Equality and Human Rights Commission consultation response on the provisions for licensing of sexual entertainment venues and changes to licensing of theatres

Creating a fairer Britain
Equality and Human Rights Commission response to the Scottish Government consultation on the provisions for licensing of sexual entertainment venues and changes to licensing of theatres

8 February 2018

Contact details:

Helen Miller
Equality and Human Rights Commission
2nd Floor 151 West George Street
Glasgow
G2 2JJ

Helen.Miller@equalityhumanrights.com
The Equality and Human Rights Commission (the Commission) champions equality and human rights, working to eliminate discrimination, reduce inequality, protect human rights and make sure that everyone has a fair chance to participate in society.

The licensing of sexual entertainment venues is of particular interest to the Commission as we are the regulator for the Equality Act and Public Sector Equality Duty (PSED). The Commission has sought to tackle long term problems of inequality including violence against women and have previously carried out an inquiry into trafficking.

We welcome the creation of this new licensing regime and hope it acts as a deterrent for traffickers who seek to force women to work in these venues.

Question 1

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.

In paragraph 53: Section 38 of the Human Trafficking and Exploitation (Scotland) Act 2015 provides for a ‘duty to notify’. Local Authorities must notify Police Scotland if they become aware of a person who is or appears to be a victim of an offence of trafficking or a victim of an offence of slavery, servitude or forced and compulsory labour. This duty is not made sufficiently clear in the guidance. Simply encouraging operators to work with voluntary organisation is not enough if there is suspicion of trafficking. Further information about the obligations on public authorities under the Human Trafficking and Exploitation (Scotland) Act 2015 are available in guidance which is available here: http://www.gov.scot/Publications/2016/10/9195/0

Question 2

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

In our view the guidance should refer to the Public Sector Equality Duty (PSED).

The PSED requires public authorities, in the exercise of its functions, to pay ‘due regard’ to the need to:

- Eliminate discrimination, harassment, victimisation, or other unlawful conduct;
- Advance equality of opportunity between people who share a
relevant protected characteristic and those who do not; and

- Foster good relations between people who share a protected characteristic and those who do not.

In Scotland listed public authorities such as local authorities are also subject to specific duties. These include a requirement to carry out an equality impact assessment on new or revised policies and strategies.

The specific duties require each listed authority to:

- where required to fulfil the general equality duty, assess the impact of applying a proposed new or revised policy or practice against the needs of the general equality duty;
- in making the assessment, consider relevant evidence relating to persons who share a protected characteristic (including any evidence received from those persons);
- in developing a policy or practice, take account of the results of any assessment in respect of that policy or practice;
- publish, within a reasonable period, the results of any assessment where it decides to apply the policy or practice in question;
- make arrangements to review and where necessary revise any policy or practice that it applies in the exercise of its functions.

Local authorities must show due regard to the Public Sector Equality Duty and will likely be required to carry out Equality Impact Assessments as they develop their SEV policy and practice. There are several places in the guidance where highlighting this duty to local authorities would be important part of assessing whether or not to pass a resolution and so references to the Public Sector Equality Duty would be relevant between paragraphs 29 and 34.

Paragraph 54: There should be a reference to the minimum standards expected of workplaces as per current health and safety regulations. It may also be worthwhile to add a bullet point suggesting that access to medical checks and sexual health advice and information is provided on site.

Paragraph 71 and 72: Consideration the ECHR rights that local authorities should undertake should be more detailed. Further information about Freedom of Expression can be found in our guidance which is available here