

Consultation on Regulation of Sexual Entertainment – Summary of Responses

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Introduction

This report provides a summary of responses to the Scottish Government's Consultation on the licensing of sexual entertainment venues (SEV's). The consultation ran from 24 June to 24 September 2013, and sought views on proposals to establish a new licensing regime for sexual entertainment venues such as lap dancing bars.

Number and Type of Responses

In total 1,017 responses were received. Of these 941 were largely identical in substance and reflected a campaign organised by the Scottish Association of Licensed Adult Entertainment Venues. It is presumed that the majority of these responses were from those who work in the industry together with customers.

The remainder of the responses were predominately from organisations with a direct interest in the proposals such as club operators, the Police, local authorities, gender equality and violence against women groups and organisations representing mainstream arts. There was also a small number of responses from interested individual members of the public.

Responses by Question

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?

Those responding on behalf of the sexual entertainment industry including the campaign responses felt that the existing arrangements were adequate and that dual licensing risked creating a confusing system. Other responders generally felt that the existing regime was no longer effective and that a new civic licensing regime was justified.

A particular concern was raised in relation to the Licensing Conditions (Late Opening Premises)(Scotland) Regulations 2007 which provides a separate definition of "adult entertainment" for premises licensed for alcohol sales under the 2005 Act. The Law Society of Scotland suggested that possible difficulties in the interaction of the two regimes could be addressed by the proposed new licensing regime for sexual entertainment venues being operated by the Licensing Board (which already deals with alcohol sales) as opposed to being dealt with by Licensing Committees constituted under the Civic Government (Scotland) Act 1982. This would have the advantage that the licensing body would be responsible for both the alcohol licensing system and the new regime, thus reducing the potential for conflict in the dual licensing structure

A number of practical issues were raised in the context of operating a dual licensed regime. For example, consistent hours of operation of activities conducted on the premises, the operation of powers of enforcement officers under the two regimes and dealing with misconduct under two regimes were issues raised as requiring consideration.

Some local authority responders were happy to continue to regulate sexual entertainment under the existing alcohol licensing regime but only if the effect of the “Brightcrew” judgement could be reversed, thus allowing the Licensing Board greater power to deal with matters other than the sale of alcohol.

Some violence against women groups made clear in this question their opposition to the existence of SEV’s at all. Others caveated their disapproval by acknowledging that a new licensing regime would provide a more effective system than currently exists.

Q2. Do you agree that sexual entertainment premises should be licensed separately from other forms of public entertainment?

The majority of responders, other than campaign responders agreed. They felt that sexual entertainment was not appropriate for regulation alongside other forms of public entertainment. Many of the violence against women groups felt that such a concept would be inappropriate given their overarching stance on sexual entertainment. Other responders based their objection on the view that a stand-alone system of licensing would provide more effective regulation.

One trade responder felt that, given the relatively small number of SEV establishments, a dedicated regime was disproportionate and existing public entertainment arrangements could adequately encompass SEV’s.

The campaign responses argued for the *status quo*.

Q3. Is the definition of an audience as 'an audience of one' appropriate?

The proposal was generally welcomed. The campaign response agreed, noting however that many local licensing requirements include a condition for an ‘open’ booth to ensure that activities were not completely private. Violence against women and gender equality groups were against private booths *per se* but were keen that where they were provided they would need to be included within the licensing regime. Although some local authorities felt that a definition more explicitly defining lap dancing would be helpful, generally there was agreement that ‘an audience of one’ was appropriate so as to ensure that private dances were included in the licensing requirement.

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?

A large number of responders from a range of organisations felt that the definition should encompass 'partial nudity' so as to ensure that the requirement could not be circumvented by the wearing of minimal clothing. One local authority requested that guidance was issued in order to support interpretation of the definition in practice. Another authority was concerned that without specific definitions (and exclusions) of burlesque and exotic dancing there could be unwelcome local variation in what was included in the licensing requirement.

Some responders were concerned that the definition would not adequately protect artistic performances and argued for specific exclusions for dance, drama and theatrical performance where the purpose is artistic, creative or educational. Police Scotland felt that there should be clarity that contact or physical intimacy is unacceptable in all circumstances.

The campaign response was that existing adult entertainment offered by lap dancing establishments would fall within the term exotic dancing.

A local authority made comments in relation to how 'financial gain' was referenced and suggested a briefer formulation. Another authority referenced (and preferred) the definition produced by the 2006 Working Group on adult entertainment.

Some responders felt the definition was largely adequate as it stood and felt that attempts to provide further definition risked creating loopholes.

Q5. Are there any other venues which should be exempt?

Most responders answered no to this question.

Theatrical groups again indicated that they would welcome an exemption for artistic activities.

A further suggestion from some responders was that venues already offering sexual entertainment activities under the Licensing (Scotland) Act 2005 should enjoy "grandfather rights" which would entitle them to continue to operate under the new licensing arrangements.

Some local authority responders were concerned that exemptions could be exploited e.g. venues applying for a theatre licence to avoid SEV licensing requirements.

Other responders argued for protection for performances of burlesque and exotic dancing.

Q6. Is it appropriate that premises that are used for sexual entertainment on less than three occasions per year should be exempt from licensing?

Overwhelmingly responders from local authorities and gender groups felt that there should be no minimum entitlement. Many made the point that on principle if the activity should be licensed then it made no difference if it occurred only very occasionally. Others were concerned at potential loopholes that might be exploited

by operators using a number of premises on an occasional basis to escape licensing.

One licensed trade responder felt that the limit of 3 was inadequate (contrasting to the England and Wales limit of twelve) and was concerned that pubs and clubs offering some sort of performance very occasionally (perhaps at a birthday party or similar occasion) may be drawn into the licensing scheme.

Q7. Is it appropriate that local authorities be allowed to decide that there should be no sexual entertainment venues in their area?

Gender groups and local authorities generally felt that authorities should be able to determine that there should be no SEV's in an area.

Some responders asked how the proposals would work in relation to existing operators with suggestions being made that "grandfather rights" should be enjoyed or that licensing authorities should be explicitly barred from setting the number of available licences at a lower number than the number of premises currently operating.

Some local authority responders said that they would not support a power to prohibit SEV's as this would contradict the licensing system regulating an activity which is lawful and for regulatory purposes unobjectionable.

Police Scotland suggested a requirement for a decision to set the number at zero to be supported by a policy statement setting out the reasons and providing evidence.

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?

Whilst generally supportive, some violence against women groups suggested that the regime would need to be supported by inspection and monitoring arrangements by staff trained in violence against women and gender equality.

Other responders were also supportive but wished to see Scottish Government guidance offered to support the licensing scheme on a variety of issues but especially on the type of artistic performances that might fall out with the licensing scheme and definitions and exemptions generally.

Police Scotland, in common with several others, felt the licensing scheme should be a mandatory regime that local authorities *must* administer rather than one which could be introduced on a discretionary basis. In addition it was suggested that there should be little discretion in how the scheme should be operated.

One local authority felt that the proposed regime would be adequate if sufficient criminal sanctions were available in the event of a breach and a court could remove a licence without action on the part of the licensing authority. Another believed that the regime needed mandatory conditions covering matters such as changing areas,

dignity of workers, age, and access for health professionals etc. Another authority was concerned that the regime's aims would not be delivered if decisions were not supported by explicit reasons and evidence. A further suggestion was for temporary licences to be made available.

The majority of responders, i.e. those from the campaign, argued for the status quo.

One responder suggested community councils should be statutory consultees in licensing decisions. Another suggested that public venues should be specifically banned from hosting sexual entertainment and domestic premises brought within the definition of venues.

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?

Several responders noted perceived inconsistencies in the approaches of different UK and Scottish Government Departments e.g. a 2010 consultation by the Department of Work and Pensions that suggested that promoting employment in the industry would be incompatible with Equality legislation.

Police Scotland, amongst others, suggested comprehensive mandatory conditions for all licensed premises covering matters such as the external appearance of premises, advertising, control of entry, the conduct of performers and performances, protection of performer, prevention of crime and record keeping. The Police also suggested guidance to support the scheme and a different licensing structure based upon a dual structure of premises licensing and personal licences for individuals working in the relevant premises. Guidance was also supported by many responders to assist local licensing authorities in operating the scheme by clarifying matters such as how to define a locality.

A local authority responder was concerned at a possible loophole that would allow operators to evade licensing by arguing that the "entertainment" is provided by self-employed performers rather than by the operator themselves. A further concern was whether the measures would allow under 18's onto the premises.

One responder was keen to highlight good practice requirements that should include licensing authorities drawing up a sexual entertainment policy suggesting where premises might be suitable, advertising applications to local communities, holding public hearings to allow applicants and objectors to present evidence and publishing the reasons that a locality was deemed unsuitable for the guidance of future applicants.

Several responders suggested that SEV's did not supply the type of long-term, high-quality employment that the Scottish economy needs.

A concern amongst some gender equality and violence against women groups was that inherent legitimacy would be conferred upon the sexual entertainment industry by licensing. They requested that policymaking should be framed so as to challenge normative social attitudes to sexual exploitation.

A very specific issue was raised by an NHS responder who had heard of a case where a lap dancer who reported an assault to the Police had been dismissed by the SEV she worked in. It was suggested that the licensing scheme should tackle these sorts of practices.

A trade responder was concerned at the costs faced by operators in meeting the costs of the system through licensing fees. This was especially acute in a situation where there were only around twenty operators around Scotland (that would be paying the fees).

The campaign responders objected generally to what they regarded a moralising and censorious approach.

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