

Adult Entertainment Working Group –

Report and Recommendations

Volume 1

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AEWG Final Report

Foreword

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Foreword

I am pleased to submit the Working Group's Report. We were given a year to look into the economic, social and personal impacts of what is called the adult entertainment industry in Scotland, and make recommendations for regulatory change. We have been, very firmly, an evidence based Group rather than an expert group and our focus has been to obtain evidence from a wide variety of sources in order to identify gaps in the current licensing regime, taking into account concerns raised by operators, performers, users, and members of the public.

Before agreeing that my name could be put forward as a potential group chair, I asked around to see what the pitfalls might be. People with experience of similar groups all said that if the Secretariat is good, you will be OK. Not knowing who the Secretariat would be I took a chance, but my faith and trust proved to be well founded. I wish to record my heartfelt appreciation for the help and support provided willingly, enthusiastically and efficiently by Anna Gilbert, Stephanie McTighe and Ken McKenna from the Scottish Executive Finance and Central Services Department Licensing Team.

Members arrived at the Group from different backgrounds and with differing views, yet we have all worked well together. I note here my thanks for their hard work, warmth, and good humour. We have been able to discuss sensitive issues comfortably and enjoy straightforward exchanges of views on tricky topics without losing sight of the task to be accomplished. We are reporting on time, with unanimous recommendations on the changes that we think should be made to the regulation of adult entertainment in Scotland.

Linda M Cavellae Baker

Introduction

The Working Group

On 24 March 2005, Scottish Ministers set up a Working Group on Adult Entertainment to review the scope and impact of adult entertainment activity and make recommendations to Ministers on the way forward. This followed concerns expressed about the lack of controls on adult entertainment activity.

The Working Group was part of a two-stage approach to considering controls on these activities. The first stage is included in the Licensing (Scotland) Bill, which was introduced on 28 February 2005, and contains powers which will be used to prescribe measures for regulating adult entertainment on premises licensed to sell alcohol.

For the second stage, the Working Group was set up to investigate all forms of adult entertainment, irrespective of where the activity takes place.

The remit

The terms of reference for the Working Group are as follows:

- to identify all relevant activities (whilst recognising the need not to suppress artistic freedom)
- to consult with all relevant interest groups (including women's groups; and employees and employers in the adult entertainment industry)
- to commission research into the activities and associated impacts (using anonymous sources where appropriate)
- to identify and assess relevant types of controls, including the implementation and impact of any controls
- to recognise the need to balance local and national interests
- to take account of concurrent work on prostitution and regulations for lap dancing in licensed premises
- to report to Ministers in April 2006, with recommendations

The report

This document (Volume 1) contains the report and recommendations of the Working Group. Volume 2 contains the associated independent research and annexes. Any views and conclusions presented in the independent research are not necessarily those of the Working Group.

Membership

Linda Costelloe Baker (Chairman)
Councillor James Coleman (Glasgow City Council)
Dr Sharon Cowan (University of Edinburgh)
Superintendent John Farrell (Strathclyde Police)
Rab Fleming (Scottish Executive)
Councillor Raymond Hutcheon (Licensing Committee, Aberdeen)
Dr Catherine Kennedy (Napier University)
Patricia McIlquham (Dundee City Council)
Jan Macleod (Women's Support Project)
Councillor Lorna Shiels (Edinburgh City Council)
Councillor Jill Shimi (Dundee City Council)
Eddie Tobin (Bar Entertainment and Dance Association)

Secretariat

Anna Gilbert (Scottish Executive)
Stephanie McTighe (Scottish Executive)

SUMMARY AND RECOMMENDATIONS

Scope

What was it, exactly, that we were looking at? Defining the scope of the project was vital so that we could focus our time and resources properly. Adult entertainment is a euphemism and could include any entertainment that is suitable only for adults, such as entertainment with violent content. The term has, however, become common for activity that has a sexual component but does not include sexual intercourse or masturbation. We thought that it was important to distinguish live adult entertainment from prostitution, noting that the Scottish Executive had a separate Working Group on outdoor prostitution; stage two will be on indoor prostitution, including saunas and massage parlours. We also noted that some of the concerns raised were covered by existing regulations and legislation, so we eventually decided to exclude printed material and sex shops.

The Working Group investigated the scope and impact of adult entertainment activity across Scotland and commissioned research to identify and assess any impact on people who work in the industry, and on local communities, with a view to identifying any controls required to regulate the industry in the light of evidence based concerns. As part of the Working Group's research we invited views on adult entertainment wherever it takes place in Scotland.

The industry: contribution to the economy

Annual turnover in the UK Adult Entertainment industry is estimated to be in excess of £300 million and is one of the fastest growing elements in the UK's "leisure services" industry. Our research showed an estimated 110 individuals working in some form in Edinburgh, 70 in Glasgow, and 70 in Aberdeen and Dundee combined. This translates to full time equivalent employment of around 75 jobs in Edinburgh, 36 in Glasgow and 48 in Aberdeen and Dundee. In addition to these figures there is direct employment of bar, security and cleaning staff.

The industry is a relatively important part of group tourism for some activities such as stag/hen weekends and brings money into the city economies, particularly to Edinburgh. It is also seen by economic development professionals in Aberdeen and Edinburgh as an 'essential' service to be provided by international cities and seen as a potential factor in attracting business investment. The impacts in Dundee and Glasgow are more limited due to the small scale of AE relative to the city economies.

The industry: scale and nature in Scotland

There is a lack of clarity about the number of premises in Scotland which provide AE. The survey of Local Authorities revealed 19 possible venues but the Group is aware that agencies can provide one off AE events almost anywhere. The research into the economic impact found that in **Aberdeen** there are five licensed AE premises, of which three are currently operational. The establishments were reasonably discreet in terms of their signage, although one was above a sex shop with prominent advertising. There is one active establishment in **Dundee**, near the city centre, but just outside the main retail area, in a nightlife zone. The seven AE establishments in **Edinburgh** are located in a relatively small area that runs along Lothian Road, through Tollcross and along Bread Street. In general, Edinburgh establishments had more explicit and larger sign-posting than establishments in the other

cities. In **Glasgow**, the four AE establishments are scattered over a fairly wide area of the city centre, with only two being in fairly close proximity.

The industry: working conditions

Adult Entertainment performers are generally self-employed and do not benefit from the protections afforded to employees. Performers complain of financial exploitation by operators. Performers have also raised concerns about a lack of dedicated changing facilities, a lack of refreshments away from the public area, and poor environmental conditions. The fact that performers are self-employed, paying the club a fee to dance and relying on tips and private dances for income, can mean that they sometimes struggle to make a profit. Performers reported exploiting customers' naivety in relation to charging patterns in order to make money. The arrangements for payment may be creating the financial conditions that may lead some performers to offer sexual services.

Gender based exploitation

Women have danced for men for all times and in all cultures. Indeed, such dancing is often of high status with envied skills. Current day concerns about pole dancing, table dancing and lap dancing have arisen because the boundaries between dance and sexual activity have become increasingly blurred. Society's views on gender based exploitation are also changing. The Group noted a view that Adult Entertainment activities represent a commodification of sexuality and intimacy, and sexualise male dominance and the denigration of women. The fact that there is a demand for sexually exploitative activities does not make these activities legitimate: for example there is also a demand for child pornography.

The AEWG believes that some of these concerns can be addressed by better regulation, though that will play only a small part in changing public attitudes to the wider issues.

RECOMMENDATIONS

For the purposes of licensing, adult entertainment should be defined as

“The performance in a public place of any activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification and/or titillation.”

1. There should be national regulations applied to AE activity, regardless of where it takes place. The current licensing régime allows unfair differences depending on the type of licence. If licensing is tightened up for a particular class of premises, imaginative operators may try to avoid regulation by, for example, providing adult entertainment in vehicles, or in a neighbouring building that does not serve alcohol.

2. All AE activities should be, at all times, fully visible to the public visiting the premises. Private activities should not take place on a public premises. Private booths are particularly difficult to oversee or manage and activities which occur in them may constitute or lead to prostitution.

3. Performers should not touch, or be touched by, customers. In order to remove any doubts about touching, and for the safety of performers, there must be a distance of 1 metre between performer and any other person during entertainment activities. Performers may not perform any act that clearly simulates masturbation, oral sex or sexual intercourse, including the insertion of any object, including their own finger into any genital opening. Performers may not touch their breasts with their mouths, lips or tongues. There is a need to separate AE from activity that might be illegal in terms of indecency or prostitution. As it is the operator who obtains the licence, the operator is responsible for ensuring compliance. The operator’s own codes of conduct should, however, include information for the performer on what she should do if a customer tries to breach this rule. Operators should also have clear notices for customers, including what action will be taken against anyone who breaches the rule.

4. There should be adequate health and safety protection for performers, including

- dedicated and private changing, washing and toilet facilities, separate from public facilities. The Local Authority should determine what is adequate given the layout and circumstances of the venue.
- a minimum temperature of 20°C, confirmed by fixed thermometer, in all working and changing areas.
- adequate lighting in all working and changing areas.
- all work and changing areas must be kept clean, free from obstruction and with surfaces that are fit for purpose.
- adequate and hygienic facilities to make hot drinks and eat meals, and a supply of cold drinking water.

Performers are normally classed as self-employed. We understand that the operator remains responsible for the health and safety of contractors working in their establishments and those responsibilities cannot be discharged by claiming that the performers are self-employed. We consider that performers' safety and well-being can be protected by specific regulatory requirements.

5. There should be adequate security to ensure compliance with the AE regulations and prevent illegal activity. Each Local Authority should have discretion to determine appropriate methods of security but as a minimum there should be CCTV. Recordings must be retained for a period of at least one month and delivered to the Local Authority within three working days of request. The Local Authority should determine the precise deployment and operation of CCTV and if there is adequate staff supervision/stewarding to ensure performer safety. This will include any additional measures required to ensure that operators comply with the mandatory.

6. There should be a minimum age of 18 for AE performers, public and employed staff with an obligation on the operator to ensure compliance. Adult entertainment should be restricted to adults.

7. The Local Authority should determine if full nudity is appropriate for a specific venue taking into consideration proximity and the degree of security and oversight. There is nothing intrinsically wrong with the naked human body but the context is important. Full nudity, for example, may be more acceptable if the performer is at some distance from the customer and there is adequate operator supervision.

8. The Local Authority must have a policy on appropriate levels of provision for AE. Local authorities should be able to control the number and size of venues providing particular types of AE in specific localities. The economic impact study showed that there are different markets for adult entertainment and measures that may be appropriate for a sporting or stag weekend market may not be suitable for the corporate conference market. Decisions on over-provision depend to a very large extent on the nature of the neighbourhood, and on aims and ambitions for the city or town as a whole.

9. The Local Authority should determine the degree of external visibility allowed for AE establishments, taking into account the location of the specific premises. Premises should have external signs which indicate what the premises are so that members of the public can make a reasonable informed choice in advance. There should, however, be local discretion on the size and content of signs depending on the neighbouring area; a small alleyway with limited footfall might have larger signs than a busy thoroughfare. What goes on inside the premises should only be visible to those who have chosen to go into the premises, regardless of the location.

10. There should be a National Exemption so that the regulations do not apply to artistic representational performance. Regulations designed to minimise exploitation should not, by accident, restrict genuine artistic freedom.

11. The Scottish Executive should develop a co-ordinated strategic approach to the issue of gender based exploitation. Regulation of one small area may be a contribution but can do little to achieve change in underlying attitudes. We realised early on that there were a number of Working and Expert Groups examining and advising the Executive on issues that

were linked in some way with the AEWG's remit. It is no accident that this work is being undertaken by many different Scottish Executive Departments because sexual behaviour and gender inequality affect so many areas of everyone's life. We are conscious that tightening up the regulations for adult entertainment does little to affect underlying attitudes, and that should be the longer term aim.

REGULATORY IMPACT ASSESSMENT

Social and Personal

Performers - Distancing AE from prostitution will improve the status of AE. An increase in regulation may lead to regulatory avoidance which could reduce safety for workers. Regulations covering working conditions will improve a significant cause of concern.

Customers - An increase in regulation may lead to regulatory avoidance which could reduce safety for customers. Customers who expect sexual services from AE would be disappointed.

Public - Members of the public would be less concerned that AE was the same as prostitution.

Local Communities - The requirement for each local authority to determine appropriate levels of provision would mean local decisions for local issues. If left to the market it is expected that AE establishments would generally locate relatively close to one another in or near the city centre. Dispersing within city centres would produce a different effect within each individual city.

Economic

Turnover - We do not see the recommended increase in regulatory oversight would close the industry down. We also note that AE industry has only a relatively small impact on the Scottish economy. It is a relatively important part of group tourism for some activities such as stag/hen weekends and brings money into the city economies, particularly to Edinburgh. It is also seen by economic development professionals in Aberdeen and Edinburgh as an 'essential' service to be provided by international cities and seen as a potential factor in attracting business investment. The impacts in Dundee and Glasgow are more limited due to the small scale of AE relative to the city economies.

Employment and earnings - New regulations are likely to increase employers' costs, which may be passed on to performers. We doubt that the restrictions on private booth dancing will close the industry down.

Customers and expenditure - New regulations are likely to increase employers' costs, which may be passed on to customers.

Informal economy - Legislation to close AE venues, or remove them from city centres would be likely to lead to an increase in unlicensed operations. A high proportion of takings and earnings would be untaxed. The view in Edinburgh is that this could be a significant problem, whereas in Glasgow it was perceived to be less of a problem. Most industry workers also believed this to be a likely problem. There are currently one off AE events being staged in all of the cities and smaller towns and villages in venues such as pubs, clubs and hotels. There are possible safety issues surrounding these events.

Property values - Possible advantages of the requirement to consider over-provision would be diversification of the AE area of Edinburgh and removing individual establishments from inappropriate areas in Glasgow. In Edinburgh there is some evidence of an area-wide

downmarket image in Tollcross/Lothian Road partly due to the industry. In Glasgow any negative effects of AE are more localised, and impact on businesses adjacent to actual and proposed establishments. Negative impacts on Dundee are small and the overall economic impact of dispersal would depend on the size of the proposed area. In Aberdeen and Dundee, dispersal was generally regarded as unnecessary.

Community costs - None, other than the costs of increased regulatory oversight.

CHAPTER 1. THE DEVELOPMENT OF A DEFINITION

A key issue for the Working Group was the definition of adult entertainment. Sorting out a working definition had to be our first priority so that we could commission the public consultation exercise and related research.

We started off with this;

“Live sexual entertainment services with an intention to sexually titillate and/or that a reasonable person, acting reasonably, would assume that there was such an intention.”

That was good enough to get us on track but we continued to discuss and debate the definition at each AEWG meeting. We wanted to find a definition that uses the simplest and most unambiguous terms possible. It is often difficult to provide a clear and easily applicable definition that meets these criteria. However it is important to try to define adult entertainment in terms which include those areas that we concluded need regulation (such as lap dancing), while excluding those that do not (such as artistic theatrical performances and private sexual behaviours).

It has been suggested that regulations licensing the commercial sale of sexual material in sex shops have included loopholes which allowed those regulations to be subverted too easily. A sex shop, for example, is defined as any premises...*which consists to a significant degree of selling, hiring...sex articles.* Since it is for each Local Authority to interpret the words ‘which consists to a significant degree’ we find that a particular chain of ‘sex shops’ requires a licence in one area but not in another even where the stock on sale is identical in both areas. We wanted to take great care with terminology to prevent similar kinds of loopholes evolving within our definition. We have tried, so far as possible, to anticipate any ambiguities in formulating a definition of the area we think should be regulated.

We developed our recommendations about definitions and terminology based on the evidence gathered by the Group. In reaching a decision about whether or not regulations on adult entertainment should focus only on commercial transactions, we took into account some of the findings from our visits to adult entertainment venues. For example in one venue in Edinburgh, there was no charge for entry at the door of the bar, and there were free dances performed by fully naked women on top of the bar. The prices of drinks were similar to other non-adult entertainment venues in the area. Therefore, any definition that regulates only adult entertainment which is performed for money (or money’s worth) would not regulate this kind of activity. For this reason we have omitted from our definition the requirement that there be a commercial element to the performance.

The kinds of activity that would be covered by a definition which referred to performances for financial reward could, however, include private dances in booths. Only one of the 12 adult entertainment venues visited by the group did not have private or semi-private booths. Since it is claimed that adult entertainment is a form of public entertainment, the AEWG took the view that “private” spaces within public bars or clubs are inappropriate. In effect, this would mean firstly that any adult entertainment performance in a public bar or club would be governed by adult entertainment regulations, and secondly that a condition of a licence for adult entertainment purposes would be that there would be no wholly private booths or spaces for performance.

So how did the definition of adult entertainment develop since its very early incarnation in the Public Consultation? We looked at other, existing definitions that might apply because of our concern at the lack of cohesion that exists. The one that best met our purpose is in The Protection of Children and Prevention of Sexual Offences Act, and we used part of Section 3(b).

The final definition

The definition that we recommend for the purposes of licensing of adult entertainment is:

“The performance in a public place of any activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification and/or titillation.”

We need to explain the language we use and the terms *performance*, *public*, and *gratification/titillation* are discussed below.

a. Performance

An initial point to note is that we chose not to position the word “live” before performance. This is because the Group thought that this would too narrowly restrict the activities covered by the definition. Live is often defined in opposition to a recording, as in the *Copyright, Design and Patents Act 1988*¹. Adult entertainment venues which recorded an earlier performance of a lap dance or strip tease in order to show it to customers at a later time would not be required to obtain an adult entertainment licence.

There is scarce legal guidance on the meaning of live or performance. The *Copyright, Design and Patents Act 1988* section 180(2) defines performance as:

- (a) a dramatic performance (which includes dance and mime),
- (b) a musical performance,
- (c) a reading or recitation of a literary work, or
- (d) a performance of a variety act or any similar presentation.

Section 19(2) of the same act goes on to elaborate that

In this Part “performance” in relation to a work —

- (a) includes delivery in the case of lectures, addresses, speeches and sermons, and
- (b) in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording, film or broadcast of the work.

¹ The 1988 Act does not define live, but does define its opposite, a recording, section 180(2):

“recording” in relation to a performance, means a film or sound recording —

- (a) made directly from the live performance,
- (b) made from a broadcast of the performance, or
- (c) made, directly or indirectly, from another recording of the performance.

It would appear from this provision that should a similar definition of performance be used in the adult entertainment context, Section 19 2(b) could cover the presentation of a recording of a performance of dance previously performed. What is clear though is that an adult entertainment performance could fall under this generic list of types of performance.

However, it is also possible that a wide interpretation of the word performance would include artistic representations and dramatic performances: so far as the Group is concerned, this would not be the desired or intended outcome. We have, therefore, included the terms “for the purpose of providing sexual gratification and/or titillation” which, as discussed below, should exclude these artistic performances.

b. In a public place

i. **Public space:** Scottish criminal cases and legislation have tried to define “public” in relation to sexual behaviour. For example the *Civic Government (Scotland) Act 1982* Section 133 has defined public as being: “any place, whether a thoroughfare or not, to which the public have unrestricted access, including doorways and entrances abutting on any “public place” and common closes, passages, stairways etc.” Section 46 of the Act (soliciting for the purposes of prostitution) subsection 2 says that this includes: “(a) any place to which at the material time the public are permitted to have access, whether on payment or otherwise; and (b) any public conveyance other than a taxi or hire car...”. In addition, the 1902 *Licensing Act* governs licensing for “*Any place to which the public have access whether on payment or otherwise*”.

Under the *Civic Government (Scotland) Act 1982*, section 41, a “place of public entertainment” excludes an establishment licensed under the *Theatres Act 1968* or the *Cinematograph Act 1909*. It is assumed that our definition will also exclude such spaces on the understanding that they are regulated separately.

Although it seems that the majority of premises that offer adult entertainment are licensed to serve alcohol, there are apparently a number of other kinds of adult entertainment provision, such as mobile performers, usually managed through agencies, offering entertainment in non-licensed premises, for example in limousines. These performances would not be covered by regulations that were solely tied to alcohol licensing. Our recommendations, which are aimed at adult entertainment which happens in public, would also need to cover this kind of entertainment provision if it occurs in public.

ii. **Vehicles:** With regard to vehicles, the guidance to local authorities in England and Wales on the *Licensing Act 2003* suggests the following:

“It should also be noted that the provision of any entertainment or entertainment facilities on premises consisting of or forming part of any vehicle while it is in motion and not permanently or temporarily parked is not to be regarded as a regulated entertainment for the purposes of the 2003 Act. For example, a band performing on a moving float in a parade would not require a premises licence if performances only take place while the vehicle is in motion” (para 5.63).

Thus adult entertainment in a *moving* vehicle in England and Wales would not be covered by the 2003 Act. **We recommend that Scotland should regulate adult entertainment in moving vehicles.**

iii. **Pubs:** Pubs and clubs have been held by the Scottish courts to be public places (see for example *Lockhart v Stephen* 1987 SCCR 642). However stripping in pubs has not been seen as public indecency, the court in *Lockhart v Stephen* saying that such conduct is not intended to “deprave and corrupt”. Whether the place in question is a public place involves an assessment not of “whether the conduct occurred in a public place in any technical sense” but of whether (even if it occurred on private premises) it was visible to the public (*Webster v Dominic* 2003 S.L.T. 975).

In the guidance to local authorities on the new English and Welsh legislation on licensing (the Licensing Act 2003), “Entertainment at a private event to which the public are not admitted becomes regulated entertainment, and therefore licensable, only if it is provided for consideration **and** with a view to profit” (para 5.16).

This would presumably cover adult entertainment at private clubs. However the guidance does go on to say – “Accordingly, a mere charge to those attending a private event to cover the costs of the entertainment, and for no other purpose, would not make the entertainment licensable as this would not be with a view to profit. The fact that a profit might inadvertently be made would be irrelevant as long as there had not been an intention to make a profit” (paragraph 5.16). This presents a possible loophole where private clubs could provide adult entertainment, unregulated.

In Scotland, until now, private members clubs have not been included within the term “public” but under the new proposed licensing legislation, this will no longer be the case. Public will then include private clubs, thus foreclosing a potential loophole that adult entertainment would simply relocate to “private” clubs.

c. **Gratification/titillation**

Adult Entertainment referred to in the guidance on the English and Welsh 2003 *Licensing Act* seems to mean entertainment with a sexual content, e.g. para 7.51. However this would at first glance include artistic representations of sexual matters, say for example a dance performance involving nudity or a play about a lap performer. We note that the performance in question has to have as its purpose sexual gratification or titillation (titillation connoting a rather less fulfilled sexual reward). Since artistic representations do not have sexual gratification or titillation as their primary goal, this would exclude such performances from the scope of our definition. We gather that the public understands the difference and note that there were, for example, no complaints about a dance performance in Edinburgh that depicted a lap performer. The Scottish Arts Council report that there have been examples of lobbying by pressure groups in relation to artistic performances, but on the grounds of religious offence rather than sexual or indecency grounds.

CHAPTER 2. REASONS FOR CHANGE

The Better Regulations Task Force, now the Better Regulation Commission, in its March 2005 report *Regulation – Less is More* noted its serious concern that, despite the UK being placed among the world’s leaders in better regulation and even after eight years of intense BRTF activity, the volume, complexity and costs of regulation continued to grow. It found too few examples of better regulation in principle leading to less costly regulation in practice. It noted that regulation probably costs the UK around £100 billion each year and, of this, some £30 – £40 billion is administrative cost – bureaucracy, paperwork and red tape. Those costs have to be paid each year by business, consumers and citizens.

The AEWG’s starting point for our recommendations on regulation was whether there were sound and evidence based reasons for adding to the regulatory burdens already in place. We also thought that we had a duty to take into account the costs that our recommendations would, if accepted, impose on those being regulated and on local authorities and council tax payers. As the BRTF says, people may rightly vote for cleaner air, longer holidays or safer travel but no-one votes for red tape or excessive monitoring, inspection and form filling.

We took into account the BRTF’s Five Principles of Good Regulation

Proportionality - Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.

- Policy solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed – don’t use a sledgehammer to crack a nut.
- All the options for achieving policy objectives must be considered – not just prescriptive regulation. Alternatives may be more effective and cheaper to apply
- “Think small first”. Regulation can have a disproportionate impact on small businesses, which account for 99.8% of UK businesses.
- EC Directives should be transposed without gold plating.
- Enforcement regimes should be proportionate to the risk posed.
- Enforcers should consider an educational, rather than a punitive approach where possible.

Accountability - Regulators must be able to justify decisions and be subject to public scrutiny.

- Proposals should be published and all those affected consulted before decisions are taken.
- Regulators should clearly explain how and why final decisions have been reached.
- Regulators and enforcers should establish clear standards and criteria against which they can be judged.

- There should be well-publicised, accessible, fair and effective complaints and appeals procedures.
- Regulators and enforcers should have clear lines of accountability to Ministers, Parliaments and the public.

Consistency - Government rules and standards must be joined up and implemented fairly.

- Regulators should be consistent with each other, and work together in a joined-up way.
- New regulations should take account of other existing or proposed regulations, whether of domestic, EU or international origin.
- Regulation should be predictable in order to give stability and certainty to those being regulated.
- Enforcement agencies should apply regulations consistently across the country.

Transparency - Regulators should be open, and keep regulations simple and user-friendly.

- Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all interested parties.
- Effective consultation must take place before proposals are developed, to ensure that stakeholders' views and expertise are taken into account.
- Stakeholders should be given at least 12 weeks, and sufficient information, to respond to consultation documents.
- Regulations should be clear and simple, and guidance, in plain language, should be issued 12 weeks before the regulations take effect.
- Those being regulated should be made aware of their obligations, with law and best practice clearly distinguished.
- Those being regulated should be given the time and support to comply. It may be helpful to supply examples of methods of compliance.
- The consequences of non-compliance should be made clear.

Targeting - Regulation should be focused on the problem and minimise side effects.

- Regulations should focus on the problem and avoid a scattergun approach.
- Where appropriate, regulators should adopt a "goalsbased" approach, with enforcers and those being regulated given flexibility in deciding how to meet clear, unambiguous targets.

- Guidance and support should be adapted to the needs of different groups.
- Enforcers should focus primarily on those whose activities give rise to the most serious risks.
- Regulations should be systematically reviewed to test whether they are still necessary and effective. If not, they should be modified or eliminated.

Taking all of those cautionary notes into account, the AEWG did find three compelling reasons for additional regulation.

2.1 Concerns regarding exploitation

Exploitation

Although the term ‘adult entertainment’ is understood by most people as referring to some form of sexual activity, there is no common agreement as to the distinction between sexually explicit and sexually exploitative activity.

There are activities which are sexually explicit but which are considered acceptable for adults, including for example, comedy with strong sexual language, and nudity in film or theatre. Such activities may fall under existing regulation, such as obscenity laws, or film classification. There are other forms of activity which are sexually explicit and which are regarded by many as unacceptable, because they are exploitative.

In order to effectively address sexual exploitation, it is essential to describe clearly the difference between an activity that is sexually explicit and an activity that is sexually exploitative. If this distinction is not agreed, the same legislation and regulation needs to be applied to both acceptable and unacceptable activity.

A suggested distinction from Professor Donna Hughes,² is that sexual activity becomes sexual exploitation if it breaches a person’s human right to dignity, equality, respect, and physical and mental wellbeing. It becomes commercial sexual exploitation when another person, or group of people, achieves gain or advancement through the activity.

In line with this definition, commercial sexual exploitation is a multi-billion dollar business which encompasses pornography, internet sex chat rooms, sex phone lines, escort services, prostitution, trafficking for prostitution, peep shows, lap dancing, pole dancing, table dancing and stripping. All these activities are gendered, in that, overwhelmingly, it is women who are paid, and men who pay. The fact that there are some male strippers, or that women may sometimes pimp other women in prostitution, does not take away from this gendered nature.

Once the idea of commercial sexual exploitation exists there can be pressure on vulnerable women to become involved. The AEWG heard evidence that once involved in lap dancing and related activities, there is pressure on women to take part in further sexual activity.

“There is a strong implication that women in the industry are vulnerable. There are several negative impacts on performers, for instance power relationships are often formed whereby club owners make strong and explicit demands on performers to the point where they feel they have no choice but to do as they are told. For instance, potential female performers are ‘employed’ or hired on a certain understanding that they will be paid for dancing for customers, but it is often a different story once these women are ‘in the door’. Club owners are likely to change the goal posts of the working conditions, whereby more is expected and even demanded of performers, such as being ‘asked’ to provide additional (sexual) services. Performers are more at risk of manipulation, as well as negative sexual health implications.

Representatives of the NHS Sandycroft Initiative have found that women working in this industry are very defensive of their position – claiming things like: “I work there but don’t have sex with the clients.” This infers that women working in this environment expect the

² Rhode Island University www.uri.edu/artsci/wms/hughes/

general public to assume that sex IS on offer in this environment. This kind of reaction implies and emphasises a social stigma, which is attached to working in this type of industry, since in general it does not look good to others, as it is not quite socially acceptable. There is also the stigma performers feel when thinking about other jobs of ‘who will employ me? What if people think I am a prostitute?’ It is certainly a view that performers who partake in adult entertainment activities may move onto other more explicit sexual services.”
(Sandyford Initiative Interview see Annex 6 (6.7))

Women involved in commercial sexual exploitation report adverse effects on their mental wellbeing.³

It is acknowledged by support services and research that many women need to dissociate in order to ‘perform’, and they do so through the use of drugs and alcohol, and/or by ‘splitting’ themselves off mentally. This is damaging to women in the long term.⁴

Scottish Women Against Pornography feel that adult entertainment ruins women’s lives and that research showed that a conservative estimate of 60% of women interviewed who were involved in the sex industry were victims of sexual abuse. They feel that the pornography industry, prostitution/lap dancing/stripping does not ultimately exist because of women’s choices. Rather it exists because men as a class, demand there be a sub-class of women and children and transgender people but mostly women, who are available for their unconditional sexual service. (Scottish Women Against Pornography Interview see Annex 6 (6.2))

A number of organisations think that such activities have a negative impact on the position of all women through the objectification of women’s bodies, irrespective of whether individual women claim success or empowerment from the activity.⁵ These activities represent a commodification of sexuality and intimacy, and sexualise male dominance and the denigration of women. The fact that there is a demand for sexually exploitative activities does not make these activities legitimate: for example there is also a demand for child pornography.

The AEWG noted that activities that are regarded as sexually exploitative are incompatible with the Scottish Executive’s work on gender equality and violence against women, the latter perhaps the most sensitive indicator of women’s inequality within society. Acceptance of these activities serves to reinforce gender inequality by facilitating and normalising men’s violence against women. Similarly, there is an inherent contradiction between sanctioning such activities and adhering to a position that supports the principles of equality and human rights.

³ See, for example, ‘Strip Club Testimony’, by Kelly Holsopple, Freedom and Justice Centre on Prostitution Resources, www.ex-performers.com An Inside Look: The Life of the Exotic Performer, by Devi, Maria, Schmidt, www.law.uoregon.edu/faculty/cforell/studentpaper.php, ‘Prostitution, Violence and Post Traumatic Stress Disorder’, www.prostitutionresearch.com.

⁴ See for example, Routes Out Of Prostitution Intervention Team reports, ‘Profitable Exploits’ by Julie Bindel, page 45, www.cwasu.org/publication_display.asp?pageid=PAPERS&type=1&pagekey=44&year=2004.

⁵ For example: The Scottish Executive National Group on Violence Against Women www.scotland.gov.uk, Zero Tolerance www.zerotolerance.org.uk and Engender www.engender.org.uk.

This wider view on exploitation helped the AEWG to find out what the **general public** think:

- 61% of respondents to the Public Attitudes Survey think some or all of the 6 groups (women in general, female strippers, local residents, customers, male strippers, men in general) are exploited by activities such as lap dancing, pole dancing, male or female strippers. **(Public Attitudes Survey see Annex 3)**
- 41% males and 46% females think women in general are exploited. **(Public Attitudes Survey see Annex 3)**
- 37% males and 43% females think female strippers are exploited. **(Public Attitudes Survey see Annex 3)**
- 37% males and 31% females think customers are exploited. **(Public Attitudes Survey see Annex 3)**
- 33 of the 52 respondents (63%) to the Public Consultation thought that the impact on the performers was negative and examples of the impacts given were as follows – sex objects, not worthy of respect, degraded, lack of self-esteem, emotional, psychological and physical effects, feeling cheap, demeaned, dehumanised, exploited. It was also felt that these performers were open to and subject to verbal, physical, mental and sexual abuse and that there was an increased threat of rape, sexual assault and harassment. **(Consultation Analysis see Annex 4)**
- “As with the other cities it was felt necessary by Edinburgh Council and the industry to tighten up other regulations, for example changing facilities for workers, CCTV and declaration of AE activity. This would ensure a well-controlled and socially acceptable industry. However, not all performers shared this point of view and some stated they would prefer a less well-regulated industry that gave them the potential for higher earnings.” **(Economic Impact Report page 55 see Annex 5)**
- The general consensus amongst women aged 18-30 and some under 18s at the YWCA is that it is felt to be exploitative to performers. **(YWCA Interview see Annex 6 (6.5))**
- SWAP believe young men today believe that they have a right to the access of young women’s bodies. SWAP feel that we are all now the audience which is proof of desensitisation. If you live in a city you have no choice but to view women as a sexual commodity. **(SWAP interview see Annex 6 (6.2))**

The performer’s perspective

Personal identity

Much of the literature relating to the performers in adult entertainment venues comprises of qualitative explorations of their experiences, specifically how they manage their ‘identity’ or cope with the stigma involved in such work.

One article explores women's pathways into stripping through an examination of their backgrounds (Sweet and Tewksbury 2000)⁶. These included: being sexually mature at an early age; having early independence from or at home; average educational attainment; having a background in sports or entertainment; and 'ugly duckling syndrome'. Two-thirds of the sample indicated some experience of sexual abuse in their upbringing. They conclude by suggesting that the common link between most of these factors is their relationship to women's self-esteem and confidence; that low confidence and self-esteem are part of the pathway to stripping.

Other studies focus more on the direct impetus to becoming a stripper and highlight factors such as economic need; having no better paying alternative; personal social networks providing the opportunity; and being intoxicated (Thompson and Harred, 1992)⁷.

Bell *et al.* (1998)⁸ focus on the issue of the performers' exploitation. From interviews with 13 current and 17 former topless performers, nearly half highlighted the negative effect of the stigma of topless dancing, including stereotyping, limited ability to move career and an internalisation of stigma. In relation to exploitation, whilst some felt that performers exploited customers, most considered the relationship between performers and customers to be mutually exploitative. None of the performers felt they were being exploited in the context of their work (Bell *et al.* 1998:361).

Thompson and Harred (1992) explore how performers manage the stigma of being topless performers. They identify two strategies: 'dividing the social world', that is only allowing some to know they participate in topless dancing whilst hiding it from others; and 'neutralisation', that is, condemning those that condemn them, denying any harm caused, and justifying their participation due to higher loyalties such as supporting a family. In a follow-up study ten years later, Thompson *et al.* (2003)⁹ concluded that topless dancing is still a highly stigmatised occupation. Whilst this study also concluded the strategies for managing stigma remained the same, they in addition identified 'cognitive and emotive dissonance' strategies used by performers to cope with the emotional strain of the distance between their public and private selves.

Whilst much of the research draws a distinction between topless or lap dancing and the sale of sex, many highlight the way performances suggest sexual availability. Many of the performers interviewed were clear that they are not available for sexual intercourse, although they may know others who are. A study by Wesely (2003)¹⁰ examines the ways in which performers' feelings about topless dancing and the boundaries they set change over time. She concluded that when the primary motivation is money, over time the desire to make more money leads to previously firm boundaries of acceptable activities becoming more fluid.

⁶ Sweet, N, and Tewksbury, R. (2000) "'What's a Nice Girl Like You Doing in a Place Like This?': Pathways to a Career in Stripping' *Sociological Spectrum*, Vol. 20 No.3, pp.325-343

⁷ Thompson, W.E., and Harred, J.L. (1992) 'Topless Performers: Managing Stigma in a Deviant Occupation', *Deviant Behavior*, Vol.13, pp.291-311.

⁸ Bell, H., Sloan, L. and Strickling, C. (1998) 'Exploiter or Exploited: Topless Performers Reflect on Their Experiences', *Affilia*, Vol.13, No.3, PP.352-368.

⁹ Thompson, W.E., Harred, J.L, and Burks, B.E. (2003) 'Managing the Stigma of Topless Dancing: A Decade Later,' *Deviant Behavior*, Vol.24, pp.551-570.

¹⁰ Wesely, J.K. (2003) "'Where am I going to stop?'" exotic dancing, fluid body boundaries, and effects on identity'. *Deviant Behavior*, Vol.24, pp.483-503.

Pay and conditions

In their responses to the AEWG's own consultation and interviews, performers were more concerned by financial exploitation.

Performers - are generally self-employed and earn money from private dances. Charges are, typically, £5 for a topless dance at table and £10 for a full strip.

Operators - drinks tend to be standard club prices and operators make their money in two ways;

- Door charges, from nil to £5 or £10 depending on the day of the week and the time of entry.
- Charges to performers, firstly a fixed fee for night and then by taking a percentage of performers' direct earnings from the customers and also by fines for breaches of house rules. The research suggested that the industry commission from performers was typically 40%.¹¹

One performer explained that

- Performers are asked to register as self-employed, and that was a contentious issue. She noted that the performer as a 'self-employed contractor' has no 'working rights'. Usually contracts are not issued, unless the performer is working through an agent, who will ensure that some kind of 'rights' are in place for both the performer and the club management. This normally only occurs when the club is based abroad. Performers are usually left open to exploitation by club management: they are expected to work for a club, usually paying them either a set fee or percentage of their earnings, regardless of the condition of the facilities and more importantly numbers of 'paying' customers. Commission taken by club owners can be as much as 50% of performers' earnings on a shift. While management will claim that they supply the premises and security arrangements that permit performers to ply their trade safely, they do not claim to present them with customers willing to pay for dances. As dances are the sole form of income for the performer, it is not unusual for a self-employed contractor to finish a shift in 'debt' to the club, as there have been no customers willing to pay for a dance. Furthermore, performers are asked to contribute to the general entertainment – management claim it is advertising for the performer – by way of nude/semi-nude stage/pole shows. No payment for this is received by performers, and often it will be detrimental to a performer's potential earnings as customers will have 'seen it all' so are unwilling to purchase a dance. At present there is only one club in Scotland that does not ask its performers to pay commission – this establishment functions well and demonstrates that 'commission' is not necessarily an essential part of a functioning club. These issues raise general concerns relating to working conditions, employment rights, taxation and exploitation of performers. **(Anonymous response to consultation)**

¹¹The Economic Impact of Adult Entertainment Report (See Appendix 5)

- Exploitation, performers feel, tends to come from commission related issues and management demands rather than from customers. **(Anonymous response to consultation)**
- The financial arrangements used by the clubs were perceived to be unfair and divisive. Clubs charged very high commission and many clubs also employed a system that fines the performers, typically from £10 to £50, for a range of activities. Performers can be fined for ‘dirty dancing’, being too drunk, being too long in the bathroom, lateness, talking to other performers too long and ‘no shows’. One performer described how the type of ‘finable’ activities changed all the time. Some performers thought that clubs used fining as a convenient lever to reduce the amount of money the clubs pay the performers. One performer also said that her tips were also often taken by the management. **(Performer Interviews see Annex 7)**
- Performers were concerned that high commissions and the use of fines is increasing pressure on the performers to dance for longer than they may otherwise want to, just to pay back the club. Some said that it made the performers very competitive with each other, and made the performers more frustrated with customers who refuse a private dance. When asked what they would do to improve dancing, the need to reduce the amount of commission and stop the fining system was mentioned most frequently. **(Performer Interviews see Annex 7)**
- All of the performers interviewed said that they felt club owners treated them as the least important on their list of priorities and two complained that they had been treated unfairly by the club owners. One stated, ‘We are lowest down the pecking order – it’s management, bar staff, bouncers and then performers’. One performer said that management had the attitude that ‘if you don’t like it – you know where the door is’. Another said that ‘general verbal abuse’ was common between performers and management. **(Performer Interviews see Annex 7)**
- Performers explained that levels of violence depended on the club and their experience of violence and harassment by management varied considerably. Three of the five performers had never experienced violence of any kind. In contrast, one said that she was being sexually harassed by the management and another described an incident where she had been ‘attacked verbally and physically’ by management in a previous club, and that she had witnessed ‘others being attacked’. Asked whether they had experienced violence outside work, three said that they had no experience of violence outside work. However, one indicated that she had been stalked and had to move home to avoid further harassment. Another said that she exercises caution to ‘avoid hangers-on outside the club’. Three of the performers identified ‘bad clubs’ which give other good clubs a bad name. **(Performer Interviews see Annex 7)**

The Customers

In the AEWG commissioned research, all establishments and performers drew a clear distinction between weekday and weekend customers. Weekday customers were a mix of travelling businessmen and locals, and weekends were a mix of locals and visiting stag

parties. On average, business customers spend the most per person, although overall expenditure is highest at the weekend due to the sheer volume of customers.¹²

In her ethnographic study of 30 regular male customers of strip clubs in a Southern US town, Frank (2003)¹³ found that their primary motivation for visiting was not for ‘sexual release’, but to ‘relax’. Regular customers knew both that sex would not be available at the strip club and where to go if that was what they wanted. This contrasts with Bindel (2004)¹⁴ who found that approximately half of customers interviewed in Glasgow had gone to a lap dancing venue looking for sex and a quarter claimed they had had sex on the premises. Frank (2003) identified four categories of ‘relaxation’: an escape from work and home; elements of excitement and risk within safe boundaries; an opportunity for personal and sexual acceptance by women; and the lack of pressure to physically perform in a sexualised encounter.

A recent small-scale qualitative piece of research conducted in the UK identified three types of customer at adult entertainment clubs: ‘the lads’, ‘the philanthropist’, and ‘the tourist’ (Booker and Clarke, 2005)¹⁵. ‘The lads’ visit clubs approximately once a month as part of a group of friends, and see it as ‘a laugh’, a normal part of male heterosexual activity. The ‘philanthropist’ is a regular visitor who highlights relationships with performers over sexual gratification and is aware of their need to earn money. ‘The tourist’ only visits such clubs when abroad. It should be noted that this research is based on a limited sample of five customers and one club manager.

However, what both pieces identify is the relationship between the motivations for attending such clubs and idealised notions of heterosexual masculinity. Part of the enjoyment of such activity appears to be the experience of power, control and a boost to the ego without the responsibility of the ‘fantasy’ becoming ‘reality’.

Referring to the document ‘*How to Conduct Yourself at FOR YOUR EYES ONLY*’ there is evidence to suggest that customers’ attitudes to women are shaped by what the club intends its performers to display. The document outlines a section on FANTASY which states:

“When you are performing on the stage during a normal set, try and create a fantasy. You could try the “girl next door” look. The girl next door look is that of a bank clerk or possibly an airline stewardess or business woman. You find her wherever you go, but would not expect to see her at the local adult entertainment club, which begins to create a FANTASY. It is by achieving this look and then undressing that a FANTASY is created. Your clothing is of the utmost importance when creating a FANTASY! One would never expect the bank clerk or receptionist to take off her clothes, especially not in a sexy or seductive manner.” **(For Your Eyes Only Code of Conduct see Annex 10)**

¹² The Economic Impact of Adult Entertainment Report (See Appendix 5)

¹³ Frank, K. (2003) “‘Just trying to relax’: masculinity; masculinizing practices and strip club regulars’, *Journal of Sex Research* February 2003.

¹⁴ Bindel, J. (2004) ‘Profitable Exploits: Lap Dancing in the UK’ *For Glasgow City Council*, Child and Woman Abuse Studies Unit. London Metropolitan University.

¹⁵ Booker, S. and Clarke, V. (2005) ‘The Lads, the Tourist and the Philanthropist: Men’s Accounts as Consumers of Lap Dancing’, *UWE Psychology Postgraduate Papers*.

Performers commented on customers' behaviour

- All performers said that the majority of customers treated them 'fairly' although all said that a small number could be rude, offensive and treat them like a 'commodity'. All performers said they receive a mixture of compliments and insults from customers. All noted that the biggest problem were often 'new' customers who did not understand the strict rules of the club. Asked which aspects of the job they disliked the most, alcohol induced rudeness from clients was mentioned most frequently, along with the fines and commission. **(Performer Interviews see Annex 7)**

In some instances performers reported exploiting customers' naivety in relation to charging patterns in order to make money.¹⁶

The AEWG also noted from its own visits that an operator had reduced the timing of a private dance from 3 minutes in order to increase the probability that the customer would want to buy a second dance.

Desensitisation

The AEWG wanted to understand the wider social impact of the adult entertainment industry. Of particular interest has been the possible impact that viewing adult entertainment performances may have on social attitudes towards women. We could not find literature relating directly to this topic and commissioning such research would have been beyond the timeframe of this group. However, a significant literature does exist which explores the issue of desensitisation in relation to pornography and moving images. Research has sought to determine whether there is a causal link between pornography and violence against women, but the findings are contradictory. For example, some research concludes that exposure to pornography makes men more likely to accept rape myths (Donnerstein and Linz 1987¹⁷; Malamuth *et al.*, 1979)¹⁸. Mullin and Linz (1995)¹⁹ concluded from their research on the effects of repeated exposure to sexually violent films that participants were significantly desensitised in their views towards domestic violence victims, and whilst resensitisation can occur, long term exposure to such images may cause men to become more easily desensitised (Mullin and Linz, 1995). In contrast, other studies have shown that sex offenders tend to have had less exposure to pornography than other men (Goldstein and Kant, 1973)²⁰.

¹⁶ Bindel, J. (2004) 'Profitable Exploits: Lap Dancing in the UK' *For Glasgow City Council*, Child and Woman Abuse Studies Unit. London Metropolitan University.

¹⁷ Donnerstein, E. and Linz, D. (1987) 'Mass Media Sexual Violence and Male Viewers: Current Theory and Research' in Kimmel, M. (ed.) *Changing Men: New Directions in Research on Men and Masculinity*, London: Sage Publications

¹⁸ Malamuth, N.M., Reisin, I., and Spinner, B. (1979) 'Exposure to pornography and Reactions to Rape' Paper presented to the 87th Annual Meeting of the *American Psychological Association*, New York, September 1979.

¹⁹ Mullin, C.R. and Linz, D. (1995) 'Desensitization and Resensitisation to Violence Against Women: Effects of Exposure to Sexually Violent Films on Judgements of Domestic Violence Victims', *Journal of Personality and Social Psychology*, Vol.69, No.3, pp.449-459.

²⁰ Goldstein, M. and Kant, H. (1973) *Pornography and Sexual Deviance*, Berkeley: University of California Press.

2.2 Inconsistencies and gaps surrounding the current regulation of the industry

Believing that rules and standards must be joined up and implemented fairly, the AEWG found gaps and inconsistencies in current regulatory provision.

The current licensing régime.

Current powers and obligations to regulate adult entertainment are contained in the Civic Government (Scotland) Act 1982; the Licensing (Scotland) Act 1976; and the Cinemas Act 1985. The Licensing (Scotland) Act 2005 contains further additional provisions.

The Civic Government (Scotland) Act 1982

This Act provides local authorities with certain discretionary powers to license places of public entertainment. It does not, however, create a mandatory licensing regime for these places.

Public Entertainment Licences

In terms of Section 41 of the 1982 Act a licence is required for the use of premises or a place of public entertainment. A "place of public entertainment" is defined as "any place where, on payment of money or money's worth, members of the public are admitted or may use any facilities for the purposes of entertainment or recreation" but does not include licensed premises within the meaning of the Licensing (Scotland) Act 1976 in which public entertainment is being provided during the permitted hours within the meaning of that Act. Thus, if premises providing adult entertainment already hold a liquor licence under the 1976 Act, there is no requirement for a separate licence under Section 41 of the 1982 Act provided the entertainment occurs during the permitted hours pertaining to the liquor licence.

The provisions contained in Section 41 of the 1982 Act are part of a discretionary licensing regime and only apply to a Local Authority area if the Local Authority has passed a resolution in terms of Section 9 of the 1982 Act specifying the places of entertainment and classes thereof which fall to be licensed. Thus, it is possible that the activities and places which require public entertainment licences could vary across all thirty-two Local Authority areas. The lists of places of public entertainment requiring licences for the cities of Aberdeen, Dundee, Edinburgh and Glasgow are as undernoted:-

Aberdeen	Dundee	Edinburgh	Glasgow
<ul style="list-style-type: none"> • Bungee-Jumping Sites • Church Halls • Circuses • Commercial Premises • Community Centres • Dance Halls • Discotheques • Fairgrounds • Halls used for Voluntary Organisations • Ice Rinks • Industrial Premises • Land • Places to which the public are admitted on payment of an admission charge, or its equivalent • Public Halls • Roller Skating Rinks • Schools and other Educational Establishments or parts thereof within which the number of members of the public admitted to or taking part in any single event or activity at any one time exceeds 60 • Sports Centres • Theatres • Vacant Buildings • Warehouses 	<ul style="list-style-type: none"> • Schools, Educational Establishments, Church Halls, Public Halls used by Voluntary Organisations and athletic or sports grounds when these premises are being used for the purposes of entertainment or recreation, except where these purposes are specifically excluded under Section 41 of the 1982 Act • Community Centres • Ice Rinks • Roller Skating Rinks • Any premises kept or used for the playing of billiards, snooker or pool or bagatelle or any game of the like kind • Any public show of any description whatever, whether in open ground or in any house or building or caravan or tent • Circuses and Carnivals • Shooting Galleries and Bowling Alleys • Leisure and Sports Centres • Dance Halls, Discotheques or any place of public resort for dancing, music or other entertainment 	<ul style="list-style-type: none"> • Billiard, Snooker and Pool Halls • Premises used for Circuses • Concert Halls • Premises used for oral recitals including poetry reading and story telling • Dance Halls and Discotheques • Premises used for Exhibitions • Premises used for Firework Displays • Premises used for health and fitness activities including without prejudice to the foregoing generality gymnasia, saunas and massage parlours • Premises used as Sun-tan Centres • Premises used for Laser Displays and Games • Premises used for Performing Animals • Premises used for Pop Concerts and other live band performances • Premises used for Variety or Musical Shows • Video Machine Arcades • Premises used for Paintball Games • Premises used for Raves • Premises used for Go-karting • Premises used for Amusement Devices being rides, machines, contrivances, structures or other such equipment including side stalls and side shows, tents, booths or similar enclosed structures, which are installed or erected and operated for or in connection with the amusement or entertainment to the public, including without prejudice to the foregoing generality bouncy castles, carousels and bungee jumping and bungee running equipment 	<ul style="list-style-type: none"> • Dance Halls and Discotheques which do not have a liquor licence • Amusement Arcades • Prize Bingo Shops • Boxing, Judo or Karate Shows • Exhibitions • Fairgrounds • Circuses • Snooker, Billiard and Pool Halls which do not have a liquor licence • Theatres • Public Shows • Ice Rinks

If the category of public entertainment is not included in the resolution passed by a Local Authority and is not otherwise licensed under the Licensing (Scotland) Act 1976 it is not subject to any current regulation. If the type of premises and class of activity is not clearly specified in the resolution it may also escape regulation. The Courts have not been supportive of general categories, reflecting the following provision in SDD Circular 6/1983 which accompanied the coming into force of the 1982 Act: - "In other words, a general resolution to license all places of public entertainment would be involved. Authorities must instead specify all classes". Therefore, if authorities wish to regulate activities such as lap dancing and places such as saunas, massage parlours and sun tanning centres these will require to be clearly defined in their resolutions.

Other premises which are separately regulated in terms of Schedule 2 to the 1982 Act and which may include adult entertainment are sex shops. In terms of Paragraph 4 of the Schedule, no person may use any premises, vehicle, vessel or stall as a sex shop without a licence to do so from the Local Authority. A "sex shop" is defined as "any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, display or demonstrating sex articles". "Sex articles" are in turn defined as "anything intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity".

The Schedule lists at Paragraph 2(4) additional types of material to which it is envisaged this will apply. This covers "any article containing or embodying matter to be read or looked at" (e.g. books, magazines, posters, pictures, etc.) and any recordings of vision or sound.

Although the definition of "sex shop" is fairly wide and is not restricted to traditional "shop" premises, it is unlikely that this would encompass most of the types of premises providing adult entertainment, although there may be certain adult entertainment venues which would fall within the "display or demonstration of sex articles" part of the definition, provided this formed a "significant degree" of the business. Whilst the licensing of sex shops is mandatory it is still a matter for each Local Authority to interpret the words which consists to a significant degree, hence a national chain of sex shops may require a licence in one area but not in another.

The Licensing (Scotland) Act 1976

This Act provides for a mandatory licensing regime for any premises selling alcoholic liquor. Licensing Boards regulate the licensing activities under the 1976 Act. The type of licence granted is dependent on the activities and facilities on offer but where entertainment is being provided an entertainment licence, public house or hotel licence are most likely.

An Entertainment Licence is defined in Schedule 1 of the 1976 Act as:-

"a licence granted in respect of premises therein, being places of public entertainment such as cinemas, theatres, dance halls and proprietary clubs, which authorises the holder thereof to sell by retail or supply alcoholic liquor to persons frequenting the premises for consumption on the premises as an ancillary to the entertainment provided, subject to such conditions as the licensing board may determine to ensure that such sale or supply is ancillary to the entertainment provided".

This is the type of licence most frequently granted for premises providing adult entertainment such as lap and pole dancing.

**Type of licence currently held by adult entertainment venues in each Local Authority:
Entertainment Licence or Liquor Licence (Public House Licence)**

Renfrewshire Council	1 venue (Entertainment Licence under 1976 Act)
Aberdeen City Council	4 venues (all Entertainment Licences under 1976 Act)
Edinburgh City Council	7 venues (2 Entertainment Licences and 5 Public House Licences, all under the 1976 Act)
Glasgow City Council	4 venues (all Entertainment Licences under 1976 Act)
Perth & Kinross Council	no venues (it is thought however that there are 2 Entertainment and 1 Public House Licence under the 1976 Act which hold irregular events)
East Renfrewshire Council	no venues
Angus Council	no venues
East Ayrshire Council	no venues
East Dunbartonshire Council	no venues
Fife Council	no venues
West Dunbartonshire Council	no venues
Stirling Council	no venues
North Ayrshire Council	no venues
Orkney Islands Council	no venues
Shetland Islands Council	no venues
Highland Council	no venues
Falkirk Council	no venues

The remaining 16 local authorities did not provide details.

Unlike the position with licences for hotels and public houses, Licensing Boards have a limited power to attach conditions to Entertainment Licences to seek to ensure that the provision of alcohol is genuinely ancillary to the entertainment. If Boards have issues with the type of entertainment in these premises the only real option is to refuse the Licence on the grounds that the premises are not suitable for the sale of alcohol having regard to the nature and extent of the proposed use and the persons likely to resort to the premises, or that the use of the premises for the sale of alcohol is likely to cause undue public nuisance or a threat to public order or safety. In the case of *Risky Business v City of Glasgow Licensing Board* 2000 SLT 923 the Court found that the Licensing Board had gone too far in relying on local knowledge to establish that the sale of alcohol in a topless dancing club would lead to sexual assaults and disorder.

Public House and Hotel licences authorise the sale of alcohol and whilst the holders of these licences may also provide adult entertainment in the premises, no consent or permission is required and Licensing Boards cannot attach conditions to these licences. The provision of adult entertainment in these premises is, therefore, unregulated although the fitness of a licensee to hold a licence may be questioned by a Licensing Board if there is any misconduct arising from adult entertainment events within the premises.

Byelaws

Section 38 of the 1976 Act provides Licensing Boards with the power to make Byelaws inter alia "for the setting out of conditions which may be attached to licences for the improvement of standards of and conduct in licensed premises". Byelaws are not generally considered a reliable or appropriate method of regulating adult entertainment in licensed premises following on the decision in Applegate Inns Ltd. V. North Lanarkshire Licensing Board [1997] 7 S.L.L.P. 10. Whilst this case related to the use of Byelaws to regulate the provision of musical entertainment in licensed premises, in finding the use of the Byelaw condition ultra vires it has effectively limited the use of the Byelaw making power by Boards since it is considered susceptible to challenge.

The Licensing (Scotland) Act 2005

The Licensing (Scotland) Act 2005 Act makes provision for the imposition of conditions on licences both at a national and local level and this may permit greater regulation of adult entertainment in liquor licensed premises. Schedule 3 lists a set of mandatory conditions with which premises licence holders must comply. These conditions are intended to ensure a nationally consistent approach on those matters which are central to the delivery of the policy underlying the Act, such as training and irresponsible drinks promotions.

Section 27(3) of the Act enables Ministers to prescribe discretionary conditions which Boards may draw on as required within their locality. This allows Ministers to prescribe a 'pool' of conditions that Boards must have regard to. This power allows Ministers to prescribe and modify conditions that become desirable over time once the new system has bedded in or on advice from the National Licensing Forum. It is very likely, as new practices develop within the trade or as new public order issues arise, there may be need to add additional licence conditions. The AEWG noted that this approach is helpful, and in line with its aim to have a coherent, but locally responsive, regulatory régime.

Summary of the Limitations and Gaps in Current Legislation and Regulation

From the foregoing it can be seen that adult entertainment may currently be provided quite legitimately in both unlicensed and licensed premises without being subject to any regulation or control. It may also take place in premises which are subject to the licensing provisions contained in the Civic Government (Scotland) Act 1982 or the Licensing (Scotland) Act 1976, albeit there are also gaps and limitations in these provisions.

Premises where there is little or no control

Adult entertainment may take place without any control in a number of different situations. Provided alcohol is not being supplied, if the category of public entertainment is not included in a resolution passed by a Local Authority in terms of Section 9 of the Civic Government (Scotland) Act 1982 then no licence is required. If the category of public entertainment is not clearly specified in the resolution then the premises may also escape the need for a licence under the 1982 Act.

Where alcohol is being provided a licence is necessary under the Licensing (Scotland) Act 1976. The primary purpose of the 1976 Act, however, is to regulate the sale and supply of alcohol in different types of premises rather than the other activities taking place in these

premises. If the adult entertainment takes place in any premises licensed under that Act (other than for entertainment), e.g. public houses, hotels, restaurants, then there is no control over the adult entertainment. This is because no permission is required for the entertainment and the 1976 Act does not permit Licensing Boards to attach conditions to any licence other than an entertainment licence.

The only measure of control in any of these premises arises in the form of a penalty where a proprietor may have a licence removed after being found to be not fit and proper and/or where the conduct in the premises breaches the laws against obscenity or indecency, or indeed any breach of the criminal law.

The AEWG was also told that adult entertainment is often hired on an ad hoc basis and takes place on premises that may not have a specific licence. The occasional nature of this type of activity makes it especially hard to regulate.

“Having spoken with what the Central Scotland Rape Crisis and Sexual Abuse Centre (CSRCC) class as survivors, CSRCC is aware that forced or consensual, legal or illegal, lap dancing, strip shows (in all contexts), shows of sexual acts, heterosexual or homosexual, involving one or more men, women or children and prostitution (of adults and children) occur in licensed premises, within people’s homes and in other secret locations in towns, cities and rural areas.” (CSRCC Interview see Annex 6 (6.1))

Premises which are subject to some control

Where premises are licensed to provide public entertainment in terms of Section 41 of the 1982 Act a Local Authority may attach conditions which inter alia restrict the use of the premises to a specified kind of entertainment. Thus there appears to be control exercisable in premises subject to this licence. However, if the conditions attached to the licence are not sufficiently clear and unambiguous they may be susceptible to differing interpretations and Court challenges, e.g. conditions may need to specify the exact nature and type of dancing permitted and prohibited or the degree of nudity prohibited.

Premises which hold an entertainment licence under the 1976 Act are also regulated although the provisions of Section 101 which allows the attaching of conditions to the licence are clearly focused on regulating the sale of alcohol as opposed to the type of entertainment. Section 101(2) of the 1976 Act provides "A licensing board, when granting an entertainment licence, may attach conditions to the licence, in order to secure that the sale or supply of alcoholic liquor is ancillary to the entertainment". Any condition designed to control the type of entertainment is likely to be found to be ultra vires. Licensing Boards must consider what entertainment is to be provided in order to ensure that the alcohol is provided as ancillary but in this regard it is the scale and quantity rather than the type of entertainment which should be addressed. As the Risky Business case demonstrates, it is difficult to refuse the licence outright.

The AEWG noted particular concerns that it had become clear to the City of Edinburgh Council that without the necessary powers to control the growth of adult entertainment venues in their city, they are unable to respond adequately to the concerns of communities most affected. Of the 6 establishments in the Tollcross area, only 1 is a licensed club (Bottoms Up), which can be properly controlled by the Licensing Board. The area has a great many public houses, situated within easy walking distance of each other and there is growing

concern that more of them will convert to unregulated 'lap dancing' establishments, without any local authority control. There is evidence that the Tollcross community is keen to see Local Authorities being awarded the powers necessary, through further legislation, if required.

Adult entertainment provided in vehicles

Adult Entertainment activities such as lap dancing and striptease by both male and female performers does take place in vehicles. Operators advertise on the internet the provision of AE in vehicles such as stretched limousines.

Vehicles that carry more than 8 passengers are regulated by the Vehicle and Operator Services Agency (VOSA). If the vehicles carry 8 or less passengers they can be licensed as Private Hire Cars, in terms of the Civic Government (Scotland) Act 1982. The drivers of these vehicles could also be licensed by the relevant local authority. With few exceptions, these vehicles and their drivers are not currently licensed by all local authorities in Scotland, though this situation is currently being addressed.

Under the Licensing (Scotland) Act 1976, vehicles cannot be licensed to sell alcohol, however there is provision, in terms of section 118 of the Licensing (Scotland) Act 2005, for vehicles to be authorised to sell alcohol, on or from a vehicle, by way of a premises licence.

Adult entertainment activity in vehicles should be subject to the same regulations as AE in other locations. Failing to do that would leave a significant loophole for operators who wished to avoid any tightening up of regulation.

2.3 Demands from the Industry

Club owners and managers

Interestingly, and perhaps not what the public might expect, there is demand for better regulation from the industry. The AEWG was told that most of the operators in the adult entertainment business want a level playing field for all. Operators thought that it was not fair for some of them to spend money on facilities and controls, operating legal activities, when others were able to set up business on the back of a liquor licence and not apply or monitor Codes of Conduct for performers and customers.

Having visited a range of premises providing adult entertainment, the AEWG saw for itself significant differences in the standards of self-regulation: some operated lengthy and detailed Codes of Conduct, with tight security and adequate facilities for performers, whereas others did not.

We noted in particular Codes from **For Your Eyes Only**, **The Truffle Club** and **Spearmint Rhino**. All three are experienced operators and we were convinced by the level of detail in their Codes that they were worried that illegal activities would probably take place without these strict and strictly monitored rules. One commented that *“There is a potential negative impact on performers if they stray into prostitution, although the risk of this is more likely in venues which are poorly operated with poor controls.”* (**For Your Eyes Only Interview see Annex 6 (6.3)**)

We noted specific Code of Conduct examples aimed at preventing illegal activities

- “When you are doing a table dance, don’t lean into the guest, this is a NO DISTANCE NO CONTACT club.”
- “No touching the customers in any way (shoulders, legs, face or crotch)”.
- “Don’t let customers touch you – legs, breasts, other personal parts, hands or face.”
- “Don’t go on the floor, crouch down quickly but don’t stay down there and don’t have your knees on the floor.”
- “Don’t put your breasts in a customer’s mouth.”
- “Don’t insert your fingers into your “fanny”.”
- “Don’t touch another girl when you are dancing with her or don’t act like you are touching her.” (**FYEO Code of Conduct see Annex 10**)
- “Performers may not perform any act that clearly simulates masturbation, oral sex or sexual intercourse, including the insertion of any object, including their own finger into any genital opening. Performers may not touch their breasts with their mouths, lips or tongues.”

- “Performers are never to perform a nude table dance unless performer is in a supervised area or within 5 metres of a floor supervisor.”
- “For the purpose of constraint, performers may only touch a customer above the customer’s chest with only the performer’s hands.”
- “Performers must not sit on or straddle the customer.”
- “Performers are *never* to intentionally touch the genitals or breasts of another performer or to knowingly permit another performer to intentionally touch their genitals or breasts.”
- “Performers are *never* to engage in an act of prostitution (the receiving of gratuities or payments for any form of sexual favour or offer as such).
- “Performers may not accept the customer’s offer of payment in return for sexual favours (solicitation).”
- “If a customer attempts to touch, or to speak to a performer inappropriately, the performer must immediately stop the performance and explain the relevant rules. If necessary, ask for assistance from and cooperate with a floor supervisor, who will take appropriate action, which may include escorting the customer out of the Club.”
(Spearmint Rhino Code of Conduct see Annex 9)

There is an obvious worry amongst those in charge of premises providing adult entertainment that without appropriate controls and safeguards, performers could stray into illegal activities including prostitution or soliciting. We note also that the operators bear the costs of their self-regulatory controls yet still, with an eye on profit, consider that those costs are worthwhile.

The Performers

Research by Bindel²¹ (2004) highlighted the level of dissatisfaction with working conditions amongst the performers she interviewed. Issues raised included: a lack of dedicated changing facilities; a lack of refreshments away for the public area; and poor environmental conditions. In addition the fact that all performers are self-employed, paying the club a fee to dance and relying on tips and private dances for income, can mean that they sometimes struggle to make a profit. In some instances performers reported exploiting customers’ naivety in relation to charging patterns in order to make money. Bindel concludes that clubs, whilst absolving themselves of all responsibility, may be creating the financial conditions that may lead some performers to offer sexual services.

The AEWG conducted its own research into performers’ views. Asked what performers would improve about their job, most said that the performers need more protection, that commission should be reduced and rudeness from customers should not be tolerated.

²¹ Bindel, J. (2004) ‘Profitable Exploits: Lap Dancing in the UK’ *For Glasgow City Council*, Child and Woman Abuse Studies Unit. London Metropolitan University.

- All performers talked about the variability in earnings. At the top end, they could earn up to £800 per shift, but they all said that they sometimes ended up owing the club money. This degree of variation made establishing an average very difficult. Performers found it marginally easier to estimate an average *range* that was £200-£300 for around 10-20 hrs work (after commission). The ability to earn a living from dancing was mediated by a range of factors. These include the need to pay commission and/or a deposit to the club, fines and penalties, whether they worked on week days or weekends (which are more lucrative) and number of private dances they managed to secure. One performer also mentioned that she also had to pay for her own drinks and sometimes she would have to pay extra for protection and the DJ. All said they sometimes end up out of pocket and that they have to work long shifts just to break even. **(Performer Interviews see Annex 7)**
- Two out of the five performers mentioned that the prospect of earning money had formed part of the reason for starting to dance. The financial benefits associated with dancing seemed to relate to the belief that performers could earn additional money quickly in an emergency or when they needed extra money for ‘luxuries’. Only one performer chose to rely on the money as a sole source of income. One said she had started dancing to ‘pay off debts’ and another wanted money to pay for plastic surgery. Another only danced ‘now and again ... when I need money quickly for something particular’. **(Performer Interviews see Annex 7)**

The AEWG noted that financial reward was not mentioned by any performer as the *sole* reason for starting dancing. Enjoyment, excitement and curiosity were more frequently mentioned as the main reasons for being attracted. The reluctance to rely on adult entertainment performance as a sole source of income may be partly due to the unpredictability of the amount of money performers are able to earn.

CHAPTER 3. EVIDENCE GATHERING

The AEWG was an evidence based group. This meant that we were not experts and it was not our own personal views that counted; our role was to obtain evidence, analyse and assess that evidence, and reach conclusions based on that evidence. We note that the Scottish Executive provided the Group with an adequate budget from which to commission a wide range of evidence and opinion.

Public Attitudes Survey – MORI Poll

The AEWG commissioned research to explore public attitudes towards adult entertainment. Noting that MORI have a contract with the Scottish Executive for this type of work, the AEWG asked them to undertake the research, having obtained the approval of the Office of the Chief Researcher.

MORI conducted a multi-client survey among a random sample of adults across Scotland. They interviewed 1,015 adults using a computer-assisted self interviewing method allowing discretion. An opt-out option was available for those uncomfortable with the subject or for those not confident using a computer - 193 respondents opted out leaving a total of 822 respondents taking part in the survey.

The questions looked at:

- general opinions of adult entertainment venues
- the occurrence and frequency of visits to adult entertainment
- attitudes towards the licensing of adult entertainment venues
- attitudes regarding who benefits from or is exploited by adult entertainment.

The key findings of the study were:

- A third of the people asked said they had been to an adult entertainment venue at some time. Men were more likely to have been than women (40% of men compared with 26% of women).
- The main circumstances around visiting an adult entertainment venue were being on a stag night or hen night (46%), being on some other organised night out (36%) and being on holiday (19%).
- Thirty percent of the whole sample said they would consider going to a venue. Of those who would not consider it (63%), the main reasons given were ‘not the kind of thing I enjoy’ (79%), ‘object to that type of entertainment’ (35%) and ‘I feel it is sexual exploitation’ (29%).
- One third of respondents said they were aware of an adult entertainment venue in their Local Authority. Almost half of the sample thought that the presence of these venues had a negative impact (49%) or no impact (43%), compared with 8% who thought they have a positive impact.

- Only 6% of respondents would be in favour of an adult entertainment venue opening in their neighbourhood. More 16-24 year olds would be in favour (16%) than the older age groups. Opposition was greater among women (63% opposed) than men (48%).
- Respondents feel that the group most exploited by adult entertainment is ‘women in general’. Older people were more likely than younger people to say all groups are exploited. People who would consider attending an adult entertainment venue were more likely to say no one is exploited.
- There was strong support for specific licences for adult entertainment venues. Older age groups showed more support than younger age groups; more women showed support than men; and those who had not been to a venue were more likely to agree with specific licences than those who had been.
- Regulations that people would be most likely to support mainly involved restrictions on where and how venues operate rather than an outright ban. The options that received the most support were that venues should be restricted to specific streets or areas (41%), touching performers should not be allowed (32%) and there should be stricter rules on how close the performers could be to the customers (24%).

The full findings of the survey can be found at **Annex 3**.

Economic Impact study – Napier University

The AEWG commissioned research to explore the economic impact of adult entertainment in Scotland. We wanted, amongst other things, to test out the presumption that adult entertainment venues are linked with corporate conference activity and with tourism associated with stag weekends.

After a competitive tendering process, the Group asked The Employment Research Institute, Napier University, Edinburgh to undertake the work. The study focused on determining the nature and, where possible, scale, of both the positive and negative economic impacts of the Adult Entertainment (AE) industry on each of the four main city economies – Aberdeen, Dundee, Edinburgh, and Glasgow. For the purposes of the study the AE industry was taken to be establishments concentrating on lap dancing and strip clubs.

The report (**Annex 5**) broadly considers the following aspects of the economic impacts of AE establishments:

- Determine the economic benefits generated to businesses, residents and more widely from the presence of the AE industry at both a city and local (neighbourhood) level
- Determine any negative economic impacts on residents and businesses and the nature of these impacts
- Where possible quantify the economic impacts.

It does this for the present location and three scenarios: zoning; dispersing; or closing down the sites where ‘adult entertainment’ takes place.

The key findings of the study were:

- The industry in Scotland (4 cities) is worth roughly between £11.8m and £22.2m in terms of gross expenditure.
- The industry has grown rapidly since the mid 1990s, but now appears to have reached a plateau in terms of number of premises, customers and possibly income.
- The overall economic impact of a policy that forced AE establishments to disperse across a city would depend on the size of the proposed area for dispersal.
- Most AE businesses could not survive outside, broadly defined, city centres.
- Concerns in all cities included complaints from potential ‘receiving’ areas where the AE establishments might move.
- Possible advantages of dispersal include economic diversification within Edinburgh and removing individual establishments from ‘inappropriate’ areas in Glasgow.
- A tight zoning policy was unpopular with the industry and with most other stakeholders in all cities. It might also lead to property owners in the zoned areas extracting ‘monopoly’ type rents.
- Some AE businesses resented the stigma attached to zoning, while others raised concerns regarding the economic effects on any area chosen for tight zoning.
- The economic effects, at a national level, of closing the industry down are estimated to be less than current turnover and worker expenditure, as some of the establishments would be converted to other uses (e.g. public houses or clubs).
- The effects of closure would likely be relatively small on city economies as a whole, although sectors associated with group tourism in Edinburgh, such as hotels and bars, could be affected.
- Closing the industry may lead to an increase in the ‘Informal economy’ of unofficial, unregulated AE establishments.

Consultation – Scottish Executive

The AEWG conducted a formal public consultation on *Adult Entertainment Activity* seeking views on adult entertainment activity in Scotland.

The Group notified key players of the consultation and issued a press release to draw it to the attention of interested members of the public. The consultation was also available on the Scottish Executive website and open to all to contribute.

The Group issued the consultation paper to 274 recipients comprising of individuals and a range of groups/organisations and received 52 responses by the time the 3 month consultation period closed on 26 September 2005. A profile of those who responded is as follows:

*Individual	15	29%
Women's Group	14	27%
Council	6	12%
Licensing Board	4	7%
Health/Community Safety Group	4	7%
Adult Entertainment Venue	2	4%
Police Organisation	2	4%
Trade Union	1	2%
Youth Group	1	2%
Domestic Violence Group	1	2%
Religious Group	1	2%
Arts Group	1	2%
TOTAL	52	100%

* Total of 15 individual responses includes 1 identified performer.

The key findings were:

In response to the question *What do you think adult entertainment includes?* the most commonly mentioned activities were live sexual entertainment activities;

- 30 of 52 (58%) said lap dancing
- 24 of 52 (46%) said strip bars/strippers/striptease
- 23 of 52 (42%) said pole dancing
- 13 of 52 (25%) said table dancing

In response to the question *Does the working definition of adult entertainment correspond with your understanding of the subject?* A majority of 34 people (65%) did not agree with the working definition. *'Live sexual entertainment services with an intention to sexually titillate, and/or that a reasonable person, acting reasonably, would assume that there was such an intention.'*

In response to the question *What impacts do these activities have on (1) Performers, (2) Audiences, (3) The public in general?*

- 33 of 52 respondents (63%) thought that the impact on the performers was negative and examples of the impacts given were as follows – sex objects, not worthy of respect, degraded, lack of self-esteem, emotional, psychological and physical effects, feeling cheap, demeaned, dehumanised, exploited. It was also felt that these performers were open to and subject to verbal, physical, mental and sexual abuse and that there was an increased threat of rape, sexual assault and harassment.

- 33 of 52 respondents (63%) thought that the impact on the audience was negative. It was perceived that the audiences predominantly consisted of men with women providing the performances for their pleasure. It was thought that this presented a negative and demeaning view of women and that women could be objectified and seen to be there for the sexual gratification of men. Concerns about gender inequality were also expressed and that the activities involved undermined movement toward gender equality.
- A majority of 34 (65%) of the respondents thought that the impact on the public in general was negative. Many in this group gave examples of women feeling unsafe or uneasy in certain areas due to the activities taking place. Example was given of the potential for harassment, verbal abuse, and stalking which put women in fear of being in certain areas at certain times.

In response to the question *What controls, if any, do you consider necessary to regulate these activities?*

- 42 of the 52 respondents (81%) thought controls were required to regulate the activities.

The Consultation Analysis can be found at **Annex 4**.

Post-Consultation Interviews

Some respondents to the Consultation took up our invitation to provide additional information. We selected nine groups or individuals to present information in an informal interview with Group members covering a particular area of interest. To ensure a range of perspectives were represented the Group considered issues such as health, religion, age, gender and those involved in the industry – both performer and operator and those with related interests, when considering whom to interview.

We interviewed:

1. Central Scotland Rape Crisis and Sexual Abuse Centre (CSRCC)
2. Scottish Women Against Pornography (SWAP)
3. For Your Eyes Only – Tableside Dancing Club
4. Violate – Fetish Club
5. Young Women’s Christian Association (YWCA)
6. Performer
7. NHS Sandyford Initiative
8. A male member of the public who had visited a range of AE premises
9. The Scottish Arts Council

The interviewees approved a summary of the interview, and those summaries are at **Annex 6**

Key findings

In summary, it is fair to say that the general concern of those representing Central Scotland Rape Crisis and Sexual Abuse Centre (CSRCC); Scottish Women Against Pornography (SWAP); NHS Sandyford Initiative and the Young Women’s Christian Association (YWCA)

was around the objectification of women and the potential for exploitation of performers. It was a common concern amongst these groups that performing in the adult entertainment industry may be degrading for women and potentially exploitative. Particular concern was expressed regarding exploitation of performers by staff and management, and the stigma which is attached to women who are seen as 'sex objects'. These groups believed that gender inequality is a main and negative impact for all and that gender equality is undermined as audiences are predominantly male with females providing the entertainment, whilst clubs providing such activities reinforce the image of women as 'sex objects'.

At the other end of the spectrum, the view was put forward by a male member of the public, that people are much more liberal these days in their attitude towards sexual activities, most noticeably through the media. Activities taking place within an adult entertainment venue depend on the individual choice of the performer and how far the performer is willing to go to earn money.

One anonymous performer commented that stag parties' contribution to the weekend economy should not be underestimated and formed the major part of any lap dance establishment's weekend custom. Lap dance clubs form part of a 'ritual' observed by many stag parties. Usually this involves some form of ritual humiliation of the groom-to-be by lap performers. The object of their visit to the clubs is 'for a laugh' and to provide entertainment that is illicit, but due to the 'look don't touch' policy does not carry much (if any) moral dilemma. She thought, however, that the public in general suffers from a large degree of misinformation relating to the sex industry and that a lack of objective research on most areas of the industry rendered it open to manipulation through the media.

Operators, such as For Your Eyes Only (FYEO) and Violate were generally concerned with appropriate measure of regulation for the adult entertainment industry. They thought that licences should be granted to responsible operators who would run the business legitimately. There was concern about the need for adult entertainment venues to operate on a level playing field, employing reputable security. Some emphasis was also placed on safety measures which should be provided by operators to ensure safety of the venue and of performers.

The Scottish Arts Council representatives were keen to express the view that art is about representation of an act and about being able to highlight all types of representations of society to allow people to think, reflect and challenge thoughts. They were concerned that regulation of the adult entertainment industry might, unwittingly, restrict artistic freedom.

Postcard campaigns

Against: During 2005, the Scottish Coalition Against Sexual Exploitation (SCASE) ran a postcard campaign with the aim of urging the Scottish Executive not to license what they believed to be exploitative activities such as lap dancing, pole dancing and stripping. The campaign took place at approximately the same time as the AEWG consultation but the postcards were addressed to the Minister for Finance and Public Service Reform, rather than the AEWG. The Minister received around 300 postcards along with a list of 29 names expressing support for the campaign. The Minister passed them on to the AEWG as it was decided that this matter fell under the remit of the Group.

The AEWG began acknowledging the postcards. However, early on in this process, it became clear that several of the “campaigners” had had their names and addresses falsely used. When advised of this, these individuals let it be known that they were unhappy that their names and addresses had been abused in this way. It also came to light that several people had submitted multiple postcards in their own name, with the intent of falsely increasing the number of those actually campaigning. As a result of this, the acknowledgment process was halted, and the AEWG decided that the campaign was sufficiently discredited such that it should be ignored for our purposes.

For: The Group noted a weblog in which there were samples of posters which invited those who were against any changes in regulation to send postcards to the Scottish Executive. One has been received. The weblog author also wrote to the Minister.

Interviews with Performers

To gain a wider perspective from those involved in the industry, the AEWG attempted to set up interviews with performers, ex-performers and those who had considered becoming a performer. Recognising that that might be a sensitive area, we decided to publish a print media advert in The Scottish Sun, The Daily Record, and the Metro (Edinburgh and Glasgow), inviting people to phone if they wished to let us have their views. We commissioned expert interviewers and set up venues that were discreet and separate from the Scottish Executive.

The response to the paper advertisements was very low with just 6 people responding. Of those who did respond, very few came forward for a face-to-face interview though 5 were willing to take part in a telephone discussion.

We were concerned by the reluctance of performers to come forward to talk about their work. Ministers had asked all group members to agree to a Code of Conduct at the outset, including confidentiality requirements, certain restrictions on external communication and gift and hospitality requirements – a copy of the Code of Conduct can be found at **Annex 13**. The Group agreed that it was important to prevent media cover that might give the impression that the Group had reached a view before all the research was available. Regrettably, just before these performer interviews, there was media cover which guessed at what our recommendations would be and which gave the impression that we had all been shocked when we visited venues. The Group as a whole was not surprised that performers felt unhappy with what they thought was an attempt to judge them and to put them out of business.

The interviews that did take place were semi-structured and covered:

- Details of dancing activity
- Earnings
- Treatment at work
- Experience of criminal activity/violence and drugs
- Social impact of dancing (family and relationships)

- Psychological impact of dancing
- Physical impact of dancing

The key findings were:

- The amount of money performers are able to earn is extremely variable.
- The commission and fining system is perceived to be unfair
- Some of the benefits of dancing are improved fitness and stamina, and increased self-esteem and confidence.
- Some of the drawbacks are strains and injuries, abuse from customers and the difficulty in earning a living due to high commission and other fines.
- Although some performers are approached by customers to have sex, involvement in prostitution and pornography is rare and is disapproved of by most performers and clubs.
- Overall performers felt safe working in the clubs.
- Asked what performers would improve about their job, most said that the performers need more protection, that commission should be reduced and rudeness from customers should not be tolerated.

Venue Visits

At our first meeting we agreed that we would undertake a programme of site visits. The protocol was;

- No Group member had to undertake visits if they chose not to.
- No visit would be by all male or all female Group members.
- Some venues would know that we were going, and some would not.
- We would visit the widest range possible covering different sizes, times, locations and activities.

We were surprised by how few customers there were in many of the venues. We arranged a further series of visits to cover what we had been told were the busiest times, but even this was very quiet in most places. We saw no signs of the public disorder that some associate with adult entertainment venues.

The **planned visits** meant that we could meet with the owner or manager, and on occasion with performers. As the discussions often took place in an office, we could also see CCTV coverage of lap dancing in booths and see exactly what goes on. Whilst pole dancing, even

fully naked, can have an element of dance, we were told by the operator and recruiter in one club that would-be lap dancing performers did not need to be able to dance and simply had to be taught the moves. We found the various Codes of Conduct issued to performers to be especially helpful in shaping our final recommendations.

The **unannounced visits** allowed us to see what the ordinary man and woman would experience (though we were aware that middle aged women are probably not normal customers). Performers thought we were on an office outing, and that ties in with the public attitude survey in which 45% of people were on a stag/hen night out, and 37% of people visited as part of some other organised night out and had been to an adult entertainment venue without knowing in advance what it was.

We paid entrance fees on the unannounced visits, and these varied from no charge at all for “the ladies” to what we suspected was a higher than normal fee in an attempt to put us off. It is fair to say that we were always welcomed, once inside.

Working on recommendations that would apply to the whole of the industry throughout Scotland, the visits showed us very clearly that there is a range of venues with very different customer bases. At one corner there is the relatively upmarket club, unashamedly glossy, genuine dancing on the public stage with partly private areas for one-to-one lap dances; at another corner a shabby backstreet venue behind a plain door where performers and customers disappeared into a row of partitioned booths and there was no public dancing display; in a third corner of the market, a raunchy and loud venue with a younger audience and no private booths. We also saw varying degrees of nudity, from the performers wearing long evening gowns before stripping, to total, and very close up, nudity apart from shoes.

The venue visits programme has been one of the most helpful things for the Group because it allowed us to place the research findings in context and we could see for ourselves what we were talking about.

Related activity within the Scottish Executive

We realised early on that there were a number of Working and Expert Groups examining and advising the Executive on issues that were linked in some way with the AEWG’s remit. These related Groups were formed on Child Prostitution, Under Age Sex, Violence Against Women, Prostitution and Possession of Extreme Pornography. It is no accident that this work is being undertaken by many different Scottish Executive Departments because sexual behaviour and gender inequality affect so many areas of everyone’s life. We made contact with these groups and made sure that they were kept informed of our work by early access to our meeting Minutes. We also met representatives from some of the most relevant groups.

Reading Box

The AEWG set up a Reading Box of related reports and research. All Group members were expected to take an item from the Box, read it and return it at the next meeting. By the end of the year, that meant that members were well grounded in research and comment from a wide variety of sources and perspectives. The items that had most impact were those that classified the customers, and reports that confirmed the nature and scale of the industry.

Method

The literature in the Reading Box was gathered by members of the Working Group and the Secretariat, whilst additional pieces were donated to the Group. We conducted a search of the academic literature using a number of bibliographic databases using key words such as ‘adult entertainment’, ‘lap’, ‘pole’ and ‘table dancing’, and ‘stripping’.

Overview of literature

Much of the literature is North American, with only a limited number relating to the UK (Bindel, 2004; Booker and Clarke, 2005). Most of the academic literature contains empirical, mostly qualitative research based in the disciplines of sociology, psychology, law and economics. However, other papers are theoretical pieces, such as Cameron’s article on the evolution of paid sex markets (2004)²².

Academic interest in this topic appears to have begun in the 1960s within the sociology of deviance, with research exploring experiences and motivations of performers. More recently, the expansion of the adult entertainment industry since the early 1990s has been reflected in the growing attention to the issue within a wider range of disciplines. This includes research exploring the various options for regulating or controlling the adult entertainment industry, such as zoning (Tucker, 1997)²³, clustering (Ryder, 2004)²⁴ or banning (Lewis, 2000)²⁵, and research that has explored the social impact of adult entertainment businesses on neighbourhoods (Linz *et al.*, 2004)²⁶. In addition several articles explore the experiences of performers (Sweet and Tewksbury, 2000; Bell *et al.*, 1998; Wesely, 2003) and the motivations of customers (Frank, 2003; Booker and Clarke, 2005).

In addition to the academic literature, the Group also sought the experiences of other regions and nations in relation to the issue of adult entertainment. One report was notable in this respect; the Crime and Misconduct Commission of Queensland report (2004)²⁷. Finally, in order to explore the wider social impact of adult entertainment, the Group explored the literature on the impact of exposure to adult entertainment or pornography on reactions to violence (for example Malamuth *et al.*, 1979²⁸; Mullin and Linz, 1995²⁹).

²² Cameron, S. (2004) ‘Space, Risk and Opportunity: The Evolution of Paid Sex Markets’, *Urban Studies*, Vol.41, No.9, pp.1643-1657.

²³ Tucker, D.M. (1997) ‘Preventing the Secondary Effects of Adult Entertainment Establishments: Is Zoning the Solution?’ *Journal of Land Use and Environmental Law*, Vol.12, No.2. pp.383-431.

²⁴ Ryder, A. (2004) ‘The Changing Nature of Adult Entertainment Districts: Between a Rock and a Hard Place or Going from Strength to Strength?’ *Urban Studies*, Vol.41, No.9, ..1659-1686.

²⁵ Lewis, J. (2000) ‘Controlling Lap Dancing: Law, Morality and Sex Work’, in Weitzer, R. (Ed.) (2000) *Sex for Sale: Prostitution, Pornography and the Sex Industry*, London: Routledge.

²⁶ Linz, D., Land, K.C, Ezell, M.E., Paul, B. and Williams, J.R. (2004) ‘An Examination of the Assumption that Adult Businesses Are associated with Crime in Surrounding Areas: A secondary Effects Study in Charlotte, North Carolina’, *Law and Society review*, Vol.38, No.1, pp69-104.

²⁷ Crime and Misconduct Commission, Queensland (2004) *Regulating Adult entertainment: A Review of the Live Adult Entertainment Industry in Queensland*, Queensland, Australia: Crime and Misconduct Commission.

²⁸ Malamuth, N.M., Reisin, I., and Spinner, B. (1979) ‘Exposure to pornography and Reactions to Rape’ Paper presented to the 87th Annual Meeting of the *American Psychological Association*, New York, September 1979.

²⁹ Mullin. C.R., and Linz, D. (1995) ‘Desensitization and Resensitization to Violence Against Women: Effects of Exposure to Sexually Violent Films on Judgements of Domestic Violence Films’, *Journal of Personality and Social Psychology*, Vol.69, No.3, pp.449-459

As a result of their review of the available literature the Group concludes that despite the timely addition of the research by Bindel (2004) on lap dancing in Glasgow and London, significant gaps in knowledge remain: public attitudes to adult entertainment; an understanding of the economic impact of the industry; and systematic understanding of the experiences of performers and motivations of their customers. Consequently the Group sought to commission research to fill these gaps.

The Annex includes a full list of Reading Box items. (**Annex 12**)

Media Survey 2005-2006

The AEWG kept a wider eye on the world by receiving weekly media updates. The articles reviewed were obtained using two news-search databases: Lexis-Nexis and ProQuest Newspapers. A number of search terms were used, including adult entertainment; lap, pole and table dancing; and stripping. The main aim of the review was to identify the range of issues present with the media coverage. As such the core concern has been to identify key themes and issues rather than the number of column inches.

We do appreciate the Secretariat's work in issuing a weekly list of things we might like to read, though we did have problems with internet security systems blocking these updates because of the inclusion of sexually explicit words!

Introduction

The review incorporates an analysis of the content of British and Irish press coverage of adult entertainment (lap dancing; pole dancing, stripping etc.) during 2005-2006. Such coverage has extended to hundreds of stories. What follows is a qualitative summary of the key themes and issues. Six key themes have been identified: 'planning and consent'; 'policy and practice'; 'becoming mainstream'; 'just business'; 'the workers'; and 'the punters'.

Planning and Consent

Many of the news stories relating to adult entertainment concern tales of local objections to proposals for lap dancing venues to open in a number of towns and cities. For example, several news stories relate to plans to open such a venue in Coventry, a move criticised by church leaders as '*lap dancing and pole dancing is degrading, depraved and dehumanises women, making them into objects rather than people*'³⁰. In contrast, other stories, whilst acknowledging the controversial nature of such venues, argue that choice is what is important³¹. Several articles comment on the increase in the number of venues across the UK, with many cities having several. The venues are also reported as becoming larger, with one venue in Leeds having a capacity of 900³².

Various grounds for local objections can be identified, including public safety, women's safety, the reputation of the town or city, concerns about violence, damage to houses and

³⁰ Goulden, B. "'Depraved' Lap Dance Club Plan Slammed', *Coventry Evening Telegraph* 01/11/05, pp.3

³¹ Hedge, J. (2005) "Selling Sex as Dance Art Form Takes Off", *Torquay Herald Express* 26/11/05, pp.6

³² Scott, N. (2006) "Leeds Set for New Lap dancing Boom", *Yorkshire Evening Post*, 12/01/06.

property and increased traffic³³. Others objected to the opening of such venues on the grounds that they legitimise the exploitation of women and may be linked to prostitution, trafficking and crime³⁴. Such objections were raised both when venues were planned in city centres and industrial estates with neighbouring residential areas. In contrast others argued that the presence of such venues would bring benefits to areas such as making locations more attractive to businessmen³⁵.

Whilst objections are made against the siting of adult entertainment venues in particular locales, other entrepreneurs endeavour to offer new locations – such as hot air balloons³⁶.

Policy and Practice

Aside from issues of consent, a number of news stories reported proposals and codes of conduct relating to the operation of adult entertainment venues. For example, in Scotland it was reported that a Scottish Executive expert group reviewing liquor licensing had proposed nine mandatory licensing conditions, including the installation of CCTV in both public and private areas³⁷. In Glasgow, a code of practice was approved by the Licensing Board in March 2005 which included the following elements: venues must compile a register of performers; foreign performers must provide passports and work permits; performers must perform only in areas stewarded and covered by CCTV; the venue must provide private and clean changing facilities; nudity is prohibited; no touching is allowed; and performances must not be visible from outside the venue. Failure to comply could result in the withdrawal of the liquor licence³⁸.

In other areas of the UK and Ireland similar codes of conduct have been introduced. For example, East Lindsey District Council (which includes Skegness) has published a list of conditions relating to lap dancing; pole dancing and striptease. These include no contact between a performer and a customer with the exception of a formal handshake or for payment; no touting for business in the street or distribution of leaflets that may offend the public; and no photographing or video-recording of performers, except CCTV security footage for the police³⁹. In Dublin, a judge granted a licence to a Stringfellow's strip club despite local objections, with a number of conditions relating to opening hours, admissions, the performers not being allowed to physically touch customers or perform dances away from the stage or table areas, and no signs with naked women allowed to be displayed outside the club⁴⁰. In Birmingham a lap dancing clubs Commission has been set up, with representatives from the Church of England, Birmingham City Council and the Business Improvement District Organisation⁴¹. Fourteen regulations were agreed, including that 'nude' performers must wear g-strings until the end of their performance⁴².

³³ Harris, A. (2005) "Stop New Lap Dance Club Plea" *Nottingham Evening Post*, 29/11/05, pp.12.; Rugby Advertiser (2005) "Lap-performers Set to Go-Go near Church", *Rugby Advertiser*, 01/12/05; Valler, D. (2005) "Students Join Protest Over Lap dancing" *Coventry Evening Telegraph*, 10/11/05, pp.27.

³⁴ Brennan, M. (2005) "Anger at Lap-Dance Club Plan for Capital", *Irish News* 07/12/05, pp.27.

³⁵ Valler, D. (2005) "Business Visitors Expect This on Agenda" *Coventry Evening Telegraph*, 9/11/05, pp.8

³⁶ The Sun (2005) "Balloon Dancing" *The Sun*, 14/12/05.

³⁷ Duncan, R. and McLuckie, L. (2005) 'Experts recommend CCTV monitoring of lap dance customers', *The Herald*, 13/01/05, p.2

³⁸ Stewart, S. (2005) 'New rules on how lap dancing clubs must operate', *The Herald* 12/03/05, p.26

³⁹ Grimsby Evening Telegraph (2005) "Can Can to 'Can't Can't'" *Grimsby Evening Telegraph* 02/11/05, pp. 10.

⁴⁰ Irish news (2006) "Licence for strip club granted" *Irish News* 10/01/06, pp.13.

⁴¹ Valler, D. (2005) "Sleazy – or a Sophisticated Night Out?" *Coventry Evening Telegraph*, 08/11/05

⁴² Guardian (2005) 'Councillors air G-string option', *The Guardian* 01/02/05, p.4.

Becoming Mainstream

Pole dancing is no longer the preserve of specialist clubs but is now being marketed as a fitness programme with a 'cardio-pole' fitness video⁴³ and classes across the UK and Ireland⁴⁴. Even the Women's Institute offers classes in it⁴⁵. Several new stories reported that the Ministry of Defence has paid for a former member of the Royal Air Force to retrain as a pole-performer⁴⁶. The UK also has an annual Pole Dancing Championship with a cash prize of £1,000⁴⁷, won, we noted, by a performer from Glasgow.

Pole dancing is also being used as a means of raising money for charity. Female students at the University of Exeter invited male students to watch them pole dance for a donation to a testicular cancer charity⁴⁸. However, despite appearing to become more mainstream, visiting lap dancing clubs is still considered newsworthy, particularly if it involves a Prime Minister's son⁴⁹.

Just Business

Several articles report how lap dancing has become part of corporate entertainment, with senior workers in the financial sector regularly entertaining clients at such venues⁵⁰. However, one company, Morgan Stanley, was reported to have sacked four of its staff after they accompanied clients to an adult entertainment club in the US. This followed the bank paying \$50 million to settle an Equal Employment Opportunity Commission lawsuit on behalf of hundreds of women who said it had discriminated against them because of such practices⁵¹. We also noted that in the UK, Abbott, one of the world's largest drugs companies has been suspended from the pharmaceutical industry's trade association after three employees improperly entertained doctors at a lap dancing club, a greyhound track and at Wimbledon⁵². Abbott released a statement expressing no explicit regret for the incidents, but stressing that it had a "zero tolerance policy" towards ethical breaches.

The Workers

Several stories seek to shatter the stereotypes that performers are desperate or have limited options by highlighting that many are students⁵³. A poll in the *Yorkshire Evening Post*

⁴³ Craig, P. (2006) "New 'Sexy Workout' is Aiming for Pole Position", *Grimby Evening Telegraph*, 04/01/06, pp.2.

⁴⁴ The Sun (2005) "We're in Pole Position" *The Sun*, 22/10/05; Daily Star (2005) "Scots in Race to the Pole", *Daily Star* 09/12/05, pp.4.

⁴⁵ The Express (2005) "WI Turns the Tables", *The Express*, 21/11/05, pp.20

⁴⁶ Brown, C. (2005) 'MOD foots bill for airwoman's pole dancing career change', *The Scotsman*, 09/05/05, p.16.

⁴⁷ Skegness News (2005) "Performer's Pole Apart" *Skegness News*, 30/11/05

⁴⁸ Exeter Express and Echo (2005) "Uni Performers take Pole Position", *Exeter Express and Echo*, 10/11/05, pp.2.

⁴⁹ Craven, N and Allen, P. (2005) "Euan Blair Visits Porn King's Paris Lap dancing Club", *Daily Mail*, 22/11/05, pp. 41

⁵⁰ Llewellyn Smith, J. (2006) "No More Sex and the City" *The Daily Telegraph*, 15/01/06, pp. 18.

⁵¹ The Daily telegraph (2006) "Bank Staff Fired after Trip to Arizona Strip Club", *The Daily telegraph*, 06/01/06, pp.3.

⁵² Jack, A. *Financial Times* 11/02/06

⁵³ Hedge, J. (2005) "Selling Sex as Dance Art Form Takes Off", *Torquay Herald Express* 26/11/05, pp.6

revealed that 15% of female students would work in the sex trade to fund their studies⁵⁴. Others report performers rejecting their studies for a career as a pole performer⁵⁵. Routes into dancing include taking pole dancing classes⁵⁶. Motivations for dancing include the amount of money that can be made⁵⁷, with some performers reporting making up to £2,000 a night⁵⁸.

A number of articles report the feelings of women when they first started lap dancing. Several reported feeling uneasy initially. For example, one article reports Jillian as saying, “*I was thinking through it whether I was being really immoral. But I soon got used to it and realised it’s just a fantasy thing for guys and there’s no harm in it.*”⁵⁹

“The Punters”

Few articles focus on the customers of adult entertainment venues. One article exploring the links between the corporate sector and lap dancing includes interviews with a number of male clients who talk about going to “titty bars” to do deals and unwind⁶⁰.

Research conducted by psychologists from the University of the West of England on the customers of lap dancing clubs was reported in several newspapers. This research identified three types of customer: ‘the lads’ who went for a laugh; ‘the gourmets’ who went on aesthetic grounds, and ‘the philanthropists’ who thought they were doing the performers good⁶¹. The research also reviewed that male customers thought lap dancing was a normal and acceptable form of adult entertainment and did not believe that women performers were being exploited⁶².

And finally...

The AEWG itself became a news story in 2005-6. Initially coverage reported the membership and remit of the group⁶³. More recently such coverage has extended to reporting some of the activities of the Group, in particular the site visits made to lap dancing venues by Group members⁶⁴. Additional coverage has speculated on the possible recommendations of the Group⁶⁵.

⁵⁴ Scott, N. (2006) “Leeds Set for New Lap dancing Boom”, *Yorkshire Evening Post*, 12/01/06.

⁵⁵ Valler, D. (2005) “Sleazy – or a Sophisticated Night Out?” *Coventry Evening Telegraph*, 08/11/05

⁵⁶ Valler, D. (2005) “Sleazy – or a Sophisticated Night Out?” *Coventry Evening Telegraph*, 08/11/05

⁵⁷ Valler, D. (2005) “Sleazy – or a Sophisticated Night Out?” *Coventry Evening Telegraph*, 08/11/05

⁵⁸ McNeilly, C. (2006) “Ulster Performer Laps Up the Big Bucks”, *Belfast Telegraph*, 13/01/06.

⁵⁹ Martin, P. (2006) “I’m Living in the Lap of Luxury; Ulster Stripper Tells How She Earns a Fortune”, *The Mirror*, 11/01/06 pp.8.

⁶⁰ Llewellyn Smith, J. (2006) “No More Sex and the City” *The Daily Telegraph*, 15/01/06, pp. 18.

⁶¹ Moran, C. (2005) ‘The philanthropic ogler? Er, surely there’s some mistake.’ *The Times* 05/04/05 p.2

⁶² Independent (2005) ‘Men consider lap dancing to be ‘normal fun’.’ *The Independent* 01/04/02 p.23.

⁶³ Fraser, D. (2005) ‘Smut supreme who is czar of the lap dance. Legal Adviser to investigate adult entertainment clubs and shops’, *The Herald* 25/02/05, p.5.

⁶⁴ Mirzani, L. (2006) “probe as Boys ‘Ogle Lap Dance Sex Show; Teens in Club Claim”, *Daily Record*, 14/01/06, pp.29.; Ferguson, B. (2006) “Fourteen-year-olds at Strip Show Claim”, *Edinburgh Evening News*, 13/01/06, pp. 9; Madeley, G. (2006) “Lapdance Club Faces Probe Over Teenagers” *Daily Mail*, 14/01/06, pp. 49; Macleod, A. (2006) “Task Force Shocked by Lapdance Mission”, *The Times*, 14/01/06, pp.29.

⁶⁵ Ferguson, B. (2006) “Strip Bars face ‘Private Dance’ Ban in Licensing Clampdown”, *Edinburgh Evening News*, 02/01/06, pp.2.; Gordon, T. (2006) “Lapdance Clubs Face Much Stricter Licensing”, *The Herald*, 02/01/06, pp.4.

Other adult entertainment activity – outwith specific adult entertainment venues

The Group wanted to assess adult entertainment activity regardless of where it takes place. We undertook a brief sampling survey, although not quantitative, to identify what activities took place outwith licensed premises (in terms of licenses to sell alcohol) in Scotland. We found that at least 20 different mobile adult entertainment services operate in Scotland, mainly in Scotland's cities, as well as the UK and worldwide. These mobile agencies offer a wide range of 'services' - anything from male and female strippers for parties, stag or hen nights; to escort services; masseuses; swingers; dogging; and limousine lap dancing. Nearly all of the mobile adult entertainment services operate via phone, normally a mobile rather than landline number, and via websites and e-mail. It is, therefore, difficult to find out where these 'private' adult entertainment activities take place and as a result, the Group was unable to visit any of them.

Performers who provide mobile services are usually attached to promotional and entertainment agencies and are both male and female. Unlike their counterparts in the lap dance clubs, these entertainers are afforded a level of certainty about earnings, in that they are paid a set fee for each performance. They will normally be booked through their agents who will negotiate the fee for the show. Included within this fee are the agent's 'cut' and the performer's fee. The agent's fee is largely regarded as covering the negotiation stage of the booking. The agent is normally not responsible for security for the performer. Performers will normally safe-guard themselves by employing their own security or driver. For example, this could be a friend who is of an imposing stature who will be paid a small fee for simply attending the function.

From the Economic Impact Report the Group found:

- “There is an ‘Informal economy’ in the AE industry in the form of unlicensed and often unadvertised strip nights in pubs, clubs and other venues such as stretch limos. Many of these are legal under current licensing arrangements and so are not necessarily ‘informal’ economy. Under current licensing regulations it is not illegal for pubs to stage any form of AE, as their license does not stipulate this. There are many unlicensed operations taking place in hotels, and combining these with escort services, which affects the business of legitimate licensed AE venues. Specific operations within each city are difficult to quantify, but the characteristics are estimated as follows (care must be taken as some of these comments are anecdotal).
- In **Aberdeen** the industry estimated that there are four or five times as many unlicensed adult entertainment places as licensed ones. There was felt to be a need for more control over this. In **Dundee** the police reported that there are social clubs hiring strippers, for example football club function suites hired for private functions. There are also private clubs operating as public houses. It was estimated that there are around 9 premises that provide this type of entertainment on a regular basis. In **Edinburgh** the police report that there are occasional events such as mobile strippers and troops of male strippers in venues such as private clubs, miners welfare clubs and football supporters clubs in Lothian. These are not licensed premises, and are registered with the Sheriff rather than the licensing board. As a result the police have no powers of inspection. The police also estimated that in Edinburgh the market of pubs doing a lap dancing/striptease night a week is quite large, although were unable to put an exact figure on this. In contrast, in West Lothian it is a condition of an

extended hours licence (after 11pm and usually given to most premises) that no AE is allowed. Strathclyde Police reports that there is little unlicensed activity in pubs in **Glasgow** as licensing regulations are strictly enforced. There are travelling strippers who operate in Scotland performing at one-off shows in private clubs and student unions. The police disapprove of these but they are not illegal. Additionally there are few problems of illegal non-EU foreign labour being used in Glasgow.” (**Economic Impact Report see Annex 5**)

Smaller towns and villages

We gathered that it is fairly common to hire what the AEWG classed as adult entertainment performers for stag or hen nights in local pubs and community halls. The performer is accompanied by a minder, and the stage show often includes audience participation.

What are other countries doing to regulate the adult entertainment industry?

From the Reading Box and media search, it was easy to see that Scotland is not alone in trying to regulate the adult entertainment industry.

Queensland, Australia

In 2003 the Crime and Misconduct Commission (CMC) were asked to review the adult entertainment industry in Queensland to address specific concerns including:

- Distinguish legitimate live adult entertainment from prostitution, allowing both to be regulated separately.
- Reduce negative impacts of the live adult entertainment industry on local communities.
- Eliminate opportunities for the exploitation of minors in the live adult entertainment industry.

Observation sessions were undertaken at 24 live adult entertainment sites across Queensland; 86 interviews were conducted with people in the industry, 33 of whom were owners/managers and 53 were entertainers. The CMC also consulted with other stakeholders e.g. the police; health; and licensing authorities in order to address the concerns.

The Commission found that the industry was largely unregulated and that a more “exhaustive, coherent and stringent approach” to regulation of the live adult entertainment industry was required to preserve community amenity and to reduce crimes such as illicit drug use or dealing, prostitution, and the sexual exploitation of those under 18 years of age. As a result, the CMC put forward 29 recommendations for government consideration.⁶⁶

⁶⁶ Crime and Misconduct Commission (2004) ‘Regulating Adult Entertainment: A review of the live entertainment industry in Queensland’

Ontario, Canada

In Ontario, Canada between 1994 and 1997, lap dancing was highlighted as a social problem in need of attention. Media coverage and legal decisions helped raise concerns of some women's groups and public officials who viewed it as harmful to the preservation of the family and others who argued it was harmful to the health and well-being of performers. Observations of strip clubs were made and interviews were undertaken by academics, and on receipt of a police complaint regarding a particular club where "indecent acts" were allegedly taking place, an undercover investigation took place to establish exactly what activity occurred. As a result, there was some debate as to whether lap dancing exceeded "community standards of tolerance in contemporary Canadian society", (the Canadian test for obscenity and indecency) under the Criminal Code of Canada. Whilst the decision from this particular investigation applied to Canada as a whole, and all Canadians are bound by the Code of Canada, it was decided that each municipality would be given the discretion to decide if lap dancing needed a bylaw.⁶⁷

Birmingham, England

Closer to home, we noted that Birmingham City Council had set up a Lap Dancing Commission in respect of concerns expressed regarding venues in the city offering entertainment containing nudity. Several types of stakeholders were invited to join the Commission to give evidence and take part in the discussion including: Birmingham City Council Licensing Committee members and others from the licensing section; operators of adult entertainment venues; and representatives from the police.

Concerns noted by Birmingham City Council's Licensing Committee included:

- Proliferation, relating to concerns of the lap dancing market becoming saturated, forcing operators to look for alternative ways to raise money.
- Location of lap dancing venues.
- Litter of leaflets advertising lap dancing venues in certain areas of the city.

There was some discussion as to whether lap dancing should continue to be regulated under the public entertainment licensing regime, or whether entertainment containing nudity should be considered as part of the sex industry and licensed in the same way as sex shops and massage parlours. In an attempt to remain as part of the regulated industry not the sex industry, the operators representing the lap dancing industry made proposals for increased "self-regulation", drawing up a "code of practice" - Birmingham City Club Watch - which operators could follow at their discretion. The Code would outline best practice policies for dealing with issues such as advertising controls; underage performers and drinkers; misuse of drugs and alcohol; prostitution or soliciting; theft; and crime and disorder.

⁶⁷ Lewis, J. (2000) 'Controlling Lap Dancing: Law, Morality and Sex Work' in R Weitzer (ed) *Sex For Sale*, Routledge, New York.

Two Group members attended a meeting of the Lap Dancing Commission, and the AEWG met with the Convenor. It was interesting to note the attempts in Birmingham to formulate policy on lap dancing under the Licensing Act 2003, very much as the AEWG is doing in Scotland.

CHAPTER 4. RECOMMENDATIONS

The Better Regulation Task Force noted that Regulation can be added to and made more burdensome by:

- a lack of clarity about: the scope and intention of the original regulation;
- what those being regulated need to do to comply;
- the purpose and legal status of guidance.

We want to avoid all of those pitfalls.

The need for additional controls

The AEWG noted from the Public Consultation Exercise (see **Annex 4**) that there was support for specific licensing arrangements for each of the four types of adult entertainment venues asked about, with over two-thirds of respondents agreeing that there should be specific licences for each.

Having established that the current licensing regime has loopholes and a more consistent approach would be fairer and easier to understand, we turned to wider and deeper issues. Was there a need for more regulation? Why, and what would its purpose be? Whilst a tidying up would be useful on its own, we wanted to see our work in the wider context of attitudes to sexual behaviour, to gender imbalance and to exploitation.

In the light of that, the AEWG makes the following recommendations.

For the purposes of licensing, adult entertainment should be defined as

“The performance in a public place of any activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification and/or titillation.”

4.1 There should be national regulations applied to the activity as defined, regardless of where it takes place. The current licensing régime allows unfair differences depending on the type of licence. If licensing is tightened up for a particular class of premises, imaginative operators may try to avoid regulation by, for example, providing adult entertainment in vehicles, or in a neighbouring building that does not serve alcohol.

4.2 All adult entertainment activities should be, at all times, fully visible to the public visiting the premises. Private activities should not take place on a public premises. Private booths are particularly difficult to oversee or manage and activities which occur in them may constitute or lead to prostitution.

The AEWG experience

- Activities witnessed via CCTV by the Adult Entertainment Working Group on visits to venues have shown that more happens in private booths than simple no-touch dancing. On our **planned visits** we saw CCTV coverage of lap dancing in booths including activity that went beyond dancing and involved intimate touching even though that was not permitted in the particular venue. That showed that even with CCTV and a Code of Conduct it is not practically possible to regulate activity in private areas. **(Venue visits review see Annex 8)**

We note also the strict rules imposed in some premises.

- “Performers are *never* to be in the company of a customer except in an area open to the public within the Club (excluding toilets) **(Spearmint Rhino Code of Conduct see Annex 9)**

We took into account the public’s view

- Of the 42 respondents who thought controls were required to regulate these activities, 12 thought these venues should be banned or shut down and 3 thought VIP and curtained areas should be banned. **(Consultation analysis see Annex 4)**
- “Assuming that customers of adult entertainment venues pay for *extra* services in a booth, other than simply a ‘private dance’, this is more like prostitution than adult entertainment.” **(Sandyford Initiative Interview see Annex 6 (6.7))**
- Having private booths and one-to-one contact personalises the relationship between performers and customers. If there is nothing extra to be provided, there is no need for private booths. Private booths only further infer to the customer that the performer is available to have sexual intercourse with them, which is not or should not be the reality. **(Sandyford Initiative Interview see Annex 6 (6.7))**
- 47% of men and 45.6% of women thought that there should be restriction on activities inside venues, this excludes multiple responses i.e. each respondent is only counted once. **(Public Attitude SPAS files)**

We noted the strict rules imposed by some operators who are clearly worried that the “intimate” atmosphere created may lead to illegal activity outwith the premises

- There will be no soliciting or meeting customers after work. Performers engagement by the club will be terminated if they are found to be involved with any customers of the club outwith the club premises. **(Truffle Club House Rules see Annex 11)**

- “Performers will either leave at the end of a shift in a nominated taxi, or a member of security will escort them to their car or off the premises.” **(Spearmint Rhino Code of Conduct see Annex 9)**
- “Performers must not leave the premises until after the customers have departed and then have been cleared to leave by the manager.” **(Spearmint Rhino Code of Conduct see Annex 9)**
- “When you finish your shift you should report to the co-ordinator who will arrange for you to be escorted to your car, when appropriate.” **(For Your Eyes Only Code of Conduct see Annex 10)**
- “Performers leave in groups of 5 at the end of the night **(For Your Eyes Only Interview see Annex 3 (6.3))**

We noted that the perceived connection between adult entertainment and prostitution was of concern to performers

- Performers are affected negatively by claims of prostitution in their profession. These claims add to the negative stigma that already exists relating to the profession. Prostitution is, to my knowledge, not condoned in any establishments offering exotic dancing. Moreover, should a performer be suspected of ‘off-premises prostitution’ she will be dismissed. Club owners and management are aware that their licences are in jeopardy and do not condone any such behaviour. **(Anonymous response to consultation)**
- Performers reported that it is common for performers to be propositioned for sex by customers as often as 4-5 times a night. All the performers interviewed disapproved of performers who were also prostitutes and they drew a clear distinction between the different types of work. One performer said that it was unusual for performers to work in prostitution and dance-prostitutes are looked down on and criticised. **(Performer Interviews see Annex 7)**

REGULATORY IMPACT ASSESSMENT

Social and Personal

Performers - The perception of AE dancing would be a clear step removed from sexual activity and thus be of higher status. There may be a reduction in payment for dances and concerns that it will close businesses down leading to job losses. It will improve safety and provide better working conditions.

Customers - Those accustomed to private dances in small booths would be most affected. We noted, however, that in some clubs that whilst the performer could be seen from the main floor the customer could sit where he was unseen.

Public - Members of the public would be more likely to know what to expect.

Local Communities - The nature of the premises might change.

Economic

Turnover - Difficult to estimate, though what seem to be successful operators include those without private or wholly private booths. Even if the industry was closed down there would not be a huge impact overall. “The effects of closure would be likely to be relatively small on city economies as a whole, although sectors associated with group tourism in Edinburgh, such as hotels and bars would be affected.” (**Economic Impact Report see Annex 5**)

Employment and earnings - There may be a reduction in payment to performers as wholly private dances should no longer take place. Some performers thought that this would close the industry down and leave them without AE work. We doubt that as some current successful operators manage without wholly private booths.

Customers and expenditure - Door charges might increase if dance charges were reduced.

Informal economy - There might be an increase in activity that tried to evade regulation.

Property values - Little impact.

Community costs - None, apart from the costs of increased regulatory oversight.

Potential effect of changes to regulation - Some operators would have to redesign their premises. All establishments would be working to common standards.

4.3 Performers should not touch, or be touched by, customers. In order to remove any doubts about touching, and for the safety of performers, there must be a distance of one metre between performer and any other person during entertainment activities.

Performers may not perform any act that clearly simulates masturbation, oral sex or sexual intercourse, including the insertion of any object, including their own finger into any genital opening. Performers may not touch their breasts with their mouths, lips or tongues. There is a need to separate AE from activity that might be illegal in terms of indecency or prostitution. As it is the operator who obtains the licence, the operator is responsible for ensuring compliance. The operator's own codes of conduct should, however, include information for the performer on what she should do if a customer tries to breach this rule. Operators should also have clear notices for customers, including what action will be taken against anyone who breaches the rule.

The AEWG experience

- Activities witnessed via CCTV by the Adult Entertainment Working Group showed that even with CCTV and a Code of Conduct it is not possible to prevent touching . **(Venue visits review see Annex 8)**
- The size of some booths makes a no touching rule almost impossible to follow.

We note also the strict rules imposed in some premises.

- “Absolutely no physical contact is permitted between performer and customer whilst dancing for the customer” **(Truffle Club House Rules see Annex 11)**
- When you are doing a table dance, don't lean into the guest, this is a NO DISTANCE NO CONTACT club.” “No touching the customers in any way (shoulders, legs, face or crotch)” “Don't let customers touch you – legs, breasts, other personal parts, hands or face.” “Don't touch another girl when you are dancing with her or don't act like you are touching her.” **(For Your Eyes Only Code of Conduct see Annex 10)**
- For the purpose of constraint, performers may only touch a customer above the customer's chest with only the performer's hands.” “Performers must not sit on or straddle the customer.” “Performers are *never* to intentionally touch the genitals or breasts of another performer or to knowingly permit another performer to intentionally touch their genitals or breasts.” “If a customer attempts to touch, or to speak to a performer inappropriately, the performer must immediately stop the performance and explain the relevant rules. If necessary, ask for assistance from and co-operate with a floor supervisor, who will take appropriate action, which may include escorting the customer out of the Club.” **(Spearmint Rhino Code of Conduct see Annex 9)**
- Performers may not perform any act that clearly simulates masturbation, oral sex or sexual intercourse, including the insertion of any object, including their own finger into any genital opening. Performers may not touch their breasts with their mouths, lips or tongues **(Spearmint Rhino Code of Conduct see Annex 9)**

We noted the industry view

- When we asked an operator about the definition of table dancing, he said the activity “is not about getting physical or touching.” **(For Your Eyes Only Interview see Annex 6 (6.3))**

We took into account the public’s view

- 31% thought touching performers should not be allowed **(Public Attitudes Survey see Annex 3)**
- Men may think women are solely for them and their pleasure, since the activities are not exactly about the skill of dancing from afar. These activities are much more sexualised than just being about observation. A ‘no touching’ rule would draw the line more clearly about what is and is not acceptable. **(Sandyford Initiative Interview see Annex 6 (6.7))**
- 47% of men and 45.6% of women thought that there should be restriction on activities inside venues, this excludes multiple responses i.e. each respondent is only counted once **(Public Attitude Survey see Annex 3)**
- 89.1% of men and 94% of women thought there should be some form of imposed restriction, this excludes multiple responses **(Public Attitude Survey see Annex 3)**

We took into account performers’ views

- Performers tend to feel in ‘control’ in the environment due to the ‘no-touching’ policy and the security measures in place in clubs. **(Anonymous response to consultation)**
- Performers reported that it is common for performers to be propositioned for sex by customers as often as 4-5 times a night. They explained that whilst some customers asked performers to perform ‘extras’, most clubs had a very strict policy of prohibiting sexual behaviour in the clubs. **(Performer Interviews see Annex 7)**
- Performers were concerned that the willingness of a minority of performers to provide sex for money posed a threat to their earnings and was putting pressure on some performers to have sex with customers. Two performers mentioned that Eastern European performers were very competitive and were prepared to offer ‘extras’ and that this was raising the expectations of the customers. One performer warned that sexual interaction might increase if customers refused to pay the same rate for ‘tamer’ dancing. If performers felt unable to make enough money from dancing, they may take more risks with customers by agreeing to do more private parties and/or prostitution. **(Performer Interviews see Annex 7)**

REGULATORY IMPACT ASSESSMENT

Social and Personal

Performers - This will lessen the chance of adult entertainment becoming, or being perceived as, illegal sexual activity. There may be a reduction in payment for dances and concerns that it will close businesses down leading to job losses. It will improve safety and provide better working conditions.

Customers - Customers may be disappointed however a safer environment would be promoted to all involved.

Public - Members of the public would be more likely to know what to expect with the perception of a safer local environment being promoted.

Local Communities - The nature of the premises might change.

Economic

Turnover - Difficult to estimate, though what seem to be successful operators include those without private booths. Even if the industry was closed down there would not be a huge over impact overall. “The effects of closure would be likely to be relatively small on city economies as a whole, although sectors associated with group tourism in Edinburgh, such as hotels and bars would be affected.” (**Economic Impact Report see Annex 5**)

Employment and earnings - Some performers thought that this would close the industry down and lead to job losses for various staff categories i.e. performers, bar staff and bouncers. We doubt that though the payment arrangements may change.

Customers and expenditure - There may be an increase in door charges if the demand for private dances is lessened.

Informal economy - There might be an increase in activity that tried to evade regulation.

Property values - May improve if activities taking place are perceived as legal.

Community costs - None, apart from increased costs of regulatory oversight.

Potential effect of changes to regulation - Some operators would have to redesign their premises. There would be common standards that could be implemented fairly.

4.4 There should be adequate health and safety protection for performers, including

1. Dedicated and private changing, washing and toilet facilities, separate from public facilities. The Local Authority should determine what is adequate given the layout and circumstances of the venue.
2. A minimum temperature of 20°C, confirmed by fixed thermometer, in all working and changing areas.
3. Adequate lighting in all working and changing areas.
4. All work and changing areas must be kept clean, free from obstruction and with surfaces that are fit for purpose.
5. Adequate and hygienic facilities to make hot drinks and eat meals, and a supply of cold drinking water.

Performers are normally classed as self-employed. We understand that the operator remains responsible for the health and safety of contractors working in their establishments and those responsibilities cannot be discharged by claiming that the performers are self-employed. We consider that performers' safety and well-being can be protected by specific regulatory requirements.

The AEWG experience:

- During the visits to adult entertainment venues we noted that some premises were not equipped with private changing facilities for performers. In two places, the public ladies toilet doubled as the performers' changing room. **(Venue Visits Reviews see Annex 8)**
- We noted the rules set by the City of Glasgow Council **(see Annex 14)**

We note also the rules imposed in some premises.

- Owner shall...Provide to Performer, at Owner's expense...dressing room facilities." **(Spearmint Rhino Dance Performance Licence see Annex 9)**
- The venue provides private changing facilities, hairdryers, special lighting and in some venues, showers are provided." **(For Your Eyes Only Interview see Annex 6 (6.3))**
- Changing rooms are strictly private spaces for performers and no other club staff can enter without permission. **(For Your Eyes Only Interview see Annex 6 (6.3))**

We took into account the public's view

- Controls should be put in place to ensure performers receive proper working conditions. **(Sandyford Initiative Interview see Annex 6 (6.7))**

- Of 42 respondents who thought controls are required to regulate these activities, 7 thought that regulation should be made for provision of health and safety standards of staff working in establishments/ working conditions including acceptable changing, showering and locker area facilities for performers. (**Consultation Analysis see Annex 4**)

We took into account the performers' views

- Performers were more likely to complain about the lack of privacy and security which has led to other performers stealing from them. One performer wanted clubs to enforce stricter house rules to punish theft and ensure greater privacy. (**Performer Interviews see Annex 7**)

REGULATORY IMPACT ASSESSMENT

Social and Personal

Performers - This will ensure privacy and personal hygiene standards for performers, who have in some places been expected to change in public or cramped areas. They will also benefit from clear responsibilities placed on operators.

Customers - They will not have to share facilities with performers, which can cause embarrassment.

Public - No impact.

Local Communities - No impact.

Economic

Turnover - There will be one-off implementation costs and some ongoing costs.

Employment and earnings - Operators may try to recover costs from performers.

Customers and expenditure - Operators should try to recover costs from customers.

Informal economy - One off AE performances will have to meet this standard.

Property values - None, or slight enhancement for the owner.

Community costs - None other than the costs of regulatory oversight.

Potential effect of changes to regulation - This will improve working conditions for performers and ensure a level playing field throughout the industry.

4.5 There should be adequate security to ensure compliance with the regulations and prevent illegal activity. Each Local Authority should have discretion to determine appropriate methods of security but as a minimum there should be CCTV. Recordings must be retained for a period of at least one month and delivered to the Local Authority within three working days of request. The Local Authority should determine the precise deployment and operation of CCTV and if there is adequate staff supervision/stewarding to ensure performer safety. This will include any additional measures required to ensure that operators comply with the mandatory controls.

We note that the Police have unfettered access to CCTV for the purposes of crime investigation.

The AEWG experience

- During the AEWG's visits we saw adult entertainment activity via CCTV, which we would not have seen otherwise. Whilst assured by all venues that the activities taking place involved no touching it appeared that there was little or no distance between performer and customer. In one venue the performer repeatedly had to remove the customer's hands, and in another, the performer placed her hands on the customer's thighs. We had little doubt that touching went on despite CCTV, and noted the operators' concern at what we were viewing. **(Venue Visits Reviews see Annex 8)**
- The visits showed that there is a range of venues with very different customer bases, types of activities and physical layouts. Appropriate requirements for methods of oversight can only be implemented through locally tailored decisions. **(Venue Visits Reviews see Annex 8)**

We noted the industry view and the measures already taken to secure compliance with self-regulation.

- Operators must be in control and ensure the running of venues is completely above board, in every possible aspect. Adult entertainment venues such as FYEO can make between £10,000-£12,000 in a night hence, they are a magnet for prostitution, pimps and drugs. It is vital that operators do not ignore the reality that these venues are attractions for the illegal elements of society which try to operate through such premises. One of the key measures which should be taken to avoid venues being misused for illegal purposes is to employ a legitimate and reputable security firm which operates legally and above board. Having a strong door presence and legitimate security presence soon makes people aware that anything illegal will not be tolerated. Security and rules are vital and local council authorities and the police should have a hand in the operations and controls which are placed on the table dancing business. **(For Your Eyes Only Interview see Annex 6 (6.3))**
- CCTV should be installed to cover all areas in an adult entertainment venue and police and/ or local authorities should have the power to check the tapes at any time. **(For Your Eyes Only Interview see Annex 6 (6.3))**

- “For the purposes of safety and standards, the Club may employ the use of closed circuit cameras and radio communications throughout the premises.” (**Spearmint Rhino Code of Conduct see Annex 9**)

We took into account the public’s view

- There were seen to be potential safety issues for performers and customers in private booths, but this was seen as being less of an issue if CCTV becomes compulsory. (**Economic Impact Report see Annex 5**)
- Of 42 people who thought controls are required 6 thought that there should be regular monitoring to ensure compliance with the conditions of the licence. (**Consultation Analysis see Annex 4**)
- “CCTV is a possible requirement although there would be concerns that tapes could be used for pornography purposes or for further exploiting a private booth. Monitoring of CCTV by the police and Local Authorities would be necessary.” (**Sandyford Initiative Interview see Annex 6 (6.7)**)

We took into account performers’ views

- Performers... tend to feel in ‘control’ in the environment due to the... security measures in place in clubs. (**Anonymous response to consultation**)
- All performers expressed feelings of safety at work and two performers specifically said that they felt safer at the dancing club than at ordinary clubs. Feelings of safety were attributed to the CCTV cameras and to bouncers who were able to stop trouble quickly. (**Performer Interviews see Annex 7**)
- There was a suggestion by one performer that club owners sometimes felt pressure to ‘turn a blind eye’ to all illegal activity if there were ‘gangsters’ involved in the club. (**Performer Interviews see Annex 7**)
- When performers were asked what they would do to improve their jobs, most mentioned the need for the club to offer more protection for the performers. (**Performer Interviews see Annex 7**)

We noted the view of the **Police**;

- Any premises or vehicles, licensed or otherwise in which Adult Entertainment occurs should have an appropriate Closed Circuit Television system in place. The provision of such a security system would serve, together with other measures, to facilitate a safe environment for customers, performers, staff and operators alike.
- All public and private dance areas and entrances and exits should be monitored constantly while the premises are open to the public by means of a CCTV system that should be installed and maintained in good working order to the satisfaction of the relevant Licensing Board and in consultation with the local Police.

- Any recording should be produced to a police constable on request. The operator should be responsible for maintaining the integrity of the system and any recordings should be kept for a minimum of 28 days.

The Group did have concerns about the possible misuse of recorded images, for pornography or blackmail, but were re-assured by evidence from the Police that there is no available information to suggest that there has been any criminal or other misuse of images captured on the security systems of those licensed premises providing adult entertainment that have CCTV installed.

REGULATORY IMPACT ASSESSMENT

Social and Personal

Performers - This will improve the safety of performers and will reduce the likelihood of related crime.

Customers - Greater surveillance may cause discomfort. This will improve the safety of customers and will reduce the likelihood of related crime.

Public - No impact.

Local Communities - May reduce the likelihood of related crime.

Economic

Turnover - There will be implementation costs for some. Other operators already have compliant security systems.

Employment and earnings - Operators may try to recover costs from performers.

Customers and expenditure - Operators should try to recover costs from customers.

Informal economy - None, other than the possibility of attempts to evade regulation.

Property values - None, or slight enhancement for the owner.

Community costs - None other than the costs of regulatory oversight.

Potential effect of changes to regulation - This will ensure a level playing field throughout the industry and benefit operators who comply.

4.6 There should be a minimum age of 18 for performers, public and employed staff with an obligation on the operator to ensure compliance. Adult entertainment should be restricted to adults. All operators must make all reasonable endeavours to prevent under-age performers, employees and customers.

We noted that there is, at present, a very wide range of age-based differences of treatment in the employment field across the EU. Given this diversity of approaches and attitudes throughout the EU, the relevant Directive could not set out in detail every age distinction that was legitimate. Instead, it establishes a framework for assessing the legitimacy and justification for the use of age distinctions, while also permitting member states to introduce some specific exemptions if they wish in certain narrowly-defined areas.

In the UK 18 is generally accepted as adulthood and we noted The Protection of Children and Prevention of Sexual Offences Act 2005. This creates new offences in relation to the arrangement, facilitation etc of child pornography and the provision of sexual services by children (under 18). This would cover those who allow people under 18 to work as lap performers.

We noted the views of the public

- “Performers working in the Adult Entertainment industry should be aged 18 at minimum but ideally, 21. There is also a risk that vulnerable women younger than 18 could get involved in the industry, for instance if a girl is living away from home or has no qualifications it would be an easy thing to do to earn money.” (YWCA Interview see Annex 6 (6.5))

REGULATORY IMPACT ASSESSMENT

Social and Personal

Performers - This reduces the likelihood of inappropriate sexual and sexualised experiences for minors.

Customers - There should be less likelihood of inappropriate sexual and sexualised experiences for minors.

Public - Those under the age of 18 will not be able to attend as performers or customers.

Local Communities - No impact.

Economic

Turnover - There will be implementation costs for some operators to ensure compliance.

Employment and earnings - Operators may try to recover costs from performers.

Customers and expenditure - Operators should try to recover costs from customers.

Informal economy - Operators will have to ensure compliance.

Property values - None.

Community costs - None other than the costs of regulatory oversight.

Potential effect of changes to regulation - The obligation on the operator will increase the likelihood of robust measures to ensure compliance. There should be less likelihood of inappropriate sexual and sexualised experiences for minors.

4.7 The Local Authority should determine if full nudity is appropriate for a specific venue taking into consideration proximity and the degree of security and oversight. There is nothing intrinsically wrong with the naked human body but the context is important. Full nudity, for example, may be more acceptable if the performer is at some distance from the customer and there is adequate operator supervision.

We took into account the views of the industry

- “Performers must not remove, lower or pull their G-string to the side whilst dancing for a customer” (**Truffle Club House Rules see Annex 11**)
- “Performers shall not be completely nude except while performing on the centre main stage of the Club or performing a nude table dance where permitted; performers are *never* to perform a nude table dance unless performer is in a supervised area or within 5 metres of a floor supervisor.” (**Spearmint Rhino Code of Conduct see Annex 9**)
- “topless performers can earn just as much money as those who perform fully nude.” (**For Your Eyes Only Interview see Annex 6 (6.3)**)

We took into account the views of the public

- 13% of males and 21% of females thought the level of nudity should be restricted. (**Public Attitudes Survey see Annex 3**)
- “There are negative impacts on performers. The act of taking clothes off in front of people is damaging and embarrassing in itself. It is the belief of CSRCC that these activities only lead to a degradation of respect by the public and as soon as respect is lost, the problems with this activity can only be heightened. Attitudes of the public towards performers is therefore concerning.” (**CSRCC Interview see Annex 6 (6.1)**)
- Adult entertainment activities impact on performers by de-personalising performers as people – it makes them ‘faceless’ in some way. There are most likely emotional impacts of friction dancing on performers. Even if venues claim the activities are about the art of striptease – there is always the inference that arousal will go further, and by nature people always hope arousal will lead to more. Perhaps there should also be controls on dress. (**Sandyford Initiative Interview see Annex 6 (6.7)**)

We took into account the views of performers

- Exotic performers provide a multitude of services in various locations and in varying states of un/dress. These vary from pole dancing, lap dancing or table dancing – fully or partially clothed, to stripping at a private function for a stag night or birthday party. Their state of undress depends on the location – gentlemen’s club, pub, club (**Anonymous response to consultation**).

REGULATORY IMPACT ASSESSMENT

Social and Personal

Performers - It would reduce the potential for exploitation.

Customers - May be disappointed by any restrictions.

Public - No impact.

Local Communities - There would be local decisions based on local views.

Economic

Turnover - There would be flexibility depending on the circumstances of the venue and local views. Operators may require a different Code of Conduct depending on each Local Authority's decision on the relevant levels of nudity and proximity. Some operators work successfully with restrictions.

Employment and earnings - Tighter controls on what is acceptable in terms of nudity may make the industry less attractive and reduce customer numbers.

Customers and expenditure - Tighter controls on what is acceptable in terms of nudity may reduce customer interest and cause disappointment and dissatisfaction.

Informal economy - If the Local Authority sets very restrictive conditions there is an increased probability of activity that tries to evade regulation.

Property values - None.

Community costs - None other than the costs of regulatory oversight.

Potential effect of changes to regulation - The obligation on the operator will increase the likelihood of robust measures to ensure compliance.

4.8 The Local Authority must have a policy on appropriate levels of provision for AE. Local authorities should be able to control the number and size of venues providing particular types of AE in specific localities. The economic impact study showed that there are different markets for adult entertainment and measures that may be appropriate for a sporting or stag weekend market may not be suitable for the corporate conference market. Decisions on over-provision depend to a very large extent on the nature of the neighbourhood, and on aims and ambitions for the city or town as a whole.

We took into account the views of the public

- One third of respondents said they were aware of an adult entertainment venue in their Local Authority. Almost half of the sample thought that the presence of these venues had a negative impact (49%) or no impact (43%), compared with 8% who thought they have a positive impact. **(Public Attitudes Survey see Annex 3)**
- Only 6% of respondents would be in favour of an adult entertainment venue opening in their neighbourhood. Just over half (56%) would be opposed. **(Public Attitudes Survey see Annex 3)**
- All respondents who felt that the presence of adult entertainment venues would have a negative impact were asked what problems they thought might be caused. As Figure 6 shows, the main potential problems were associated with anti-social behaviour. They believed that the area might develop a more negative image (65% male and 70% female) might attract the wrong kind of people and that there might be more drunken and unruly behaviour. The safety of local women was also an issue for respondents. Two-thirds (66%) of women were concerned that there might be implications for local women's safety, as were 57% of men. **(Public Attitudes Survey see Annex 3)**
- 41% of respondents thought venues should be restricted to specific streets or areas. **(Public Attitudes Survey see Annex 3)**
- In Edinburgh, the negative impacts of the industry appear to be greater than in other cities, possibly due to the scale and concentration of the industry there. Local economic development practitioners argued that the area around Lothian Road and "Tollcross is already infamous for drinking and violence and AE adds an extra element of 'sleaze' to this. Some types of business suffer as a result of the nature of the area." **(Economic Impact Report see Annex 5)**
- In Edinburgh, neighbouring businesses provided some evidence of an area-wide downmarket image in Tollcross/Lothian Road partly due to the AE industry. In Glasgow, research with the Council and neighbouring businesses indicated that any negative effects of AE are more localised, and only impact on businesses adjacent to actual and proposed establishments. **(Economic Impact Report see Annex 5)**
- From the views of neighbouring businesses in Edinburgh, a few specific businesses targeting high spending visitors, for example more upmarket restaurants, had concerns that the area where adult entertainment venues are clustered was perceived to be low quality and was avoided by high spending locals and visitors alike. *"In a slight way yes, it affects me, because the area is affected by these establishments, the status of*

the area is affected.” “It can be difficult to convince people that you have something different from what is already in the area. There are less people that will come to our restaurant just because the area in which we are.” (Economic Impact Report see Annex 5)

- Lothian and Borders police indicated that there were no specific crime problems caused by the presence of AE establishments. **(Economic Impact Report see Annex 5)**
- In Edinburgh 6 of the 7 ‘Lap Dance’ clubs in the city are located within the Tollcross area. Tollcross is a high-density, residential area, with approximately 7,000 households. The demographics of the area are very mixed, with 16-25 year olds being the highest proportion of the population, pensioners the second, at about 25% of the overall population and the rest are mainly families with young children. The area also has a retail centre, a primary school and several cinemas, theatres, restaurants and regular clubs, within a very small radius. Residents there have particular concerns. Five of the clubs operate on ‘normal’ public house licences. Organised ‘Stag’ parties have greatly increased since 2001. The complaints received by the City of Edinburgh Council, have included comments such as, “I’ve only lived here for the last year and already I can see the area going to the dogs”, *Home St resident, Sept 2002*, “I have lived in Tollcross for forty years, but in the last few years, I’ve noticed it’s becoming Edinburgh’s answer to Soho, by stealth” *Bruntsfield Place resident, August 2005*. When residents are asked to explain further what they mean by such comments they give examples of large groups of drunken men, harassing or shouting abuse at passers-by when they are travelling between the many adult entertainment venues in the area. **(Report by AEWG member)**
- The City of Edinburgh Council has, in the last few years, seen an increase in the numbers of complaints received from residents and workers in the Tollcross area, in relation to incidents of harassment and intimidation of local women and men, by the users of the areas ‘Lap Dance’ clubs. For example, in the Bread Street/West Port area, which contains 3 of the 5 unregulated ‘Lap Dance’ public houses in Tollcross, reports have been received from local residents, such as, “We can’t even pop out to the shops for a pint of milk on a Saturday afternoon without being subjected to sexual comments and/or abuse and it doesn’t seem to matter if we have our young children with us, either”, *Bread Street resident, June 2004*, and from Home Street, complaints such as, “I have been attacked personally by ‘punters’ coming out of the old ‘Fantasy Bar’ (now the Liquorice Club) whilst going into the main door of my flat, and the whole stretch of road can be uncomfortable to walk down”, *Former Home Street resident, October 2004*. The Council has also received reports of sexual harassment and intimidation from parents, whose children attend Tollcross Primary School, in Fountainbridge. For example, one member of the school board advised that, “One of our parents was waiting for her husband and child, on Earl Grey Street, at around 4.00p.m. last Friday, where she was approached and asked ‘How much?’”, *Board member and Bread St resident, December 2004*. One local resident says that he was “delighted that someone is taking a stand against the trashy bars that seem to have sprung up in our City over the past few years. I’m appalled that no one else has seen the dangers of alcohol-fuelled men being released onto city centre streets after an evening of ‘sexual promises’. He hoped that the AEWG are “not going to be diverted by spurious claims that it would drive the business underground, it’s already

underground and it's these bars that are feeding it", *Bruntsfield Place resident, September 2005. (Report by AEWG member)*

- There is a strongly held view within the Tollcross community that the high levels of adult entertainment venues in the area are having a detrimental impact on their quality of life and residential amenity. There is also a growing concern within the City of Edinburgh Council that there may also be a knock-on effect on the other tourists and visitors to the area, who may wish to enjoy the many other visitor attractions and general entertainment venues on offer. For example, the Edinburgh Film House, on Lothian Road, recently complained that "one morning we arrived at work to find the public house across the street had become a 'lap dancing' bar (Big Daddy O's) and were surprised to learn that no consultation or neighbour notification was required from local authority. Obviously we're concerned that our visitors will be put off coming to The Film House, as a direct result", *representative of EIFF, December 2005*. Other comments that give the council concern include "Now with the approach of summer more Stag Party 'Binge Drinkers' will flock to the area and when leaving, some become sick on the pavement or doorways or will even relieve themselves in the doorways", *West Port resident, May 2004*, and, "I love the area for so many other reasons but it could be so much better if these places weren't there or at least were minimal. I don't think the tourists like it much either!" *Home Street resident, October 2004. (Report by AEWG member)*
- 34 of 52 of the respondents thought that the impact on the public in general was negative. Many in this group gave examples of women feeling unsafe or uneasy in certain areas due to the activities taking place. Example was given of the potential for harassment, verbal abuse, and stalking which put women in fear of being in certain areas at certain times. **(Consultation Analysis see Annex 4)**
- "CSRCC stated that having secluded or specific 'red light' areas may 'shield' the public in general from witnessing any disorder and enable them to avoid potentially violent areas audiences/clients/pimps are frequenting. However, keeping these areas more secluded and secretive puts the workers at much more risk of violence and abuse. They believe that more open and central locations for the activities will only mean the violence experienced by the workers will happen behind closed doors as opposed to on the streets. Central areas may make it safer for the public, as they are more likely to be busy a lot of the time. However, having public areas of adult entertainment will normalise and promote acceptance of an abusive industry and thus contribute to the erosion of respect. CSRCC stated there are no 'ideal' areas for this industry. **(CSRCC Interview see Annex 6 (6.1))**
- "Lothian Road and Tollcross in Edinburgh are perceived as magnet areas for men especially stag parties – a clear message came through from YWCA that women in the group felt unsafe in these areas." **(YWCA Interview see Annex 6 (6.5))**
- "Men who are aroused when they leave adult entertainment venues pose a threat for those walking past/or residents nearby, especially if in they are in groups of stag parties. Women in particular may feel more fearful in these areas." **(Sandyford Initiative Interview see Annex 6 (6.7))**

- Zoning was unpopular with the industry and with most other stakeholders in all cities. The potential impact depended on the size of proposed zone – zoning within a wider area would be unnecessary as this takes place without intervention. The industry resented the stigma attached to zoning, while others raised concerns regarding the economic effects on any area chosen for tight zoning. Some neighbouring non-AE businesses in Edinburgh were in favour of a tight zone to increase the diversity of footfall in the wider Tollcross/Lothian Road area. **(Economic Impact Report see Annex 5)**

REGULATORY IMPACT ASSESSMENT

Social and Personal

Performers - Some may lose their jobs due to competition for restricted venues.

Customers - None, other than possibly restrictions of availability.

Public - Appropriate restrictions would improve the perceptions of the general public.

Local Communities - There would be local decisions based on local views. Restrictions would have the potential to improve the perceptions of residents. There may be potential to positively change areas of deprivation in some cities - areas with AE are more deprived than comparable areas in Aberdeen, similar in Dundee and less deprived in Edinburgh and Glasgow. No area wants to be a receiving zone.

Economic

Turnover - Restrictions could restrict amount of AE activity taking place in one locality.

Employment and earnings - Restrictions could restrict amount of AE taking place in one locality. Dispersal may reduce the amount of customers.

Customers and expenditure - Dispersal may reduce the amount of customers.

Informal economy - If the Local Authority sets restrictive conditions there is an increased probability of activity that tries to evade regulation.

Property values - Restrictions would improve the perceptions of surrounding businesses. A tight zone may lead to property owners there taking 'monopoly' type rents from AE establishments who could not locate elsewhere.

Community costs - None other than the costs of regulatory oversight.

Potential effect of changes to regulation - Locally based decisions would allow flexibility depending on the circumstances of an individual area and local views. Concerns about the effect of over-provision would be addressed by people who know the area.

4.9 The Local Authority should determine the degree of external visibility allowed, taking into account the location of the specific premises. Premises should have external signs which indicate what the premises are so that members of the public can make a reasonable informed choice in advance. There should, however, be local discretion on the size and content of signs depending on the neighbouring area; a small alleyway with limited footfall might have larger signs than a busy thoroughfare. What goes on inside the premises should only be visible to those who have chosen to go into the premises, regardless of the location.

We took into account the view of the industry

- “Owner shall...Advertise the business in a commercially reasonable manner for the benefit of both Performer and Owner.” (**Spearmint Rhino Dance Performance Licence see Annex 9**)
- “It was argued by the industry that the low-profile operation of the establishment avoided upsetting any nearby residents and businesses.” One operator said that “*with this kind of business you have to be central but discreet.*” (**Economic Impact Report see Annex 5**).

We took into account the view of the public

- With the exception of some Edinburgh establishments, most were relatively discreet in terms of signage and location. (**Economic Impact Report see Annex 5**).
- Of 42 of those who thought controls are required to regulate these activities, 3 thought licensing conditions should be applied to advertising of clubs and related activities (including flyers and promotional material). (**Consultation Analysis see Annex 4**).
- “There are negative effects of this activity on children in general, for instance walking down Bread Street in Edinburgh would have a huge effect on what children see and what they take seriously. Seeing venues which provide ‘adult entertainment’ would lead to an erosion of respect for women.” (**CSRCC Interview see Annex 6 (6.1)**).
- “Because taxis in Glasgow advertise lap dancing, the public are subjected to this whether or not they like it and may feel that such advertising says something about the city of Glasgow – i.e. that this is what women are like (available). Advertising in this manner further normalises these activities.” (**Sandyford Initiative Interview see Annex 6 (6.7)**).

REGULATORY IMPACT ASSESSMENT

Social and Personal

Performers - Help to reduce perceptions of objectification/exploitation of women.

Customers - Visitors and first time customers may find premises harder to locate.

Public - Makes clear to the public exactly what the premises are. Helps to avoid causing offence to the general public. Restrictions would improve the perceptions of the general public. Help to reduce perceptions of objectification/exploitation of women.

Local Communities - There would be local decisions based on local views. Restrictions would improve the perceptions of residents.

Economic

Turnover - Restrictions could affect customer awareness.

Employment and earnings - Restrictions could affect customer awareness.

Customers and expenditure - Restrictions could affect customer awareness.

Informal economy - If the Local Authority sets restrictive conditions there is an increased probability of activity that tries to evade regulation.

Property values - Restrictions would improve the perceptions of surrounding businesses.

Community costs - None other than the costs of regulatory oversight.

Potential effect of changes to regulation - Locally based decisions would allow flexibility depending on the circumstances of an individual area and local views. Concerns about visibility would be addressed by people who know the area.

4.10 There should be a National Exemption so that the regulations do not apply to artistic representational performance. Regulations designed to minimise exploitation should not, by accident, restrict genuine artistic freedom.

We took into account the views of the Scottish Arts Council;

- The role of art in society is to allow people to think, reflect and challenge thoughts.
- Theatre is about representing different parts of society.
- Representation of activity is not the activity itself.
- Representation is different from staging a performance which specifically has the intention to titillate sexually.
- Artistic interpretation is important and needs to be able to highlight sexual representation.

We took into account the Guidance on the Licensing Act 2003 with regards to censorship:

- "In general, other than in the context of film classification for film exhibitions, licensing authorities should not use their powers under the 2003 Act to seek to impose conditions which censor the content of any form of regulated entertainment. This is not a proper function of licensing law and cannot be properly related to the licensing objectives. The content of regulated entertainment is a matter which is addressed by existing laws governing indecency and obscenity. Where the concern is about protecting children, their access should be restricted where necessary. But no other limitation should normally be imposed" (para. 7.69).

We took into account the view of artistic performers' representatives

- The Scottish Arts Council confirmed that a majority of theatre performers are members of the trade union Equity, which protects the interests of performers and sets contracts whereby performers agree and sign at the outset, conditions regarding nudity. **(Scottish Arts Council Interview see Annex 6 (6.9))**
- The trade union Equity distinguishes between performers of dance and performers who work in the 'adult entertainment' business as those who are (salary) paid for performing and those who are sex workers.
- Equity confirmed there have been no reported instances in Scotland of performers being exploited by being asked to do extra activities e.g. to take off their clothes at an audition. **(Equity phone response)**

We took into account the view of a club

- The events do not have paid performers as the members partake in the entertainment with each other in a safe non-judgemental environment, however members may also attend events as a social forum and have no involvement in the activities if this is

what they wish. A significant portion of the entertainment is intended to provide instruction, advice and guidance. The entertainment is self policed and behaviour and etiquette rules are in place and strictly adhered to.” **(Violate Interview see Annex 6 (6.4))**

REGULATORY IMPACT ASSESSMENT

Social and Personal

Performers - None.

Customers - None.

Public - None.

Local Communities - None.

Economic

Turnover - None.

Employment and earnings - None.

Customers and expenditure - None.

Informal economy - None.

Property values - None.

Community costs - None.

Potential effect of changes to regulation - None.

4.11 Links to other Scottish Executive policy areas

One of our key recommendations is **that the Scottish Executive should develop a co-ordinated strategic approach to the issue of gender based exploitation.** We realised early on that there were a number of Working and Expert Groups examining and advising the Executive on issues that were linked in some way with the AEWG's remit. It is no accident that this work is being undertaken by many different Scottish Executive Departments because sexual behaviour and gender inequality affect so many areas of everyone's life. We made contact with these groups and made sure that they were kept informed of our work by early access to our meeting Minutes. We also met representatives from some of the most relevant groups. We could, however, see no signs of a truly co-ordinated approach. We are conscious that tightening up the regulations for adult entertainment does little to affect underlying attitudes, and that should be the longer term aim.

Child Prostitution

The Protection of Children and Prevention of Sexual Offences Bill was passed on 28 May 2005 and it received Royal Assent on 12 July 2005. Commencement took place on 7 October 2005.

Of particular interest to the AEWG:

- The offences in relation to indecent images of children in the Civic Government (Scotland) Act 1982 were amended so that they will apply to indecent images of young people under 18 (with certain exceptions) rather than just to images of children under 16.
- A new offence of Paying for the Sexual Services of a Child, where "child" is defined as a person under 18. The Executive added a new definition of "sexual services" so that this does not refer only to prostitution. The scope of what it covers will ultimately be for the courts to decide, but the Executive considers that it will cover sexual services such as lap dancing, pole dancing, stripping, and sex chatlines.
- The Act defines "sexual services" as:
 - (a) the performance of sexual activity; or
 - (b) the performance of any other activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification, and a person's sexual services are obtained where what is obtained is the performance of such an activity by the person.
- New offences in relation to the arrangement, facilitation etc of child pornography and the provision of sexual services by children (under 18). This would cover those who employ people under 18 to work as lap performers etc.

Possession of Extreme Pornography

The Scottish Executive has consulted on whether to create a specific criminal offence for possession of extreme pornography. The consultation was launched on Tuesday 30 August 2005 and closed on Friday 2 December 2005. Seventy one Scottish Responses were received: 38 personal responses and 33 responses from organisations. In addition, 49 responses from cross border organisations are also being included in the Scottish analysis. Organisations responding included local authorities, police organisations, women's groups, religious groups, broadcasters, internet service providers, civil liberties groups and organisations representing the BDSM (Bondage, Dominance, Sadomasochism, Masochism and Mastery) community.

The responses to the consultation varied greatly and a number of key issues and themes were highlighted as a result. The analysis is now complete and will be published shortly. It will be available via the link to the consultation on the Scottish Executive website.

Prostitution

An Expert Group on Prostitution was founded in 2004. The Group's task - spread over a three year period - has been broken into three elements: women involved in street prostitution, to be followed by women involved in 'indoor' prostitution, and then men involved in prostitution.

The first element has been completed and the group produced a report in 2005 entitled "Being Outside: Constructing A Response To Street Prostitution". The report notes that;

- Concern is rising regarding the incidence of prostitution in Scotland, the damage which results to those involved, the harm which can result to the communities affected and the possible association with a range of serious criminal activities, such as drug misuse and people trafficking.
- The Scottish Parliament has considered this concern in the context of possible introduction of legally sanctioned 'management zones' - but the Expert Group was set up to examine and advise on all issues relevant to prostitution, rather than just this single aspect.
- The Group gathered information and research findings relating to the UK, Europe and other countries comparable to Scotland; examined the current position in the four largest Scottish cities, Aberdeen, Dundee, Edinburgh and Glasgow
- There are a number of key common challenges:
 - to safeguard women involved in prostitution, reduce the harm they experience, tackle the concurrent behaviours such as drug misuse and help them towards exiting prostitution;
 - to protect residential and commercial communities from the effects of soliciting and prostitution;
 - to prevent children and young people who may be vulnerable to becoming involved in prostitution from taking that step;

- to influence the attitudes which lead to the abuse of women sexually and physically through street prostitution.
- The law should be reviewed with regard to soliciting. The changes would seek to ensure that the law should:
 - not criminalise on a moral basis;
 - address the imbalance between men and women arising from the present emphasis on the person soliciting, without reference to the potential purchaser of sexual services;
 - seek to reduce stigma which attaches disproportionately to the person soliciting as against the potential purchaser;
 - minimise the use of imprisonment for women involved in prostitution;
 - ensure continued protection to vulnerable groups, including young people and vulnerable adult men and women, from exploitation;
 - provide effective protection to the general public from offensive behaviour or conduct;
 - avoid any tendency to increase risk to vulnerable people and to communities through unplanned displacement; and
 - provide a constructive legal framework to support the achievement of broader strategic obligations for tackling prostitution in Scotland.

As a follow up to the above report, the Executive is currently developing guidance to local authorities on their powers and on how they (and other participants in Community Planning) should address street prostitution more effectively as part of the Community Planning process.

No decision has yet been taken on the format and timetable of work for the next two phases of the review, on indoor prostitution and trafficking.

Under Age Sex

The Scottish Executive has established a Short Life Working Group to look at the recommendations in the Bichard Report and how allegations of under age sexual activity are handled in Scotland and whether there is a need to consider further work.

Violence Against Women

The National Group to Address Violence Against Women commenced in 2004, and has since appointed an Expert Committee on Violence Against Women. The Expert Committee has been tasked with developing a strategic framework within which violence against women issues, including commercial sexual exploitation, can be considered. A draft was submitted to the National Group at its meeting on 16 January 2006, and will be further developed in light of comments made by NG members.

The following excerpt is from the draft VAW framework developed by the Expert Committee and currently being considered by the National Group (copied with permission from chair of the Expert Committee)

“Activities such as pornography, prostitution, stripping, lap dancing, pole dancing, and table dancing are forms of commercial sexual exploitation. These activities have been shown to be harmful for the individual women involved, and have a negative impact on the position of all women through the objectification of women’s bodies. This happens irrespective of whether individual women claim success or empowerment from the activity. It is essential to separate sexual activity from exploitative sexual activity. A sexual activity becomes sexual exploitation if it breaches a person’s human right to dignity, equality, respect, and physical and mental wellbeing. It becomes commercial sexual exploitation when another person, or group of people, achieves financial gain or advancement through the activity.”

CHAPTER 5. OUTWITH REMIT OF THE AEWG

In Group discussions, and in response to the public consultation, we were aware that our working definition of adult entertainment was relatively narrow and did not include all of the issues that cause concern to the public.

For example;

- The service does not have to be ‘live’. Internet pornography and magazines are not necessarily live broadcasts. **(Anonymous response to consultation)**

Having cast our net widely at the outset, we then excluded from our brief a number of issues which are regulated already.

Advertising

The Advertising Standards Authority administers the rules by which the marketing industry controls the content of marketing communications. It investigates complaints from both the public and the industry about marketing communications that are alleged to break the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code). The ASA also investigates complaints to ensure that television and radio advertising complies with the CAP (broadcast) Codes. We contacted the ASA which confirmed that its Code covers the whole of the UK and applies to:

- a. advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions, fax transmissions, catalogues, follow-up literature and other electronic and printed material
- b. posters and other promotional media in public places, including moving images
- c. cinema and video commercials
- d. advertisements in non-broadcast electronic media, including online advertisements in paid-for space (e.g. banner and pop-up advertisements)
- e. viewdata services
- f. marketing databases containing consumers’ personal information
- g. sales promotions
- h. advertisement promotions

The ASA emphasised that it covers legal advertising because it is a self-regulatory body rather than a legal enforcement body. Therefore, if an advertisement is illegal, such as for an illegal service (e.g. prostitute cards) the ASA would not adjudicate under the Codes because it would be the responsibility of the police to ensure that such advertising did not appear or that there was not an illegal practice taking place that warranted advertising. The ASA does not cover fly posting which is an illegal practice. We **recommend** that anyone who has

concerns about the content of AE related advertising should report the matter to their Local Authority and to the ASA.

Complaints about sexually explicit advertisements

We asked the ASA for information about complaints received about advertisements featuring male/female strippers and pole or lap dancing or advertisements for adult entertainment activities.

The ASA took over the responsibility for regulating broadcast advertising from the Office of Communications (Ofcom) on 1 November 2004. As a result it could only provide information about TV ad complaints received after that date. Of the three specific advertisements we had mentioned (Volvic, Timberland Flooring and Vodafone) the ASA only received complaints about the Volvic one. 26 complaints were received that the advertisement was sexist, inappropriately used sex to sell mineral water, contained inappropriate imagery for family viewing times and promoted negative stereotyping. The complaints were considered by the ASA Council, which decided that there was no justification for an investigation into the complaints under the TV Code.

The only other TV ad that the ASA had received complaints about featured an adult entertainment type service for Bounty and featured a scene showing prostitutes in Amsterdam. 10 viewers objected that it should not have been shown during children's programming and that its scheduling was inappropriate. The ASA Council decided that a scheduling restriction should be imposed to ensure the ad stayed clear of children's programmes. Other complaints were received that the advertisement promoted negative stereotyping of transsexuals although the ASA Council decided that those complaints did not justify an investigation.

The majority of complaints received by the ASA about adult entertainment advertisement were for dancing bars on the basis that they are offensive; most were produced by Spearmint Rhino. Typical objections are that such advertisements are unsuitable for public display, especially when posters have been sited near places of worship or schools, and that because they frequently feature scantily clad women as the subject for adult entertainment, they are sexist and objectify women.

The ASA does occasionally receive complaints about advertisements for sex chat lines that appear in some magazines and newspapers. The ASA notes that contact services and sex chat lines are not illegal and there is no prohibition on them being advertised. As with advertisements about dancing bars most of those complaints are about the product rather than the content of the advertising and therefore, are rarely investigated.

Most complaints about this type of advertising are resolved without investigation. The ASA Council usually considers that advertisements are unlikely to cause serious or widespread offence unless they go further than merely showing women wearing little clothing, for example, if they are sexually explicit. In addition, the ASA considers that most complaints they receive are objections to the product being advertised at all rather than the content of a particular advertisement. For example, the level of nudity displayed in advertisements for dancing bars rarely goes beyond that shown in those for lingerie, although the latter tend to draw fewer complaints.

The ASA does investigate advertisements where there appears to be grounds for believing that serious or widespread offence has been caused. Since 2000, it has received;

2000 28 complaints about advertisements for, or featuring, table dancing, 24 of these were for a Spearmint Rhino.

2001 33 complaints, 31 were about Spearmint Rhino.

2002 71 complaints, 63 were about three separate Spearmint Rhino ads.

2003 10 complaints.

2004 36 complaints, 29 of which were about a Spearmint Rhino poster.

Local Advertising

We found that **City of Glasgow Council and Dundee Council** had effective policies with regard to advertising related to the sex industry, including adult entertainment.

In **Glasgow**, the licensing committee's view on taxi advertising is expressed in its policy on taxi advertising. Each case is considered on its own merits but, broadly, the policy will not allow images of nudity or portrayals of people as sex objects. There is no ban on or restriction of the advertising of adult entertainment premises as such but they are subject to the general policy. All licence holders wishing to carry advertising on their vehicles must obtain the consent of the licensing authority, so this type of advertising is fairly closely monitored.

The taxi advertising policy says that 'In general, each application for approval of advertising material will be considered on its own merits but advertisements will not be permitted which advertise or promote the sale of alcohol or tobacco products; nor if they contain political, ethnic, religious, sectarian, sexual or controversial text; display nude or semi-nude figures; or are likely to offend public taste; depict men, women or children as sexual objects; depict direct and immediate violence to anyone shown in the advertisement or observing it; advertise any racist group or organisation which intends to promote such a group or such organisation and/or any of its activities.'

Fly posting is usually encountered in terms of premises holding entertainment licences and is prohibited by a condition on those licences. Fly posting is also contrary to planning law and enforcement is carried out by the Council's Development and Regeneration Services for the planning authority in terms of planning legislation and not in terms of licensing legislation. Reports of fly posting are generally responded to within a week of notification but if a complaint is received that the material is offensive there is an immediate response. There is currently no monitoring of the amount of material which relates to that of a sexist nature or which is demeaning or offensive to women.

Graffiti is removed by the Council cleansing services and again they will give high priority to complaints regarding offensive material. There is currently no monitoring of the amount of material which relates to that of a sexist nature or which is demeaning or offensive to women.

We also highlight Glasgow's recent distribution of the 'See Something Say Something' Card, a Community Safety initiative, which was launched at the beginning of August 2005. The aim of the campaign was to encourage maximum reporting of graffiti etc and the Council reports an increase in reporting of graffiti, fly tipping, and fly posting from 908 reports to 1400 reports, an increase of 54% on previous figures.

In **Dundee**, The City Council's Licensing Committee has imposed the following condition on all Taxi Licences in terms of the Civic Government (Scotland) Act 1982:

The holder of a taxi licence shall not permit any notice, advertisement or printed bill or any names, letters or numbers to appear upon the outside or inside of any licensed taxi other than the name, lettering and numbers referred to in Condition 10 (i.e. name of the operator and taxi number). Where a variation of this Condition is approved the advertisement must not obliterate names, numbers etc referred to in Condition 10. Notwithstanding the provisions of this condition, the holder of the license shall display "no smoking" signs inside the vehicle in the form and position approved by the council's licensing authority.

Accordingly if the holder of a taxi licence wishes to display advertising on his taxi he requires to apply for approval from the local authority. There have been no variations granted which would allow advertising of adult entertainment on any taxi in the City.

The AEWG **commends** this type of determined and co-ordinated approach to other Councils who wish to take effective action.

Employment status

We noted concerns from performers that their self-employed status allowed exploitation by operators. One performer asked for more defined guidelines for performers and club owners with regards to taxation. The decision on whether a worker is employed or self-employed is made by HM Inland Revenue and Customs (HMRC) and is, therefore, outwith the remit of this Group. We noted, however, two relevant challenges, notably **Customs and Excise Commissioners v Polok and another**⁶⁸; and **16844: Stephen Paul Rudd T/A Duo's Spa and Sauna**⁶⁹. From these findings it would be reasonable to assume that the activities of performers and their customers are separable from the services provided by operators.

The Group also noted that one Scottish operator has taken advice on taxation and provides helpful information to the performers. He commented that many performers want to comply fully with taxation requirements so that they have a legitimate source of income to support applications for loans such as mortgages. We note that HMRC is always willing to provide free advice and guidance on personal taxation and **recommend** that both performers and operators should use that source of advice.

We are concerned by performers' reports of what they see as unfair commission systems and fines. We note that in the absence of a written contract, such terms can be changed

⁶⁸ Simon's Tax Cases 1973 – Present -- Simon's Tax Cases 2002 -- Customs and Excise Commissioners v Polok and another - (2002) STC 361 - (2002) EWHC 156 (Ch) http://www.hmccourts-service.gov.uk/judgmentsfiles/j1028/Customs_Excise_v_Polok.htm

⁶⁹ (VAT & Duties Tribunal Decisions) -- VAT and Duties Tribunal Decisions – Cases 16500 – 16999 – 16844: STEPHEN PAUL RUDD T/A DUO'S SPA AND SAUNA – Decision Number 16844

arbitrarily, and that can be both unfair and exploitative. We **recommend** that performers should have a formal contract which sets out the terms for payment, conduct and working conditions. When choosing where to work, performers may wish to take into account the terms of any such contract.

Litter

In relation to flyers that are handed out to advertise clubs then thrown away and also litter in general left around clubs, the Group found that littering is covered by the Environmental Protection Act 1990.

The Act says that *If any person throws down, drops or otherwise deposits in, into or on various categories of mainly public land, any thing whatsoever in such circumstances as to cause, or contribute to, or tend to lead to, defacement by litter, this constitutes an offence under Section 87 of the Environmental Protection Act 1990.* It is punishable by a fine of up to £2,500. More usually, however, offenders are offered a fixed penalty notice by an authorised local officer, or a police officer, under which they may pay a fixed penalty of £50 and there are no further legal proceedings.

Under Section 89 of the 1990 Act, responsibility for clearing litter rests on a number of so-called duty bodies, which are generally those responsible for the land in question. In most instances of littering, this will be the local authority. The duty body must clear litter to the standards in the Code of Practice on Litter and Refuse, and the Scottish Ministers have powers to direct duty bodies in the performance of this statutory duty. Local authorities may serve litter abatement notices on those who permit land to become defaced by litter, and street litter control notices which specify reasonable requirements relating to keeping the area around premises clean, under Section 92 and 93 respectively of the Act. Under Section 91 any person aggrieved by the failure of a duty body to carry out its clearance duty may obtain an order from the sheriff requiring it to do so.

Phone services

OFCOM, a UK wide regulator, has the power, for the purpose of regulating the provision, content, promotion and marketing of premium rate services, to set conditions that bind the persons to whom they are applied. **ICSTIS**, the Independent Committee for the Supervision of Standards of Telephone Information Services is the regulatory body for premium rate services.

The AEWG contacted ICSTIS for information and found its definitions helpful. We used some of ICSTIS's definitions and terminology in our recommendations with the aim of promoting coherence and consistency.

ICTIS defines Sexual Entertainment Services as services of a clearly sexual nature or any services for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature. It adds that services which are pay for product services, where the product is of a clearly sexual nature, are sexual entertainment services.

- Sexual entertainment services, and promotions for them, must not contain references which suggest or imply the involvement of persons under 18 years of age.

- Promotions for sexual entertainment services must not appear in publications targeted at persons under the age of 18.
- Promotions for sexual entertainment services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectations of those responding to the promotion.
- All sexual entertainment services must provide an introductory message at the beginning of the service stating that:
 - a. the caller must be over the age of 18, and
 - b. the caller should be either the bill-payer or have the bill-payer's permission to call the service

ICSTIS Guidelines are intended to advise the premium rate services industry on how it interprets or applies provisions in the ICSTIS Code of Practice.

Live Services - Providers of live entertainment services are normally required to record all calls and to contribute to the Live Service Providers' Compensation Fund. They must make all reasonable endeavours to discourage under-age callers and unauthorised use. If an operator has reasonable grounds to suspect that the caller is under 18 years of age, the operator should ask the caller their age and date of birth, and ask them any other questions which the operator thinks are appropriate. If the caller hesitates in responding, the replies are inconsistent or the operator is still not satisfied, then the caller should be regarded as being under 18 and the call should be terminated.

Recording Equipment - Service providers are required to record all services, and recording equipment must be compatible with ICSTIS' replay facilities. Recordings must be retained for a period of at least one year and delivered to ICSTIS and the Adjudicator within three working days of request.

Sex Advice Services - To avoid being classified as sexual entertainment services, the content of advice services must not be presented in a sexually titillating manner.

Printed material

UK laws on pornography are covered by the Obscene Publications Act 1959 in England and Wales and in Scotland by The Civic Governance (Scotland) Act 1982.

The AEWG noted that a petition was lodged on behalf of Scottish Women Against Pornography, calling for the Scottish Parliament to define pornographic material as incitement to sexual hatred and to make such incitement an offence similar to that of incitement to racial hatred. The Group decided that the focus of their work should be on matters where there are relevant powers for the devolved Government in Scotland. The broader aspects of the control of the media which can contain pornographic material are reserved matters, and as such were not included in the scope of work for the Group. The petition was therefore outwith our remit and was directed to the group in the Scottish Executive dealing with Extreme Pornography.

In March 2006, the National Federation of Retail Newsagents (NFRN), which represents 19,000 independent newsagents, issued guidelines to its members on the display of magazines and newspapers that display sexually explicit images. Such items should be displayed out of the sight of children but newspapers can remain on the bottom shelf if they are folded in a way to conceal sexually explicit content. The guidance is not legally binding.

Public order

The Group's remit was to recommend regulations for adult entertainment within specific premises. Any activities that take place outwith premises would potentially be covered by existing legislation on public order. We are satisfied that there is adequate legislation on public order, though we note concerns that members of the public are reluctant to report incidents and can be concerned at the lack of an adequate response. We **recommend** that members of local communities should always report public disorder to the local Police.

The report on the Economic Impact of AE found that:

- “At a **Scotland-wide** level it was argued by Visit Scotland that currently there is little negative impact over and above the impact of bars and nightclubs in city centres. There may be a slight problem with specific areas, but the AE industry does not discourage visitors to cities in general. This was seen to be partly as visitors are much more liberal and tolerant than in the past and expect to see a red light district in any major city. Disturbances connected with AE establishments were not seen to discourage tourism or tourist spend more than other bars or nightclubs.” In **Dundee**, the researchers found that “There appear to be very few negative impacts associated with the industry in Dundee, which may reflect the small scale of the industry there. Residents have reported littering and prostitution as associated with AE premises, but these reports are uncommon. The licensing board reported that there is a perceived crime problem associated with AE by some, but that crime statistics do not appear to support this. The police report that there have been very occasional problems of indecent advances towards the performers, but these are rare. Standards of stewarding in AE venues are usually good.” (**Economic Impact Report see Annex 5**)

Sex shops

Local Authorities already have the power to license sex shops but it is at their discretion whether or not they do so. The Group decided that sex shops were already capable of being regulated.

Theatres and cinemas

The Civic Governance (Scotland) Act 1982 Pt II. Section 41. **Public entertainment licenses** stipulates that

- (1) A licence, to be known as a “public entertainment licence”, shall be required for the use of premises as a place of public entertainment but does not include-

premises licensed under the Theatres Act 1968, Section 1 of the Cinemas Act 1985 or Part II of the Gaming Act 1968.

A licence is required under the Theatres Act 1968 for the 'public performance of any play'. If a premises wished to exhibit films for commercial purposes it would require to be licensed under the Cinemas Act 1985. Licences for the aforementioned are granted by the local authority and where these licences are held a public entertainment licence would not be required.

The classification of films is a matter reserved to Westminster and is therefore outwith the remit of the AEWG. The British Board of Film Classification is the independent regulator of the film and video industry in the UK.

Under Section 1 of The Cinemas Act 1985 "no premises shall be used for a film exhibition unless they are licensed for the purpose under this section". The licensing authority is the Local Authority in whose area the premises are situated. The licence is granted subject to such conditions as the Local Authority may determine.

The responsibility for classification of films and videos lies with the British Board of Film Classification. The BBFC stipulates that "any material which is in breach of the criminal law, including material judged to be obscene under the current interpretation of the Obscene Publications Act 1959." is not acceptable. There is a category "R18" which applies to films to be shown only in specially licensed cinemas or supplied only in licensed sex shops and to persons of not less than 18 years. According to the BBFC "the "R18" category is a special and legally restricted classification primarily for explicit works of consenting sex between adults. Films may only be shown to adults in specially licensed cinemas and videos may be supplied to adults only in licensed sex shops. "R18" videos may not be supplied by mail order".

Local authorities are not bound to accept the BBFC's classification of a particular film, although this does not happen very often. If a cinema wished to show an "R18" film it would need to ensure that the conditions of its licence allow this or obtain the Local Authority's consent. For example, in Dundee the conditions attached to Cinema Licences allow the showing of films in all other categories, e.g. "PG", "12", "15", "18", etc. but specify that other material may be shown with the consent of the Local Authority.

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