

## POLICY NOTE

### THE AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015 (COMMENCEMENT NO. 9 AND TRANSITIONAL PROVISIONS) ORDER 2019

#### SSI 2019/99

1. The above instrument was made in exercise of the powers conferred by sections 88(2) and (3) of the Air Weapons and Licensing (Scotland) Act 2015 (“the 2015 Act”). The instrument is not subject to any parliamentary procedure.

**Purpose of the instrument.** This instrument is being made to commence the provisions at section 74 and section 76 of the Air Weapons and Licensing (Scotland) Act 2015 (the ‘2015 Act’) which allow local authorities to licence theatres and sexual entertainment venues (SEV) under the Civic Government (Scotland) Act 1982 (the “1982 Act”).

#### Policy Objectives

2. This Order brings section 74(1) and section 76 of the 2015 Act into force on 26 April 2019. It brings the remaining provisions of section 74 into force on 27 January 2021.
3. The Bill for the 2015 Act received Royal Assent on 4 August 2015. Sections 60(1) and (2), 84, 85, 86, 88 and 89 of the 2015 Act came into force on the following day. The policy objectives relating to the 2015 Act are fully set out in the Policy Memorandum which accompanied the Bill. The link below records the passage of the Bill through Parliament and includes the Policy Memorandum:  
  
<http://www.parliament.scot/LargePDFfiles/SPPB219.pdf>.
4. This Order forms part of an implementation package for the 2015 Act. The provisions of the 2015 Act are being commenced in several stages. This is the ninth commencement order. Specifically, it brings into force the following civic licensing provisions of the 2015 Act.

#### Section 74

5. This section repeals the mandatory requirement for theatrical performances to be licensed under the Theatres Act 1968 (“the 1968 Act”); recreates the anti-censorship provisions within the Civic Government (Scotland) Act 1982 (“the 1982 Act”) to prevent censorship of theatrical performances; and amends the 1968 Act to repeal redundant provisions that support licencing enforcement such as powers of entry and inspection. Section 74(1) amends section 41 of the 1982 Act so as to remove the prohibition on theatres being licensed via the public entertainment licensing regime. Local authorities will then have a discretion to resolve to licence theatres through the public entertainment licensing regime provided for at section 41 and Schedule 1 of the 1982 Act. This will allow local authorities greater flexibility to take account of the size of the premises and the potential audience and to determine in a local context how licencing should be regulated in their area. There is a required period of at least nine months between the date the resolution to licence theatres is passed and the date it comes into effect.

6. To ensure a smooth transition from the mandatory licensing regime under the 1968 Act to the optional public entertainment licensing scheme under the 1982 Act, and to prevent any overlap between the two regimes, the commencement of section 74 is in two stages. The amendments to section 41 of the 1982 Act come into force on 26 April 2019 and the 1968 licensing regime is then repealed on 27 January 2021. This will enable local authorities to make a resolution to license theatres under the public entertainment licensing regime and to have that regime in place by the time mandatory theatre licensing comes to an end. It will also give theatres requiring a licence sufficient time to apply under the new regime before the existing regime is repealed.
7. If there is no resolution in place when the repeal of the theatre licensing scheme under the 1968 Act takes effect on 27 January 2021 there will be no mechanism for a local authority to licence theatrical performances. In those circumstances, theatres will no longer require a theatre licence and will not be required to obtain a public entertainment licence.
8. The transitional provisions in the Order restrict the operation of the public entertainment regime in relation to theatres so that it cannot come into effect before the 1968 Act licensing regime comes to an end. The transitional provisions also bring all licences granted under the 1968 Act to an end along with the repeal of the underlying licensing regime thereby preventing the scenario whereby a theatre has a 1968 licence and a public entertainment licence in operation at the same time.
9. No savings or transitory provisions are being made for the commencement of section 74. The ongoing licensing of theatres once the 1968 Act licensing regime is repealed will be a matter for local authorities to determine and will also be subject to the resolution procedures laid out in section 9 of the 1982 Act.

#### Section 76

10. This section comes into force on 26 April 2019. It introduces a specific licensing regime for the regulation of sexual entertainment venues (“SEVs”) by amending and modifying the existing licensing regime for sex shops provided for in Part III and Schedule 2 of the 1982 Act. It achieves this through inserting sections 45A, 45B and 45C into the 1982 Act and modifying the provisions of Schedule 2 in their application to SEVs.
11. Section 45A provides definitions of sexual entertainment and sexual entertainment venue – the latter being 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.” Section 45B provides a procedure whereby local authorities may resolve to licence SEVs and provides that Schedule 2 of the 1982 Act as modified will apply in those circumstances. Section 45B also requires that a local authority must have regard to any guidance issued by the Scottish Ministers. Section 45C obliges all local authorities which choose to licence SEVs to publish a statement of their policy with respect to the exercise of their functions in licensing SEVs.
12. No savings, transitional or transitory provisions are being made for the commencement of section 76. The licensing of SEVs will be a matter for local authorities to determine and will also be subject to the resolution procedures laid out in section 45B of the 1982 Act.

## Consultation

13. No formal consultation was carried out in relation to this Commencement Order. However, engagement with relevant stakeholders took place in the development of the Order.
14. Formal consultation also took place before the Bill for the 2015 Act was introduced. Informal consultation with stakeholders took place during the Bill's parliamentary passage and a formal consultation was undertaken on the non-statutory *Guidance on the Provisions for Licensing of Sexual Entertainment Venues and Changes to Licensing of Theatres*. Engagement will continue during the implementation process. The links below show the relevant SEV licensing consultation documentation:

<http://www.scotland.gov.uk/Publications/2013/06/3607>

<https://consult.gov.scot/justice/licensing-of-sexual-entertainment-venues/>

## Impact Assessments

15. An Equality Impact Assessment was carried out in relation to the Bill for the 2015 Act. The link below shows the relevant documentation:

<http://www.gov.scot/Publications/2014/05/3617>

## Financial Effects

16. A Business and Regulatory Impact Assessment was completed in relation to the Bill for the 2015 Act and can be viewed at the link below. There will be no significant impact on the Scottish Government, local government or on business as a result of this policy.

<http://www.gov.scot/Publications/2014/05/7168>

Scottish Government  
Justice Directorate  
Criminal Law, Practice and Licensing Unit

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