

**A meeting of the General Purposes Board will be held on Wednesday 9 December 2020 at 3pm.**

**This meeting is by remote online access only through the videoconferencing facilities which are available to Members and relevant Officers. The joining details will be sent to Members and Officers prior to the meeting.**

**In the event of connectivity issues, Members are asked to use the *join by phone* number in the Webex invitation.**

**Please note the time of the meeting.**

GERARD MALONE  
Head of Legal & Property Services

**BUSINESS**

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Enquiries to – **Lindsay Carrick** – Tel 01475 712114

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<b>Report To:</b>	<b>Corporate Management Team</b>	<b>Date:</b>	<b>9 December 2020</b>
<b>Report By:</b>	<b>Head of Legal &amp; Property Services</b>	<b>Report No:</b>	<b>LP/134/20</b>
<b>Contact Officer:</b>	<b>Lindsay Carrick</b>	<b>Contact No:</b>	<b>01475 712114</b>
<b>Subject:</b>	<b>Licensing of Sexual Entertainment Venues</b>		

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## 1.0 PURPOSE

- 1.1 The Scottish Government has introduced legislation amending the Civic Government 1982 Act which gives local authorities a discretionary power to licence "Sexual Entertainment Venues" (SEVs) in their area. The intention behind this new legislation is to prevent crime, ensure safety of staff and customers and prevent nuisance. The purpose of this report is to seek the Board's agreement to authorise a public consultation exercise on the licensing of Sexual Entertainment Venues in Inverclyde.

## 2.0 SUMMARY

- 2.1 Prior to the introduction of the new legislation in Scotland Sexual Entertainment Venues did not require to be licensed to provide sexual entertainment. However, throughout Scotland some of these premises were already licensed in terms of the Licensing (Scotland) Act 2005 as they also sold alcohol. Although Inverclyde's Licensing Board regulates the sale of alcohol there was previously no specific legislation controlling sexual entertainment in these premises. There is clear Court of Session authority that the licensing regime in the Licensing (Scotland) Act 2005 is limited to the regulation of the sale of alcohol and cannot extend to matters not linked to the sale of alcohol. The Civic Government (Scotland) Act 1982, as amended allows local authorities to carefully consider whether there would be merit in passing a resolution to licence Sexual Entertainment Venues, now or in the future and setting a number, which may be nil, of such venues operating in their area in the future. If no resolution is in place, then no licence is required to operate an SEV and an existing SEV could continue to operate or new SEVs could come into operation within a local authority area without an SEV licence.

## 3.0 RECOMMENDATIONS

- 3.1 It is recommended that the Board note the terms of this report; and consider authorising the Head of Legal & Property Services to carry out a public consultation in order to gather the views of the local community in determining whether Sexual Entertainment Venues be licensed in Inverclyde; and if licensed, what the appropriate number of Sexual Entertainment Venues For Inverclyde should be; and what should be included in a Sexual Entertainment Policy Statement.

## 4.0 BACKGROUND

- 4.1 The Air Weapons and Licensing (Scotland) Act 2015 (the 2015 Act) received Royal Assent ON 4 August 2015 .The provisions of the Act which relate to the licensing of sexual entertainment venues ( SEV ) came into force on 26 April 2019 .
- 4.2 On 26 April 2019 the Scottish Government passed The Air Weapons, Licensing (Scotland) Act 2015 (Commencement No.9 & Transitional Provision) Order 2019 which introduced the relevant provisions, detailed in the 2015 Act , into the Civic Government 1982 Act, giving Local Authorities a discretionary power to licence Sexual Entertainment Venues.
- 4.3 A “Sexual Entertainment Venue” is defined 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 and the most common examples are lap dancing and strip clubs. However, the definition is wide enough to cover other premises where sexual entertainment is provided. Premises where sexual entertainment is provided on no more than four occasions in a twelve month period are not to be treated as a sexual entertainment venue e.g. premises that cater for the occasional stag or hen do.” 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 .
- 4.4 Prior to the introduction of the new provisions there was no legal requirement for Sexual Entertainment Venues to be licensed under the 1982 Act in Scotland. If premises in which the sexual entertainment was taking place sold alcohol then the premises only required a Premises Licence under the Licensing (Scotland) Act 2005 which included adult entertainment as an activity on the approved operating plan. The Board should note that there are currently no premises in Inverclyde with this activity noted on their operating plan.
- 4.5 It should be noted that the new provisions do not introduce a mandatory licensing regime and it is for each local authority to determine whether they wish to licence SEV s. Where a local authority decides to licence Sexual Entertainment Venues, the newly introduced section 45B of the 1982 Act, enables the local authority to pass a resolution in order for Sexual Entertainment Venue licensing to have effect in their area. It also stipulates in terms of section 45C that where a local authority decides to licence Sexual Entertainment Venues it must prepare a Sexual Entertainment Venue policy statement.
- 4.6 In considering whether to pass a resolution a local authority should carefully consider, whether they wish to control Sexual Entertainment Venues even if no such premises are currently in operation in their area. It is important to note that If the Council does not adopt such a power to control Sexual Entertainment Venues then Sexual Entertainment Venues, both existing and new venues, will be able to operate without any direct control from the Council.
- 4.7 Where a Local Authority has passed a resolution that a licensing regime for Sexual Entertainment Venues will have effect in their area, they will then be required to prepare and publish a Sexual Entertainment Venue policy statement. The policy statement should set out clearly the justification of the local authority’s position with regard to licensing Sexual Entertainment Venues. Any such policy should provide details of the licensing conditions together with enforcement details. Such a policy statement could potentially include a provision that there will be no Sexual Entertainment Venues permitted within the area, if that is deemed appropriate following consultation.

4.8 The Policy Statement should also include details of the impact of the licensing of Sexual Entertainment Venues in the area of Inverclyde taking into account the licensing objectives of preventing public nuisance, securing public safety, protecting children and young people from harm and reducing violence against women.

4.9 The Board should note that due to the requirement to deal with urgent prioritised matters arising directly due to the Coronavirus pandemic this is the first opportunity to bring this matter to the attention of the Board.

## 5.0 IMPLICATIONS

### Finance

5.1 There are no new financial implications at this stage, however if a resolution was passed that Sexual Entertainment Venues should be permitted and regulated within the area a fee would have to be set by the Board for a Sexual Entertainment licence.

#### Financial Implications:

##### One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

##### Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

### Legal

5.2 The carrying out of a consultation will allow the Board to determine whether to utilise the discretionary powers under the 1982 Act.

### Human Resources

5.3 There are no Human Resources implications

### Equalities

5.4 Equalities

(a) Has an Equality Impact Assessment been carried out?

	YES (see attached appendix)
x	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required

(b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

	YES – A written statement showing how this report's recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
x	NO

(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
x	NO

**Repopulation**

5.5 There are no repopulation implications.

**6.0 CONSULTATIONS**

- 6.1 The Board is asked to authorise the Head of Legal & Property Services to carry out a consultation exercise in order to allow it to make a decision on the possibility of adopting a resolution to licence Sexual Entertainment Venues, which could potentially lead to a policy that Sexual Entertainment Venues are either restricted in numbers or that the number should be set at zero. In setting the number at zero, a local authority requires to demonstrate proportionality by evidencing that the competing interest of operators alongside those of the local community have been fairly considered and appropriately balanced.
- 6.2 Through the proposed consultation process, evidence would be gathered on a wide range of issues relating to the licensing and regulation of SEVs in line with the guidance issued by The Scottish Government. Views should also be invited from Police Scotland, Community Councils, Scottish Fire and Rescue Service, NHS amongst other organisations with an interest which should also include organisations such as violence against women partnerships, and child protection committees.
- 6.3 The Scottish Government issued guidance to Local Authorities on 28 March 2019 in relation to the licensing of SEVs and this provides guidance to Local Authorities on the main change. A proposed time line for the consultation is set out in Appendix 1 to this report.

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graph TD; A[Consider whether to make a resolution to licence sexual entertainment venues (local authorities may wish to seek the views of local people; businesses and Police Scotland prior to deciding whether to pass a resolution)] --> B[If a decision is taken to licence SEV]; B --> C[Publish the resolution and policy statement no later than 28 days before the date that the resolution comes into effect.]; C --> D[Determine and publish a list of who is to receive a copy of an application from the SEV licence applicant.]; D --> E[Consider all applications received by the date specified in the resolution to licence SEV under the procedure set out at Schedule 2 of the Civic Government (Scotland) Act 1982. In granting or refusing SEV licence applications ensure that the competing interests of individuals alongside those of the community have been fairly considered and appropriately balanced.]; E --> F[Periodically review the number of SEV determined, policy statement and list of who is to receive a copy of an application.];
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Consider whether to make a resolution to licence sexual entertainment venues (local authorities may wish to seek the views of local people; businesses and Police Scotland prior to deciding whether to pass a resolution)

- Licensing can take effect no earlier than one year from the date the resolution is passed.
- No resolution means no requirement for SEV operators to obtain a licence

If a decision is taken to licence SEV

- Develop a policy statement in consultation with relevant stakeholders, including violence against women partnerships, child protection committees and community councils.
- Engage with any existing SEV operators to ensure they are aware of what action they will need to take.

Publish the resolution and policy statement no later than 28 days before the date that the resolution comes into effect.

Determine and publish a list of who is to receive a copy of an application from the SEV licence applicant.

Consider all applications received by the date specified in the resolution to licence SEV under the procedure set out at Schedule 2 of the Civic Government (Scotland) Act 1982. In granting or refusing SEV licence applications ensure that the competing interests of individuals alongside those of the community have been fairly considered and appropriately balanced.

Periodically review the number of SEV determined, policy statement and list of who is to receive a copy of an application.

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<b>Report To:</b>	<b>General Purposes Board</b>	<b>Date:</b>	<b>9 December 2020</b>
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<b>Contact Officer:</b>	<b>Lindsay Carrick</b>	<b>Contact No:</b>	<b>01475 712114</b>
<b>Subject:</b>	<b>Air Weapons and Licensing (Scotland) Act 2015 Repeal of Theatres Act 1968</b>		

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## 1.0 PURPOSE

- 1.1 The purpose of this report is to provide the Board with an update on the implementation and changes to the licensing regime as a result of the Air Weapons and Licensing (Scotland) Act 2015 (the 2015 Act). The Theatres Act 1968 (the 1968 Act) will be repealed on 27 January 2021 and the current exemption within the Civic Government (Scotland) Act 1982 (the 1982 Act) will be removed, thereby enabling a local authority to resolve under section 9 of the 1982 Act to licence theatres under the public entertainment licensing regime.

## 2.0 SUMMARY

- 2.1 The Theatres Act 1968 (the 1968 Act) provides a licensing regime for premises which are used for the public performance of plays. Section 41 of the 1982 Act provides a discretionary licensing regime for places of public entertainment. The definition of a place of public entertainment in section 41(2) specifically excludes premises which are licensed under the 1968 Act. Prior to the commencement of section 74 of the 2015 Act, theatres were required to be licensed under the 1968 Act and were therefore exempt from the licensing regime under the 1982 Act.
- 2.2 Places of public entertainment are defined as any place where members of the public are admitted or may use any facilities for the purposes of entertainment or recreation. There are a number of premises which are excluded from the 1982 Act including athletic or sports grounds and premises licensed for the sale of alcohol, gaming or cinema.
- 2.3 Licensing of public entertainment in terms of the 1982 Act is an optional class of activity for licensing authorities. Licences are only required if a licensing authority resolves that the relevant activity should be licensed. In relation to public entertainment licences, the authority must describe the type of premises which will require to be licensed.
- 2.4 The main reason for the repeal of the 1968 Act and allowing the performance of plays to become a public entertainment licensable activity under section 41 of the 1982 Act is to introduce greater flexibility by letting a local authority set out the scope of the public entertainment regime. The guidance from the Scottish Government has suggested that local authorities will, for example, be able to exclude premises offering plays to very small audiences from the licensing requirement where they consider that appropriate and proportionate.
- 2.5 Consideration should also be given to the type of premises that may require a public entertainment licence for the public performance of plays. The 1968 Act theatre licensing regime currently applies to plays performed in "any place" and would therefore include outdoor play performances. It also requires any performance in a public place and any performance which the public are permitted to attend, whether or not for payment, to be licensed.

- 2.6 It is proposed to start a consultation exercise to seek public opinion on whether or not the use of premises for the public performance of plays should be included within the Council's list of licensable public entertainment activities.
- 2.7 After the period of consultation, the responses would be circulated at a future meeting which would allow members to make a decision as to whether they make a resolution to include the performance of plays within the public entertainment licensing regime, and if so, the exact terms of the resolution. Members should note that if they are minded to include the performance of plays within the public entertainment regime a statutory consultation must be followed. A proposed timeline for any potential inclusion of theatres within the public entertainment resolution is set out in Appendix 1 to the report.
- 2.8 The procedures for varying a resolution to include additional licensable activities are set out at section 9 of the 1982 Act. This includes formal publication of the proposal to vary followed by a 28 day consultation period. Where a local authority passes a final resolution there is a required statutory period of at least 9 months between the date the resolution is passed and the date it comes into effect.
- 2.9 The procedures for varying a resolution to include additional licensable activities are set out at section 9 of the 1982 Act. This includes formal publication of the proposal to vary followed by a 28 day consultation period. Where a local authority passes a final resolution there is a required statutory period of at least 9 months between the date the resolution is passed and the date it comes into effect.
- 2.10 In these challenging and unprecedented times and restrictions in place due to the coronavirus pandemic, it is highly unlikely that another theatre will open within the area in the near future. Should a new Theatre seek to open, prior to the date the resolution comes into effect, then it will be open to the Council to grant a temporary public entertainment licence for a restricted period. A temporary licence can have the maximum duration of up to 6 weeks with consecutive temporary licences being permitted.
- 2.11 The Board should note that there are currently two theatres within the Inverclyde area namely the Beacon Arts Centre and The Albany. In addition to a licence under the Theatres Act 1968 both theatres have a premises licence granted under the Licensing (Scotland) Act 2005, and will therefore be exempt from a licence required under the 1982 Act.

Gerard Malone  
Head of Legal & Property Services

### **3.0 RECOMMENDATION**

- 3.1 That the Board note the changes to the Civic Government (Scotland) Act 1982 repealing the existing requirement for theatrical performances to be licensed under the Theatres Act 1968 and that the Head of Legal & Property Services be authorised to carry out a public consultation in order to gather views in determining whether the public performance of plays should be included within the Council's list of licensable public entertainment activities.



## 4.0 BACKGROUND

- 4.2 Section 74 of the 2015 Act amends the 1968 Act to repeal the theatre licensing regime under that Act. Section 74 also amends section 41 of the 1982 Act by removing the exemption of theatres from the definition of “place of public entertainment”. A local authority can now resolve under Section 9 of the 1982 Act to licence theatres under its public entertainment licensing regime.
- 4.3 The main reason for the repeal of the 1968 Act and allowing the performance of plays to become a public entertainment licensable activity under section 41 of the 1982 Act is to introduce greater flexibility by letting a local authority set out the scope of the public entertainment licensing regime. The guidance from the Scottish Government suggests that local authorities, will for example be able to exclude premises offering plays to very small audiences from the licensing requirement where they consider that appropriate and proportionate.
- 4.4 The Board Should note that due to the requirement to deal with urgent prioritised matters arising directly from the Coronavirus pandemic this is the first opportunity to bring the matter to the attention of the Board.

## 5.0 IMPLICATIONS

### 5.1 Finance

The loss of income fee created by the repeal of Theatres Act 1968. The current fee under the 1968 Act will no longer apply and the activity will fall under the current Public Entertainment Licence fees should this be considered appropriate following consultation. It is anticipated that there will be a reduction in the licence fee income as the two theatres identified at para 2.6 both qualify for the statutory exemption in respect of premises holding a liquor licence in which public entertainment is being provided during licensed hours.

#### Financial Implications:

##### One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

##### Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

### 5.2 Legal

Section 74 of the 2015 Act amends the 1968 Act to repeal the theatre licensing regime under that Act. Section 74 also amends section 41 of the 1982 Act to remove the exemption of theatres from the definition of “places of public entertainment”. A local authority could thereafter resolve under Section 9 of the 1982 Act to licence theatres under its public entertainment licensing regime.

### 5.3 Human Resources

There are no HR implications arising from this report.

### 5.4 Equalities

#### Equalities

(a) Has an Equality Impact Assessment been carried out?

	YES
x	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required

(b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

	YES – A written statement showing how this report's recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
x	NO

(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
x	NO

### 5.5 Repopulation

There are no repopulation implications arising from this report.

## 6.0 CONSULTATIONS

6.1 The Board is asked to authorise the Head of Legal & Property Services to carry out a consultation exercise in order to allow a decision to be made regarding whether the use of premises for the public performance of plays should be included within the Council's list of licensable public entertainment activities.

## 7.0 BACKGROUND PAPERS

7.1 None

Report to General Purposes Board inviting members to go out to public consultation  
(9 December 2020)

Should the Council licence theatres under the public entertainment licensing regime and if so what  
type of premises

Consultation Period

14 December 2020 - 25 January 2021

Report back to General Purposes Board with consultation responses  
(February 2021)

Produce draft conditions for Members to consider should they resolve to licence theatres  
Draft resolution under Section 9 of the Civic Government (Scotland) Act 1982 for Members to  
consider should they resolve to licence Theatres

Statutory Consultation (28 days)  
(February 2021)

Newspaper publication and consultation period for resolution and conditions

Report back to the General Purposes Board to allow for any modification to the resolution and  
conditions in light of representations received  
(Date TBC)

Finalise and publish resolution  
(Date TBC)