

## Response ID ANON-39SF-DGCQ-4

Submitted to **Consultation on guidance on the provisions for licensing of sexual entertainment venues and changes to licensing of theatres**  
Submitted on **2018-02-07 16:45:54**

### Questions

**We would welcome comments on any areas within the draft non-statutory guidance which you found were unclear or not easily understood. Please specify the paragraph.**

**We would welcome comments on areas within the draft non-statutory guidance which you found were unclear or not easily understood. Please specify the paragraph. :**

Collective Response by Scottish Women's Aid, Engender, Women's Support Project, the Scottish Women's Convention, Rape Crisis Scotland and Zero Tolerance

#### Position Summary

The operating of Sexual Entertainment Venues (SEVs), is fundamentally incompatible with the priorities of Equally Safe, Scotland's Strategy to prevent and eradicate Violence against Women and Girls, the Human Trafficking and Exploitation (Scotland) Bill, our current approach to domestic abuse, rape and sexual offences (which we seek to prevent by challenging men's behaviour), and UK Equality and Human Rights Legislation. We are therefore dismayed that the draft guidance on the Provisions for Licensing of SEVs asks local authorities to balance the 'freedom of choice' of men to watch sexual entertainment against the harm these venues cause.

Throughout the draft guidance not enough emphasis is placed on the risks and harms associated with the operation of SEVs. The exploitation faced by performers within SEVs and the harm to all women caused by sanctioning the objectification of women's bodies should be made explicit within the guidance. To compound this issue, undue emphasis is placed on the possible legal challenges that local authorities might face if they choose not to allow SEVs to operate in their locality. We ask that this consistent imbalance reflected throughout the wording of the draft guidance be addressed and an accurate picture of the harms be included.

We are concerned that the guidance, as it stands, does not provide clarity and assistance to local authorities and local partners to help ensure that women in SEV's are providing sexual entertainment in a safe and regulated environment. This omission results in the draft guidance presenting a significant disparity in focus. We request that adequate focus is given to key issues of safety and fair employment, in line with Scotland's Inequalities National Outcome.

#### Specific paragraphs that we found unclear

1. "In developing the licensing regime care has therefore been taken to balance individual freedom of choice with the right of local authorities to exercise appropriate control and regulation of SEV that operate within their areas." (Paragraph 23)

Within Equally Safe, Scotland's strategy for preventing and eradicating violence against women and girls (VAWG), the Scottish Government defines lap dancing and stripping as commercial sexual exploitation, and thus a form of VAWG. This is acknowledged under paragraph 19 of this draft guidance. However, the draft guidance also references 'freedom of choice' (paragraph 23), it is unclear whose 'freedom of choice' is being referred to. The Scottish Government's current strategy on ending VAWG notes that commercial sexual exploitation causes harm to all women, by sanctioning objectification of women's bodies, and further notes that this harm to women collectively happens regardless of whether individuals claim liberation or empowerment from the activity. It is therefore not clear why it should be allowed to continue, because of 'freedom of choice'. We request that the language referring to 'choice' is removed from the guidance or, failing this, further clarified. If the guidance is referring to men's 'freedom of choice' as owners of SEVs and/or customers versus Scotland's strategy to prevent and eradicate VAWG, then this should be made explicitly clear within the guidance. This will help local authorities weigh up men's perceived entitlement to watch semi-nude women perform sexually for 'entertainment' against the kind of safe and equal Scotland we want for us and our children.

2. "This is a complex area and local authorities will have to consider the local circumstances and balance the legal obligations of legislation including, but not limited to, the EU Services Directive, the Regulatory Reform (Scotland) Act 2015 with the needs of their communities to mitigate the risks of legal challenge and any rights SEV operators may have particularly under Article 1, Protocol 1 of the European Convention of Human Rights (entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression)." (Paragraph 26)

"The local authority may wish to reflect on whether reducing the number of venues, or setting the number at zero, in their area will have a disproportionate effect on business and on whether they may leave themselves open to legal challenges e.g. under Article 1, Protocol 1 (entitles every person to the peaceful enjoyment of their possessions) of the European Convention of Human Rights." (Paragraph 43)

Paragraphs 26 and 43 both emphasise possible legal challenges local authorities might face if they set the number of SEVs at zero or below the current number of operating SEVs in their locality. This repetition places a disproportionate emphasis on the risks that might be faced by local authorities after they pass a resolution and yet does not offer guidance to local authorities on how they might mitigate this risk. We request that the repetition be removed, and the two paragraphs are combined into one. Additionally, the draft guidance should provide further clarification on how local authorities might counter such legal challenges in order to help them balance legal obligations. To this end, we ask that the full wording of Article 1, Protocol 1 of the European Convention of Human Rights be included as the full wording outlines scenarios when a person's right to property should be overridden;

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by the general principles of international law.' (Article 1, Protocol 1, European Convention of Human Rights)

The guidance should stress that the rights outlined in Article 10 are qualified and subject to conditions and restrictions as prescribed by law which may be necessary to protect certain interests.

Finally, we ask that the guidance further clarifies what is meant by 'disproportionate effects' (paragraph 43) on businesses that local authorities should take into account when deciding whether to reduce the number of SEVs. If a local authority takes a decision to not license SEVs or to lower the number of SEVs in their area, in line with Scotland's strategy for preventing and eradicating VAWG, then it is hard to envision what 'disproportionately' negative impact this could cause in relation to the positive impact on women and the community. This language is potentially misleading, creating a false impression of comparative balance between concern for women and children's safety and health versus concern for an SEV owner's profits. We therefore request that this language is removed from the draft guidance. In its place we request that the guidance refers to the disproportionate effects licensing SEVs may have on women's ability and opportunities to find work outside of an exploitative environment.

3. "In considering whether to pass a resolution a local authority should consider whether they will wish to control SEVs either now or in the future. If there is no resolution in place, then no licence is required to operate an SEV. It may therefore be appropriate to determine a resolution even where there are no current SEV in operation if the local authority considers that it is likely to be thought that it would be inappropriate for any SEV to operate in its area in the future. Otherwise it will be possible for a SEV to operate there unregulated until a SEV licensing regime is put in place." (Paragraph 30)

It is incredibly important that this paragraph be understood if local authorities are to ensure that SEVs do not operate unregulated. In its current state it is not clear how this guidance will support local authorities to achieve this. We request that the guidance expands on what would happen should a local authority not pass a resolution and an SEV then opens in that area. Further clarification is needed to understand how a local authority should respond and what steps should be taken to safeguard women, particularly performers, during this unregulated period.

Paragraph 32. implies that a resolution may or may not be passed by a local authority. We request that the guidance is clearer regarding the negative impacts of not adopting a licensing policy. The potential lack of a consistent approach across Scotland is particularly concerning and could result in various harmful scenarios, examples include:

- A local authority adopts a licensing resolution but gives out licenses freely with minimal conditions. This could result in SEV operators choosing to locate and cluster in this local authorities. The impact of this on safety of performers and the surrounding community would be significant.
- A local authority does not adopt a licensing resolution and a SEV or SEVs are allowed to operate completely unhindered and unregulated. Worryingly, this possibility seems even more likely than the first and would result in extremely unsafe conditions for performers and absolutely no assurances of safety for the community.

The guidance must be updated to help local authorities ensure that such scenarios do not occur. Additionally, the guidance should encourage local authorities to share best practice regarding licensing policies in order to nurture much needed consistency across Scotland.

**We would welcome comments on other issues which you believe should be taken into account within the guidance.**

**We would welcome comments on other issues which you believe should be taken into account within the guidance.:**

1. "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 whether there have been incidents involving anti-social behaviour, sexual assaults or more minor harassment reported in any particular area
- whether there have been incidents of human trafficking or exploitation locally."

(Paragraph 31)

This list is not exhaustive and does not encourage local authorities to consider the full range of risks and harms caused by the presence of SEVs. We request that the following be added to this list of considerations:

- the location of women's refuges and shelters
  - the location of other services focussed on supporting women, children and young people including services helping women to exit prostitution, services focused on fighting human trafficking and youth services.
  - the location of brothels
  - prevalence of other forms of commercial sexual exploitation, including prostitution
- instance of reported crimes involving violence against women and girls

In addition, we strongly recommend that each local authority carry out an equality impact assessment (EQIA) when deciding whether to pass a resolution and deciding on the nature of the resolution. EQIAs are a pre, not post hoc tool for developing policy and services, therefore any resolution that has such a clear gender dimension should certainly be accompanied by a rigorous EQIA. The Scottish Government's guidance on EQIAs should accompany this guidance should be a standard template that is provided to all local authorities alongside this guidance.

2. "Local authorities have extensive experience of engaging with local people and will know what works best in their individual areas and may wish, as a matter of good practice, to seek the views of local people and businesses prior to deciding whether to pass a resolution. In doing so, local authorities may wish to make any relevant information available to local people in order to inform their understanding." (Paragraph 32)

Consulting local people and providing them with relevant information must be a mandatory step for local authorities not just a matter of good practice. We recognise that the guidance wishes to acknowledge the experience and autonomy of local authorities however consulting communities aligns with consultation obligations around community justice and crime prevention and is a necessity. The current wording of the guidance implies that consulting communities would be over and above the minimum requirements and this must be rectified in order to ensure communities have a voice regarding a decision that will significantly impact them.

3. "By way of example, such licence conditions could regulate:
- the display of advertisements on or connected to the venue.
  - the days and times when the premises may be used as a SEV.
  - the visibility of the interior of the SEV to passers by
  - the number of persons to be admitted to the premises." (Paragraph 50)

This list should be expanded to include protection of the working conditions of performers. In its current form, the guidance does not do enough to ensure that local authorities are regulating the working conditions and treatment of performers within SEVs. If a local authority decides to licence SEVs then it must claim a certain level of responsibility for women's safety in these establishments and include licence conditions that will help mitigate the harm caused by this form of exploitation. The reality is that SEVs are highly exploitative and offer very poor work conditions, for example, lap-dancing clubs routinely:

- Ask women to pay to appear/dance (unlike other dance performances where the audience members pay for a ticket and the organisation staging the performance pays the performers), meaning that they can be out of pocket if they don't have enough customers to cover their appearance fee on a given night.
- Use women who are self-employed dancers as opposed to employees, so they have limited protection, job security and rights.
- Fine dancers for breaches of rules, which can be arbitrary and unpredictable.
- Have high staff turnover because men demand new 'products' to look at and engage with and do not wish to see the same girls and women repeatedly – they wish a range of nationalities, breast sizes etc. The nature of the work is that it's not permanent or secure – sexual entertainment is provided by young women whose attractiveness is deemed to diminish with age.
- Encourage drinking among the dancers, some of whom develop alcohol dependency problems.
- Make the women who work there feel unsafe or degraded, with long-term impacts on their physical and psychological well-being - many women report a heavy psychological toll linked to dealing with, in effect, normalised sexual harassment on a nightly basis.

(This information alongside further details of the conditions faced by performers can be found here:

<http://www.womenssupportproject.co.uk/userfiles/file/uploads/profitable%20exploits-1.pdf>)

4. "Part of the local authority's role is to ensure improved working conditions and a safer environment for the women who work in SEV's. They may wish to encourage operators to actively identify potential victims of human trafficking in their recruitment procedures and to work with agencies such as the Trafficking Awareness Raising Alliance (TARA) to combat the trafficking of individuals and families." (Paragraph 53)

We request that this suggestion is reconsidered. TARA and other specialist support services do not have a remit to work with private businesses who profit from the sexual exploitation of women. Such a relationship between SEV operators and support services might deter abused and vulnerable women in the premises from approaching these same support services. This suggestion would also place an unfair burden on these organisations who have clearly stated and well-formed approaches to VAWG and exploitation. We question the rationale of expecting support services to engage with operators to provide a checking mechanism for trafficking which then might be seen as some kind of quality assurance or kite mark.

Given the prevalence of victims of human trafficking being forced to work in SEVs, we do not suggest that this issue be removed from the guidance. Rather, we suggest that TARA and other support services are linked directly with performers rather than the SEV owners or operators.

5. "In terms of how a premises licensed as a SEV should be run, local authorities may wish to consider adopting some or all of the following non-exhaustive list of suggestions and develop them as model conditions within their Policy Statement:

list of full names, dates of birth, nationality and contact details (address or telephone number) for all performers to be available on the premises for immediate production if requested by Police or local authority officers.

- ensure immigration status is in order and performers have not been the victims of human trafficking
- employment of security guards
- use and storage of CCTV
- provision of hygienic changing facilities and a toilet with access to hot water exclusively for the use of the performers
- set break times for performers
- the provision of a break room exclusively for the use of the performers
- performers to be escorted by security to nominated taxi or to their car at end of shift
- performers to remain clothed outwith performance area
- no physical contact between performers and customers
- rules to be displayed at appropriate locations within the venue of customer conduct that is deemed acceptable e.g. customers to remain fully clothed at all times
- performers not to accept offer from customer of payment in return for sexual favours
- performers not to accept any form of contact details from customers
- performers not to engage in any unlawful activity within SEV
- no photographs or video recordings to be taken." (Paragraph 54)

These basic, and in many cases legal, requirements must be mandatory and stated as such within local authorities' policy statements. It is not acceptable for these to be optional conditions. If a local authority decides to licence SEVs then it must claim a certain level of responsibility for women's safety in these establishments; if these conditions are not a requirement for receipt of a licence then there will be intolerable risks faced by women working in SEVs. We request that this list be a set of mandatory operating requirements that local authorities must include within their policy statements and SEVs must meet in order to be granted a licence. There could be flexibility for local authorities to set conditions in addition to these but these must be a minimum standard. We request that

health and safety compliance and insurance obligations are also considered and reflected in the above list.

Furthermore, the guidance should make it clear that responsibility for ensuring that conditions are met lies with the SEV operators (licence holders), rather than with the performers. It is the licence holder's responsibility to ensure that their customers abide by the law and treat performers with respect. It is not the performers' responsibility to ensure the licence holder or customer are abiding by these conditions. We therefore request that the wording of these bullet points be changed to address what is expected from SEV operators:

- 'performers not to accept offer from customer of payment in return for sexual favours' changed to, 'licence holder to ensure customers do not offer payment in return for sexual favours'
- 'performers not to accept any form of contact details from customers' changed to, 'licence holder to ensure customers do not offer any form of contact details to performers'
- 'performers not to engage in any unlawful activity within SEV' changed to, 'licence holder to ensure no one engages in any unlawful activity within SEV'.

6. "We suggest that in considering an application for a SEV licence, with the view to reaching an evidence based decision on whether it should be granted, local authorities will wish to look carefully at the proposed location and take account of

- the existing character and function of the area in which it will be located
- whether there are any schools near the vicinity of the SEV
- whether there any places of worship in that vicinity
- whether there are other relevant businesses or charities operating in the area e.g. homelessness shelters, supported accommodation, recovery units etc.
- whether the SEV is close to heavily residential areas
- whether there have been incidents involving anti-social behaviour, sexual assaults or more minor harassment reported in that area
- the views of residents and other relevant interested persons input from the local Police Scotland human trafficking champion or the Human Trafficking Unit at Gartcosh." (Paragraph 59)

This list is not exhaustive and does not encourage local authorities to consider the full range of risks and harms caused by the presence of SEVs. It is essential that local authorities consider whether prospective license holders are fit and proper persons. A history of any offence of violence or abuse, particularly towards women and girls, or involvement in organised crime, should preclude an individual from obtaining a SEV license. The location of women's shelters must also be added to this list.

7. "Paragraph 18 of Schedule 2 provides that a local authority should charge a reasonable fee which is sufficient to meet the expenses incurred by the authority in exercising its functions under the Schedule. In setting fees, local authorities will wish to have regard to the EU Services Directive." (Paragraph 73)

There is no provision on licence fees. We believe that these should be much higher than for running a venue which is open to all sections of society such as a café or a pub. This would discourage a proliferation of SEVs and recognise that they are not truly 'public entertainment'. Many English and Welsh local authorities have imposed high fees since their new SEV regime came into force. E.g. Birmingham City Council charges over £6,200 for an SEV licence, whereas a skin piercer's licence would be £87. Manchester City Council charges £4,425 for an SEV licence, but a café licence would start from £100 depending on rateable value. We think further clarity should be provided to local authorities on this.

8. "The 1982 Act makes clear that any decision made by the local authority, when considering applications for SEV licences, should be reasonable. This applies to fees, conditions which may be added to the licence, and to the time taken to consider the application." (Paragraph 76)

We ask that the guidance elaborates on what is meant by reasonable. Specifically we request further clarification on who or what defines and prescribes what is reasonable.

## About You

### What is your name?

**Name:**

Amy Johnson

### What is your email address?

**Email:**

amy.johnson@zerotolerance.org.uk

### Are you responding as an individual or an organisation?

Organisation

### What is your organisation?

**Organisation:**

Zero Tolerance, Rape Crisis Scotland, Engender, Scottish Women's Aid, Women's Support Project, Scottish Women's Convention

### The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

**We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?**

Yes