

Consultation on Guidance on the Provisions for Licensing of Sexual Entertainment Venues and Changes to Licensing of Theatres

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

Introduction

COSLA is the representative voice of Scottish of Local Government in Scotland and works with member councils to improve services for communities and to strengthen local democracy. The Consultation on: Guidance on the Provisions for Licensing of Sexual Entertainment Venues and Changes to Licensing of Theatres has been considered by the COSLA Community Well-Being Board.

General comments

COSLA remains fully committed to the *Equally Safe* strategy which was jointly produced by the Scottish Government and COSLA. This sets out a definition of violence against women and girls as including commercial sexual exploitation, including prostitution, lap dancing, stripping, pornography and human trafficking. We recognise the inherent conflict that exists between the principles associated with *Equally Safe* and provisions for the licensing of sexual entertainment venues. It is therefore very difficult to see how a commitment to eradicating violence against women and girls could sit alongside the licensing of sexual entertainment venues.

Notwithstanding these principled concerns, COSLA is supportive of the introduction of a new licensing regime for sexual entertainment venues as local authorities have indicated that they would welcome the ability to control the number and location of such venues in their areas and address the current gap in licensing and regulation that exists. We have been clear that given the risks and sensitivities surrounding this issue that guidance to support local authorities in implementing this licensing regime is critical to minimise the risk of legal challenge to local authorities and to ensure that any venues in Scotland are safe places for staff, customers and communities.

Any guidance on this complex issue must support local authorities in ensuring that decisions that are made provide the best possible outcomes for their communities. However, there remain concerns that the guidance does not provide sufficient clarity to local authorities on how to develop policy statements which are robust enough to withstand legal challenge. Additionally, further work is required to develop model or mandatory conditions which are suitable and enforceable would reduce the risk of criminality, such as prostitution and human trafficking; and help protect the safety and wellbeing of performers, customers and the wider public. This should be done in partnership with local authorities, Police Scotland and other relevant partners.

The guidance does not recognise that working in the sexual entertainment industry is for most people not about choice, but about exploitation, and one in which women are disproportionately represented. Sexual entertainment venues can be used to channel vulnerable people with limited life choices into degrading employment for the sexual gratification and profit of others. The notion that control and regulation must be balanced with individual 'choice' or 'freedom' can therefore be misleading and potentially offensive to individuals exploited to work in the sexual entertainment industry, the agencies who work with them and local authorities which are trying to eradicate exploitation in their communities.

We would like to highlight our concern around exceptions for those venues which provide what is defined as sexual entertainment four or less times a year. Beyond the obvious difficulties in enforcing this, it is not clear what the justification is for allowing some instances of sexual entertainment to operate without licence. This essentially means that conditions which protect the staff and communities do not have to be adhered to – this does not occur for other types of licensed activities as either they apply all the time or an occasional license must be applied for.

Specific comments

In Paragraph 1 the final sentence should be deleted as it seems to be odd to specify a date when licences may be required for a non-mandatory licensing regime, and particularly one which requires the development of a policy statement in consultation with relevant interest groups. It could create expectations on local authorities and pressure to decide whether to pass a resolution to license sexual entertainment venues before they are able to give due consideration to the matter.

Paragraphs 19-21 recognise the conflict between the *Equally Safe* strategy but provide no substantive guidance as to how local authorities might address this inherent conflict. Additionally, paragraph 20 should highlight that the legal risks are around limiting a legal business activity.

As the policy statement is key when local authorities are deciding whether to license a venue, it should be referenced in paragraph 28.

With reference to paragraphs 41-44, COSLA is seeking clarity that there are no restrictions on what a local authority can consider as a relevant locality within their policy statement given that guidance to English and Welsh local authorities clearly states that a relevant locality cannot be an entire local authority area, nor an entire town or city. If this is due to case law in England and Wales COSLA is concerned this could be expected to apply to Scottish local authorities when developing the policy statement. Additionally, there is no reference to the Articles or legislation that could support local authorities in setting the number of sexual entertainment venues in an area at zero, for example those that protect citizens from the potential of degrading treatment or forced labour.

In paragraph 45 Police Scotland should also be consulted and they should be expected to be able to provide local authorities with relevant information about current or potential operators and whether there are risks relating to human trafficking and exploitation and other serious organised crime in their area along with any relevant information about particular localities. Consideration should be given as to whether the specified interested parties also include local trade and businesses.

Paragraph 53 should be reworded to refer to a 'safe' rather than a 'safer' environment for the women who work in sexual entertainment venues.

Paragraph 60 should be expanded to provide clarity for trade and local authorities to understand who might be included in this, for example using the text in paragraph 82. Local authorities anticipate this may be a difficult provision to systematically enforce.

Paragraph 61 introduces a 'first come first served basis' where a local authority sets the number of sexual entertainment venues above zero in a particular locality. Guidance on how a local authority can deal with a situation where a further application comes in which is preferable to the current operator (for example on the grounds of location) would be welcomed. Additionally, the guidance to English and Welsh local authorities clearly states that all applications must be considered on their own merit – can the Scottish Government confirm that refusing the application without further consideration would not lead to a legal challenge from an applicant?

With reference to paragraph 69, is there a recommended distance to a proposed location within which interested parties should be notified, or is the expectation that all of these interested parties which exist within a local authority area should be notified and receive copies of all applications made within a local authority area? Additionally, guidance on how local authorities are expected to inform or interact with interested parties and communities where a proposed venue is near a local authority border would be welcomed.

With regards to fees, directing local authorities to the R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) (Respondents) v Westminster City Council (Appellant) [2015] ruling may be of benefit.