to a response being sent to the Ministers in accordance with the proposed Answers to the Consultation Questions contained in this Report.

2. BACKGROUND

- 2.1 The Scottish Government is currently consulting on the proposed regulation of sexual entertainment venues in Scotland. Such entertainment includes lap-dancing establishments, strip shows, peep shows and live sex shows. The Scottish Government has indicated in its consultation paper that it considers that such entertainment should be regulated and licensed in order to allow performers and customers to benefit from a safe and regulated environment.
- 2.2 The Government indicates that licensing of sexual entertainment venues should not inadvertently hinder artistic performance but equally stresses that sexual entertainment licensing would not cover or authorise illegal activity, such as brothel keeping or prostitution.
- 2.3 The Government indicates that it does not seek to endorse or condone activities which may be covered by the new licensing regime. Rather the consultation paper and the proposals argue that they seek to balance individual freedom of choice with the local community's right to exercise control and regulate sexual entertainment venues that operate within its areas. Local licensing authorities are set to be best placed to reflect the views of the communities they serve and determine whether sexual entertainment establishments should be authorised and under which conditions.
- 2.4 The consultation paper refers to the fact that regulation of adult sexual entertainment has been looked at on a number of occasions in recent years and in particular refers to work undertaken by the Working Group on Adult Entertainment which reviewed the scope and impact of adult entertainment activity some seven years ago. The Working Group noted anecdotal and international evidence of links between adult entertainment and criminality, although it did not find significant evidence of criminality linked to the adult entertainment venues in Scotland. The Working Group did however conclude that regulation would assist in reducing the risks of criminal activity, including prostitution.
- 2.5 Following the Working Group Report, Parliament felt that as sexual entertainment venues also sold alcohol and therefore required alcohol licences, it was best left to local licensing boards to regulate adult entertainment via the alcohol licensing system. Local licensing boards could use their own discretion to regulate the types of entertainment which would be permitted from alcohol licenced premises. Angus Licensing Board made provision for such regulation through its Licensing Policy Statement, in providing that

"all acts and participants must wear clothing or a costume made of non-transparent/non-translucent material to cover breasts on the female and buttocks and genitals on each sex".

A specific system of licensing for sexual entertainment was again considered in 2010 as part of the Criminal Justice and Licensing (Scotland) Act 2010. The proposals largely mirrored those which had been introduced in England and Wales by the Police and Crime Act 2009. Parliament rejected the 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.

- 2.6 However, recent Court judgements have called into question the ability of licensing boards to properly regulate sexual entertainment venues through the Licensing (Scotland) Act 2005. Basically, the courts have found that attempts to regulate sexual entertainment venues under licensing legislation can go beyond the remit of the Licensing (Scotland) Act 2005.
- 2.7 The Government is therefore consulting on views on the proposed 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. It would be for the discretion of the local licensing authority to determine whether or not a licensing regime was needed in their area and the Government has also indicated that it may be prepared to allow local authorities an ability to set a desired number of sexual entertainment premises for their area and for that number to be zero if the local authority was so minded. The licensing provisions would also include the ability to set conditions to control the conduct of activity on premises in their area.

3. CONSULTATION QUESTIONS

3.1 The Consultation proposes regulation by licensing of sexual entertainment venues. Sexual entertainment venues are to mean any premises at which sexual entertainment is provided before a live audience for the financial gain of the organiser.

3.2 Sexual entertainment means any live performance or 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).

3.3 On the basis of the foregoing, the consultation contains the following nine questions and suggested responses to these questions have been added to the questions themselves:-

Q.1 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?

A.1 Yes. Other activities currently require separate licensing under both the Licensing (Scotland) Act 2005 and the Civic Government (Scotland) Act 1982. Carefully worded legislation and guidance on the regime for sexual entertainment venues should avoid any adverse impact on alcohol licensing.

Q.2 Do you agree that sexual entertainment premises should be licensed separately from other forms of public entertainment?

A.2 Yes. Sexual entertainment premises require individually tailored legislation to address the specific issues involved as identified in the consultation paper and consideration should be given to making this form of licensing compulsory rather than discretionary.

Q.3 Is the definition of an audience as “an audience of one” appropriate?

A.3 Yes. Private acts are currently performed for audiences of one or two people and these acts should be regulated under the proposed legislation.

Q.4 Is the definition of sexual entertainment sufficiently clear? Are additional measures required to protect the position of artistic performances including, for example, erotic dancing?

A.4 Challenges to the definition of sexual entertainment may be forthcoming. It is hoped that Ministers will reserve the right to amend the definition as necessary. It is appreciated that it may be difficult to draw a distinction between acts which may require to be licensed under the new legislation and other forms of artistic

entertainment, such as burlesque and theatrical performances. Suitable Government guidance would be helpful.

Q.5 Are there any other venues which should be exempt?

A.5 No.

Q.6 Is it appropriate that premises that are used for sexual entertainment on less than three occasions per year should be exempt from licensing?

A.6 No. If premises are used for sexual entertainment then they should be licensed, although local authorities could perhaps be given a discretion to exempt certain premises, but this would be at the discretion of the local authority.

Q.7 Is it appropriate that local authorities be allowed to decide that there should be no sexual entertainment venues in their area?

A.7 Yes. This would be similar to the provisions regulating the licensing of sex shops.

Q.8 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?

A.8. Yes, although appropriate government guidance on the type of artistic performances which would not fall within the definition of a sexual entertainment venue would be appropriate.

Q.9 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?

A.9. Consideration should be given to making the licensing of sexual entertainment venues compulsory.

4. FINANCIAL IMPLICATIONS

There will be some financial implications arising from the introduction of the new licensing regime. However, depending on the actual wording of the legislation, Angus Council may determine that no sexual entertainment venues would be permitted in Angus. Some costs would still be incurred as a result of enforcing the legislation, but these costs have not been estimated at this stage.

5. EQUALITIES IMPLICATIONS

The issues contained in this Report fall within an approved category that has been confirmed as exempt from an equalities perspective.

6. HUMAN RIGHTS IMPLICATIONS

There are no Human Rights issues arising directly from this report.

7. RISKS

This report does not require any specific risk issues to be addressed.

8. CONSULTATION

The Chief Executive, the Head of Corporate Improvement and Finance and the Head of Legal and Democratic Services have been consulted in the terms of this report.

9. CONCLUSION

The Committee is asked to welcome this Consultation and provide answers to the consultation questions as noted above.

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NOTE: The background papers as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing above Report are:

The Scottish Government's Consultation on Regulation of Sexual Entertainment Venues.