

DUMFRIES AND GALLOWAY COUNCIL

**LICENSING POLICY STATEMENT ON THE LICENSING OF SEXUAL
ENTERTAINMENT VENUES ('SEV POLICY STATEMENT')**

Section 45C Civic Government (Scotland) Act 1982 as modified by
Section 76 Air Weapons and Licensing (Scotland) Act 2015

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1. INTRODUCTION

1.1 The Air Weapons and Licensing (Scotland) Act 2015 made a number of changes to the Civic Government (Scotland) Act 1982 (1982 Act). One of the changes introduces a new, discretionary and specific licensing regime for Sexual Entertainment Venues (SEVs).

1.2 The legislative provisions in relation to SEVs are contained within sections 45A to 45F and modified Schedule 2 of the 1982 Act.

1.3 As this licensing scheme is discretionary, it is up to each Local Authority in Scotland to decide whether or not they wish to licence SEVs.

1.4 If a Local Authority wishes to licence SEVs it requires to pass a Resolution and identify a date from which that Resolution will take effect. In law, this date must be at least one year after the date the Resolution is passed.

1.5 If a Local Authority chooses not to pass a Resolution then SEVs can operate within that Local Authority area without any regulation.

1.6 At a meeting on 24 August 2021, the Communities Committee of Dumfries and Galloway Council passed a Resolution in terms of sections 45B(1) and 45B(2) 1982 Act to licence SEVs as it determined that SEVs should operate within a regulated environment rather than without regulation. The date this Resolution takes effect is 1 January 2023.

1.7 In terms of section 45C 1982 Act, where a Local Authority passes a Resolution it must prepare a SEV Policy Statement – being a statement of the Local Authority's policy with respect to the exercise of their functions in relation to the licensing of SEVs.

1.8 This document is Dumfries and Galloway Council's SEV Policy Statement.

1.9 By licensing SEVs, Dumfries and Galloway Council's key aims are to :

- Prevent public nuisance, crime and disorder ;
- Secure public safety ;
- Protect children and young people from harm ;
- Reduce violence against women

2. WHICH PREMISES REQUIRE A LICENCE?

2.1 A licence is needed for a Sexual Entertainment Venue unless the rules about Occasional Use or Waivers apply (paragraphs 9 and 10).

2.2 A Sexual Entertainment Venue is defined in the legislation as 'any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser' (section 45A 1982 Act).

2.3 'Premises' includes any vehicle, vessel or stall but does not include any private dwelling to which the public is not admitted.

2.4 A list of statutory definitions is detailed at Appendix 1 for the following terms:

- 'Audience';
- 'Financial gain';
- 'Organiser';
- 'Premises'
- 'Sexual Entertainment' and
- 'Display of Nudity'.

2.5 In terms of Schedule 2 of the 1982 Act, Sex Shops and Sex Cinemas are not Sexual Entertainment Venues and therefore do not require a SEV licence. These types of premises are defined separately within the 1982 Act.

2.6 Premises at which Sexual Entertainment is provided on an occasional basis are not to be treated as a SEV if the Occasional rules apply – see paragraph 9 for more detail on 'Occasional Use'.

2.7 Where a premises which requires an SEV wishes to be exempt then an application can be made for Waiver of a licence (see Paragraph 10).

3. APPLICATIONS FOR A SEV LICENCE OR WAIVER

3.1 An application must be made in writing – for more information including the information that requires to be submitted with an application form see Appendix 2.

3.2 Appendix 3 details a note of procedure to be followed which includes statutory notification requirements that an Applicant must follow and also the procedure that the Local Authority will follow when it receives an application. This note also includes details as to who will be consulted when an Application is made and what happens afterwards.

3.3 All applications for the grant, renewal or waiver of an SEV licence will be determined at a Hearing of the Civic Government Licensing Panel. This includes applications for variations and consent to material change as well as revocations. No matters in relation to SEVs will be determined via delegated authority though the Local Authority reserves the right to review this position in the future and this position may change.

3.4 The Licensing Panel will not determine an application until satisfied that the Applicant has completed the full application procedure, submitted relevant fee and submitted all required documentation.

3.5 In deciding whether or not to grant or renew a Licence or Waiver, the Licensing Panel will consider each Application on its own merits and will take into account the following:

- Any Objections or Representations
- The Licensing Policy Statement
- Statutory Criteria (Appendix 4)

- Scottish Government Guidance
- Any other relevant considerations

3.6 With regard to Waivers, any premises that requires a SEV is unlikely to be granted a Waiver other than in exceptional circumstances. Since the Council has resolved to licence SEVs, there will be presumption against grant of a Waiver. An applicant requesting a Waiver would be asked to attend a Hearing of the Licensing Panel and seek to rebut that presumption. Given that Occasional Use exemptions exist under the 1982 Act, it is unlikely that Waivers will be granted.

3.7 Any licence or Waiver that is granted will be subject to Standard Conditions as detailed at Appendix 5. The Licensing Panel also retains the legal power to attach additional, reasonable conditions as it thinks fit.

3.8 Licences will be granted for the duration of one year but can be granted for a shorter period as the Council may decide at the time when they grant or renew the licence.

3.9 It is the responsibility of the licence holder to ensure that they renew their licence on time and no renewal reminder letters will be issued to the licence holder.

4. POLICY

4.1 The legislation in relation to SEVs relates to the following two Scottish Government Policies:

- 'Equally Safe: Scotland's Strategy for preventing and eradicating violence against women and girls' and
- 'Human Trafficking and Exploitation Strategy'.

4.2 In preparing this SEV Policy Statement, the Council has fulfilled its duties under section 45C(3) 1982 Act to:

- Consider the impact of the licensing of SEVS in their area, having regard, in particular, to how it will affect the objectives of:
 - Preventing public nuisance, crime and disorder
 - Securing public safety
 - Protecting children and young people from harm
 - Reducing violence against women

4.3 In preparing this Statement, the Council must consult such persons or bodies as they consider appropriate and those who were consulted for the purposes of this Statement are detailed at Appendix 6.

4.4 In fulfilling its duties, the Council has consulted with consultees and advertised the consultation to the general public seeking their views. It has also considered how it can exercise its functions so as to advance the statutory licensing objectives detailed above. The primary purpose of this Policy Statement is to ensure that Dumfries and Galloway Council promotes these objectives in exercising its licensing functions.

4.5 The Council has also set out its Standard Conditions (Appendix 5) which will attach to licences to assist compliance with the licensing objectives. The Council also retains the legal power to attach additional, reasonable conditions to licences on a case by case basis and, in doing this, the Council must have regard to how the additional conditions relate to Mandatory Conditions set out in the 1982 Act, Regulations, Orders or other instruments set out in terms of the Act.

4.6 The Council will take into consideration all material provided by the applicant as part of the application process and all other relevant factors either because they are relevant specifically to the application or relevant in terms of the legislation.

5. OBJECTIONS AND REPRESENTATIONS

5.1 Paragraph 8(2) of Schedule 2 of the 1982 Act provides that:

‘Any objection or representation relating to an application for the grant or renewal of a licence under this Schedule shall, subject to sub-paragraph (3) below, be entertained by the local authority, if, but only if, the objection or representation-

- (a) is in writing;
- (b) specifies the grounds of the objection or, as the case may be, the nature of the representation;
- (c) specifies the name and address of the person making it;
- (d) is signed by him or on his behalf;
- (e) was made to them within 28 days of whichever is the later or, as the case may be, latest of the following dates –
 - (i) the date of submission to them of the application;
 - (ii) the date when public advertisement was first given under paragraph 7(2) above;
 - (iii) the date, if any, specified by the local authority under paragraph 7(10) above”.

5.2 Paragraph 8(3) also provides that it shall be competent for a Local Authority to entertain an objection or representation received by them before they take a final decision upon the application to which it relates if they are satisfied that there is sufficient reason why it was not made in the time required under paragraph 8(2).

5.3 Third parties may make objections and representations in relation to an application for grant or renewal of a licence including Waiver applications.

5.4 Any objection or representation should state clearly the legal ground for objecting or submitting the representation. Mandatory grounds of refusal are detailed at paragraph 9(3), Schedule 2 to the 1982 Act and discretionary grounds of refusal are listed at paragraphs 9(4) to 9(6) Schedule 2 to the 1982 Act. (see also Appendix 4).

5.5 Any objection or representation which is not specific or does not clearly state a legal ground is unlikely to be accepted as a valid objection or representation.

5.6 A petition is unlikely to be accepted as a valid objection or representation as it is more difficult for the Council to identify whether the petition is a series of individual

complaints or whether all the signatories have the same complaint. Persons who sign petitions must state clearly their name and address. The Council will place more weight on objections and representations received from those directly impacted by the presence of a SEV.

5.7 The applicant is entitled to receive fair notice of complaints and the objector should expect to be able to answer questions in relation to the complaint.

5.8 Objections and representations must relate to matters under the Civic Government (Scotland) Act 1982 and not to other matters that are outwith this Act's remit. They must also relate directly to the application for a SEV.

5.9 The Council will make a decision whether or not to grant an application for a SEV based on all the relevant material before it and having considered the merits of the application.

6. THE GENERAL PRESUMPTION

6.1 The Council is required to set the number of SEVs permitted in their area and for each relevant locality.

6.2 The basis of this limit is that the Council is entitled to refuse an application for the grant or renewal of a licence on a number of grounds, including:

that the number of SEVs in the Local Authority's area or Relevant Locality at the time the application is made is equal to or exceeds the number which the Local Authority consider is appropriate for their area or that locality" (section 45B(6)(e)(i) and Schedule 2 paragraphs 9(4) and 9(5)(c).

6.3 Schedule 2, paragraph 9(6) also provides that, for the purposes of the above, Nil may be an appropriate number.

6.4 The relevant locality means (Schedule 2, paragraph 9(7)):

- in relation to premises, the locality where they are situated; and
- in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a SEV

6.5 Accordingly, the Council has determined that the whole of the Dumfries and Galloway area is the relevant locality (Section 45B(6)(e)(ii)(a) and Schedule 2, Paragraph 9(5A))

6.6 Further information regarding the locality can be found at Appendix 7

6.7 Following consultation and balancing respective interests, the Council has also determined that the appropriate number of SEVs within the entirety of the Dumfries and Galloway area will be **zero**. This is a rebuttable presumption. Each application will be determined on its own merits.

7. SENSITIVE PREMISES

7.1 The presumption of refusal will be regarded as being enhanced if the proposed SEV is within 500m of the following Sensitive Premises:-

- schools, play areas, nurseries, parks, swimming pools and other sports facilities
- cinemas, theatres and concert halls and any other family leisure facilities
- libraries and museums
- public buildings including Council offices
- retail shopping areas
- residential areas
- places of worship, celebration or commemoration
- community centres
- services focussed on supporting women, children and young people, such as women's refuges
- services focussed on supporting people with substance abuse issues, mental health issues, or other vulnerable people
- historic buildings or tourist attractions
- Premises likely to be frequented by people under 18 or families
- roads, footpaths and other access routes to any of the above

7.2 In determining whether or not the Sensitive Premises Presumption applies, the Council will also have regard to:

(a) Whether any SEVs are already operating, or have operated, in the Relevant Locality (whether under a SEV Licence, under the 'Occasional Exemption', or with a Waiver);

(b) Whether there have been reports to the Police or Home Office of incidents within the Relevant Locality (whether or not leading to prosecution or conviction) of human trafficking or exploitation, or breaches of immigration laws by the Applicant or anyone else concerned with the proposed SEV;

(c) Whether there have been reports to the Police of incidents within 400 metres of the proposed SEV (whether or not leading to prosecution or conviction) of crime or anti-social behaviour.

(d) The existing character and function of the area in which the SEV is to be located; and

(e) The views of residents and other relevant interested parties as far as is possible.

7.3 The Sensitive Premises Presumption is a rebuttable presumption. Each application will be determined on its own merits.

8. PREMISES WITH OTHER LICENCES

8.1 If a premises is licensed under the Licensing (Scotland) Act 2005, it is not sufficient for those premises to state that 'Adult Entertainment' is permitted on the Operating Plan. If such entertainment is being provided and it falls within the statutory definition of a SEV, then an SEV licence will be required.

8.2 The alcohol premises licence will only cover the sale of alcohol.

8.3 If the premises take a booking where 'sexual entertainment' might happen, the premises should advise those booking that such entertainment is prohibited.

8.4 If 'sexual entertainment' does take place on premises where no SEV has been obtained and there has been no Waiver granted, the Premises Manager and Premises Licence Holder can be prosecuted for not having an SEV licence. This could also result in the premises and personal licences being reviewed by Dumfries and Galloway Divisional Licensing Boards. Such a review could result in licences being suspended or revoked.

8.5 Sexual Entertainment is also a specific statutory exclusion under the Public Entertainment Licensing regime.

8.6 All of the above within this section of the Policy is subject to the Occasional Use Exemption which is noted at Part 9 below.

9. OCCASIONAL USE - ('the 4 in a year exemption')

9.1 There will be some occasions where a premises may not require an SEV licence. It is legally permissible for premises to be used for 'sexual entertainment' for a proposed event which doesn't exceed the duration of 24 hours as long as the premises hasn't been used for 'sexual entertainment' on not more than 3 previous occasions in the past 12 months. This means that a fourth occasion within a 12 month period is permitted but any more than 4 is not.

9.2 Each occasion must last no more than 24 hours. If any occasion last more than 24 hours, each period of 24 hours will be deemed to be a separate occasion.

9.3 The Occasional Exemption rule applies to a rolling year and not the calendar year (being 1 January to 31 December). To work out how many exempt occasions have taken place, you must count back a period of 12 months from the last occasion.

9.4 You do not have to tell the Licensing Service or Police Scotland that you are using your Occasional Use exemption but you are asked to do so as a matter of good practice. It is preferable that this notification of Occasional Exemption Use is made in writing so that the Licensing Service can accurately note this on its system. There is no fee for this requested notification of Occasional Use Exemption.

10. WAIVERS

10.1 An application can be made to the Council to waive the requirement for an SEV licence.

10.2 The Council can allow premises to book 'sexual entertainment' without a licence. There is no fee for a Waiver application.

10.3 For at least 21 continuous days before applying to the Council the operator must display a "Notice of Application" at or near the proposed Premises stating that they are proposing to use the premises as a Sexual Entertainment Venue, and stating:

- the proposed dates of operation, and
- the proposed times of operation.

10.4 After that period, the operator must give the Council a Certificate of Display confirming display for that period.

10.5 Both the Notice of Application and Certificate of Display are available from Dumfries and Galloway Council's licensing webpage.

10.6 The Application for a Waiver:

- Must be in writing;
- Must contain a copy of the Site Notice
- Must contain the same information and include a Layout Plan and a Location Plan as is the Operator was applying for a licence (Appendix 2).

10.7 Following receipt of the application for Waiver, the Council will:

- Forward a copy of the Application with associated documents to Police Scotland and
- Put a public notice on its website.

10.8 An application for Waiver will be considered at a meeting of the Licensing Panel. The Licensing Panel will not consider the application until it has received the Certificate of Display.

10.9 The Council may waive the requirement of a licence if they consider that to require a licence would be unreasonable or inappropriate. In determining such, the Licensing Panel will take into account:

- Any Objections or Representations received;
- The terms of this SEV Licensing Policy Statement;
- Scottish Government Guidance and
- Any other relevant considerations.

10.10 The Licensing Panel will consider each Application on its merits but is of the opinion that Waivers will only be granted in exceptional circumstances.

10.11 It will approach a Waiver Application with the presumption that it should be refused. The Applicant should attend the Licensing Panel hearing and seek to rebut that presumption. The Council is unlikely to consider it would be appropriate to permit waiver from the requirements to hold a SEV Licence, particularly as the legislation allows an Occasional Use exemption for up to 4 separate Occasions in a rolling 12 month period.

10.12 A Waiver may be for such period as the Council thinks fit and each case the duration will be determined on its own merits but the period shall be no longer than 12 months.

10.13 The Waiver shall have the same conditions that will attach to an SEV licence (see Appendix 5 for Standard Conditions) with the exception of condition 9.1 which will be replaced with the following:

- *'The Organiser must display on the exterior of the Premises at each Customer entrance, in a position where it may be easily read by people outside the Premises, a Notice stating:*
- *'This is a Sexual Entertainment Venue. No-one under 18 can enter. The Premises are monitored by CCTV. These Premises have in place a Waiver granted by Dumfries and Galloway Council, which means that they do not require a Licence for Sexual Entertainment. '*

10.14 The Council will notify Police Scotland in terms of its legal obligation to do so where a Waiver is granted.

10.15 It is not possible to renew a Waiver. Once it expires, the premises can only operate as a SEV if a SEV licence is in place or if another Waiver is granted.

10.16 A Waiver can be terminated by the Council at any time after it is granted and the Council will tell Police Scotland if it is terminated.

11. RENEWAL OF A LICENCE

11.1 If an application for the renewal of a licence is made before its expiry date the existing licence shall continue to have effect until a final decision on the application is made by the Local Authority.

11.2 If the expiry date has already passed when the applicant makes a renewal application, this will be treated as an Application for a new grant of licence unless the following conditions are met:-

- The application is made no later than 28 days after the expiry date; and
- The Council is satisfied that good cause is shown to accept the late application.

11.3 The applicant should state in writing what the good cause is for accepting the late application.

11.4 The procedures for a Renewal Application are the same as they are for a New Grant of a Licence, but the Licence is not guaranteed to be renewed - the Local Authority is not

obliged to grant a renewal. The Council will take into account the operation of the Premises during the Licence, and any allegations of offences and/or breaches of Licence Conditions.

11.5. Unlike Applications for the grant or renewal of other types of Licence, Applications for the grant or renewal of SEV Licences will be referred to the Licensing Panel. Delegated Powers will not be used.

12. REVOCATION OF A LICENCE

12.1 The Council may at any time revoke a Licence under the legislation on the basis that:-

- a) If one of the grounds of refusal applies (See Appendix 4)
- b) If in their opinion, any of the grounds relating to the fitness of the Licence Holder or anyone involved with the licence apply or
- c) If a condition of the licence has been contravened.

13. CONSULTATION

13.1 Consultation on this document took place between 1 April to 31 May 2022. The Policy, including the zero SEV policy, will be kept under review and revised if appropriate by Supplementary Policy Statements. The Policy will be applied unless or until so revised. It may also be subject to legislative change.

13.2 Dumfries and Galloway Council adopted this Policy at the meeting of its Communities Committee on 25 August 2022.

13.3 Any comments you may wish to make on this Policy can be submitted via email to licensing@dumgal.gov.uk.

13.4 Copies of the Policy Statement will be available for public inspection, free of charge and during office hours at Municipal Chambers, Buccleuch St, Dumfries DG1 2AD.

13.5 This Policy Statement will also be published on the Council's webpage.

13.6 Any personal information collected will be held in accordance with the requirements of data protection legislation.

DEFINITIONS

‘Audience’ – Includes an audience of one person. Therefore, a one to one performance (including a ‘peep show’) would require a SEV licence.

‘Financial Gain’ - Includes financial gain arising directly or indirectly from the provision of the sexual entertainment.

‘Organiser’ – the person ‘A’ who is responsible for –

- (i) The management of the premises or
- (ii) The organisation or management of the sexual entertainment or
- (iii) Where ‘A’ exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise) that other person;

‘Premises’ – includes any vehicle, vessel or stall but does not include any private dwelling to which the public is not admitted.

‘Sexual Entertainment’ – means

- Any live performance or
- Any live display of nudity

which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)

‘Display of Nudity’ – means

- (i) In the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus,
- (ii) In the case of a man, the showing of (to any extent and by any means) his pubic area, genitals or anus.

ADDITIONAL INFORMATION TO BE SUBMITTED WITH AN APPLICATION FORM**Application Form**

The application form for a SEV licence may be found on www.dumgal.gov.uk/licensing

Hard copies are also available from Municipal Chambers, Buccleuch St, Dumfries DG1 2AD.

Anyone applying to the Council for the grant or renewal of a SEV licence (or a Waiver requesting removal of the requirement to be licensed) will require to make an application in writing to the Licensing Authority setting out the following:

1. Particulars of the Applicant:

The full name, date of birth and place of birth of both:

- The owner of the premises
- The premises manager

Where the owner is a Partnership or Company:

- The full name, date of birth and place of birth of all the people involved in the management and/or control of the Partnership or Company;
- If the applicant is a Company, copies of the Memorandum and Articles of Association of the Company;
- If the applicant is a Partnership, a certified copy of the Partnership Agreement.

In relation to all of these people (the owner, Premises Manager and other relevant persons), there should be statements:

- Of what experience (if any) the person has had in operating SEVs or premises licensed for the sale of alcohol anywhere in the United Kingdom;
- Subject to the Rehabilitation of Offenders Act 1974 (as amended by the Management of Offenders (Scotland) Act 2019) of any unspent convictions or alternatives to prosecution relating to that person;
- Any administrative penalties relating to Social Security of Immigration relating to that person.

A copy of any other licence/s in place in respect of the premises, vehicle, vessel or stall must also be submitted (for example, a Premises Licence issued under the Licensing (Scotland) Act 2005).

2. Layout Plan

The application should include a Layout Plan to scale 1:100 (or more detailed). This should include a legend explaining the scale used and the symbols used.

The layout plan should describe the premises, including:

- The extent and dimensions of the external and internal walls of the premises;
- The location and names of any streets surrounding the premises from which members of the public will have access to the premises;
- the location and width of each point of access to and egress from the Premises;

- the location and width of any other escape routes from the Premises;
- the location of any equipment used for the detection or warning of fire or smoke or for fighting fires;
- the location of any steps, stairs, elevators or lifts on the Premises;
- the layout of rooms and features of the Premises (such as stages, bars, cloakrooms, performance areas, and dressing rooms);
- the extent of the public areas outlined in blue;
- the staff-only areas outlined in red;
- the location of any toilets on the Premises (identified as male, female or disabled as appropriate);
- the location and field of view of any CCTV camera;
- drawings showing the front elevation as proposed including any proposed signage, advertising and window display;
- for any stage or raised area, the location and height relative to the floor;
- the position of any ramps, lifts or other facilities for the benefit of disabled people

3. Location Plan

The Application should include a Location Plan at scale 1:1,500 (or more detailed). This should include a legend explaining the scale used and the symbols used. The Location Plan should:

- cover an area with a radius of not less than 1,000 metres from the boundary of the Premises, showing the Premises in relation to surrounding streets and buildings;
- identify Sensitive Premises in that area (defined in Part 7 of this Policy Statement).

4. Premises

The Application must state in writing:

- the address of the Premises (or where the application relates to a vehicle, vessel or stall, where it is to be used);
- the date(s) and time(s) that Sexual Entertainment will be provided, on each day of the week;
- the type(s) of Sexual Entertainment proposed;
- the minimum ages of the Performers;
- The numbers of people who will be on the Premises at any one time:
 - Customers (this will be the 'Customer capacity' figure stated in the Licence or Waiver);
 - Performers
 - Stewards
 - Other staff
- The arrangements proposed for stewarding; and
- Confirmation that no-one aged under 18 years old will be allowed on the Premises while Sexual Entertainment is being provided.

5. Planning Permission

The Applicant should ensure that they have complied with Planning related issues and should provide a copy of any Planning Decision Notices/relevant planning documentation evidencing that the proposal to use the premises as a SEV is consistent with planning permission. The application will be sent to the Council's Planning department for comment.

6. Permitted Hours

The Applicant must state what days and times it is proposed that the Premises should be open to the public. The Council may restrict these days/times.

APPENDIX 3**NOTE OF PROCEDURE WHEN AN APPLICATION IS RECEIVED**

When an Applicant asks the Council for the grant or renewal of a SEV Licence, the Applicant must do the following:-

Before lodging the Application

The Applicant must ask the Council:

- (a) to specify a newspaper to be used for publication of an advertisement, or
- (b) to dispense with the requirement to publish a newspaper advertisement (in which case the Council will publish notice of the Application electronically).

If the request is (b), the Applicant should specify why newspaper advertisement is thought not to be appropriate.

When making the Application

- (a) The Application must be in writing and must contain the information set out in Appendix 2;
- (b) The Application should be accompanied by the prescribed fee. The fee will not be reduced or refunded if the Application is refused or if the Licence is granted for less than the dates/times requested. The fee is £1586 for grant or renewal whether or not granted for a one year period or less.
- (c) The Applicant must display a "Notice of Application" (in the form prescribed below) on or near the Premises in a place where the Notice can conveniently be read by the public. This Notice must be displayed for 21 days, beginning with the date of the Application (Schedule 2, Paragraph 7(4)).

After making the Application

The Applicant must:

- a) not later than 7 days after the date of the Application:

Unless the Council has dispensed with newspaper advertisement, publish an advertisement in the newspaper circulating in the Council area previously specified by the Council; the advertisement must be in the prescribed form (see "Notice of Application" below). If the Council has dispensed with newspaper advertisement, the Council will publish such a Notice electronically not later than 7 days after the date of the Application.

- b) not later than 7 days after the date of the Application:

give the Council a certificate confirming that this has been done;

- c) Where the application is in respect of a premises, notice of it shall in addition be displayed for 21 days, beginning with the date of the application, on or near the premises in a place where the notice can conveniently be read by the public.
- d) as soon as possible after the expiry of the period of 21 days for display of the Site Notice:

give the Council a Certificate stating that he/she has complied with the requirement to display the Site Notice, and a copy of the Site Notice.

- e) if relevant, as soon as possible after newspaper publication:

give the Council one complete copy of the newspaper containing the advertisement of the Application.

Notice of Application

If displayed at or near the proposed SEV the Notice must be

- on A4-sized paper (or larger)
- printed legibly or typed in black ink
- in a font size of 16 points or larger

arranged so as to ensure that it remains legible throughout the public notice period (for example, laminated or attached to the inside of a clear window facing towards outside)

This Notice is prescribed by the Council under Schedule 2, Paragraph 7(7).

"Licensing of Sexual Entertainment Venues

Civic Government (Scotland) Act 1982 (as modified by Section 76 of the Air Weapons and Licensing (Scotland) Act 2015)

On [date of lodging] an Application was made to Dumfries and Galloway Council by [Applicant's Name] for the

**[delete as appropriate]
Grant of a Licence
Renewal of a Licence
Waiver of the need to have a Licence**

**for a "Sexual Entertainment Venue" at
[Address of Premises].**

Anyone wishing to state an Objection or Representation about this proposal must do so

- **in signed writing (an email on its own is not sufficient);**
- **specifying the grounds of Objection or Representation;**
- **specifying the name and address of the person making it;**
- **stating whether or not the person consents to their name and address being given to the Applicant;**

The possible grounds for refusal of a Licence are stated in 1982 Act, Schedule 2, Paragraph 9(5).

The letter of Objection/Representation must be sent to:

**The Licensing Manager
Municipal Chambers
Buccleuch Street
Dumfries
DG1 2AD**

The Council will advise the Applicant of the general terms of any letter of Objection/Representation received, but will not reveal the sender's name or address unless the sender consents. The Council will assume that the sender does not consent unless the sender positively states otherwise. If the sender does not consent, the Council will redact the letter before sending it to the Applicant.

The sender will be invited to the meeting of the Licensing Panel which determines the Application.

An Objection or Representation can only be accepted if it is received by the Council within 28 days of the date of publication (if it has been posted by Registered or Recorded Delivery post to the Council so as to arrive by that date, it will be accepted as being in time even if it arrives later).

The Council is entitled (but not obliged) to accept a late letter of Objection/Representation if there is a sufficient reason why it was not made in time.. There is no guarantee that the Council will accept a late letter of Objection/Representation. If a letter of Objection/Representation is sent late then there is the possibility that the Council will already have decided on the Licence Application in which case there will be no review of that decision.

Procedure in the Council

In terms of Schedule 2, paragraphs 7(3C) and 7(3D) 1982 Act the designated list of those who will receive a copy of the application is as follows:

- All Councillors in the Council;
- Police Scotland;
- Scottish Fire and Rescue Service;
- Council's Building Standard's Department;
- Council's Environmental Health Department;
- Council's Planning Department;
- Council's Education Services;
- Council's Adult and Child Protection Services;
- Local Community Council (where the proposed SEV is proposed to be located).

The Applicant must ensure that they comply with their legal obligations in terms of Schedule 2, paragraph 7(3C) with regard to sending a copy of the application to the persons above no later than 7 days after the date of the application and submitting to the Local Authority a certificate stating that the applicant has complied with this obligation.

If the Council has dispensed with the requirement on the Applicant to publish a newspaper advertisement, the Council will publish the "Notice of Application" (above) on its website for a continuous period of at least 21 days.

APPENDIX 4**STATUTORY CRITERIA INCLUDING GROUNDS OF REFUSAL**

1. These are detailed at paragraph 9, Schedule 2 of the 1982 Act.

2. There are two types of grounds of refusal:

(a) Mandatory Grounds of Refusal (see below): if these exist then the Licensing Authority is prohibited in law from granting the licence;

(b) Discretionary Grounds of Refusal (see below): these are possible reasons for the Licensing Authority to grant or refuse the licence. In this case, the Licensing Authority will hold a Hearing and, after having heard from everyone relevant to the application (including the applicant, the Police and anyone who has submitted an objection and/or representation), the Licensing Authority will decide whether or not to grant the licence.

3. The legislation sometimes refer to a 'Sex Shop' instead of a 'Sexual Entertainment Venue'. The reason for this is that the 1982 Act has always had a system of licensing 'Sex Shops', and when the new provisions about 'Sexual Entertainment Venues' were to be introduced, the Scottish Parliament did this by modifying the existing system rather than by creating a separate system. This was done via Section 45B(6)(a) of the 1982 Act, which provides that:

"(a) references to a Sex Shop are to be read as references to a Sexual Entertainment Venue"

4. Mandatory Grounds of Refusal

Paragraph 9(3) Schedule 2 of the 1982 Act states that a licence under this Schedule shall not be granted:

- The applicant is under the age of 18;
- The applicant is disqualified from holding a SEV licence;
- The applicant has been convicted of an offence relating to the enforcement of SEV legislation;
- The applicant has not resided in the United Kingdom for a period of at least 6 months (or, if a Company, is not registered in the United Kingdom);
- The applicant has been refused a SEV licence in the last 12 months.

5. Discretionary Grounds of Refusal

5.1 These are detailed in paragraphs 9(4) to 9(6) Schedule 2 of the 1982 Act and provide that the Local Authority must refuse an application for the grant or renewal of a SEV licence if, in their opinion, one or more of the following grounds apply:

a) That the applicant or, where the applicant is a person other than a natural person, any director of it or any partner in it or any person responsible for its management, is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;

- b) That, if the licence were to be granted or renewed, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself;
- c) That the number of SEVs in the relevant locality at the time the application is made is equal to or exceeds the number which the Local Authority consider is appropriate for that locality;
- d) That the grant or renewal of the licence would be inappropriate, having regard:
 - (i) To the character of the relevant locality, or
 - (ii) To the use to which any premises in the vicinity are put; or
 - (iii) To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

5.2 Nil may be an appropriate number for the purposes of paragraph 9 (5)(c) of Schedule 2. (being 'c' above).

- 5.3 In determining whether the applicant or anyone associated with the applicant is a suitable person to hold the licence, considerations for the Council will include:
- (i) the relevant knowledge and experience possessed by that person;
 - (ii) any evidence of the operation of any existing or previous licences (whether or not relating to SEVs), including any licence held in any part of the United Kingdom.
 - (iii) the terms of any Objections and/or Representations received.

APPENDIX 5**STANDARD CONDITIONS****Status of Conditions**

Any SEV Licence will have the following Standard Conditions made by the Council under Section 45F.

These Conditions will be subject to any Special Conditions prescribed by the Council in relation to particular Premises. In the event of a conflict between the Standard Conditions and any Special Conditions, the Special Conditions shall prevail.

Both the Standard Conditions and any Special Conditions are subject to any Mandatory Conditions prescribed by Scottish Ministers under Section 45E.

Definitions

'Performer' - a person who is engaged to provide 'Sexual Entertainment';

'Customer' - a person who is on the Premises but does not work for the Organiser;

'Premises Manager' - a natural person (not a company or partnership) named on the Licence (or an 'Acting Premises Manager' authorised under Condition 11). The Premises Manager is treated as a Joint Holder of the Licence and will be named in the Licence document.

1. Records and copy documents

1.1. Where these Conditions require the keeping of records and copy documents, these things must be kept in writing or on a computer.

1.2. The Licence-Holder must ensure that at all times:

- these things are available for viewing by the Police, the Civic Licensing Standards Officer, and any other authorised Council officer on request;
- there is a member of staff who is able to access these things, display them (if on computer or television monitor), and make copies.

1.3. Where these Conditions require that records and copy documents should be kept, these things should be kept for 12 months beginning:

- (a) if relating to a Performer or other member of staff, when that person stopped working on the Premises;
- (b) if relating to a Customer, when that person was admitted to or excluded from the Premises;

or, if less, 12 months after the event recorded.

Those records and copies shall be available to the Police, the Civic Licensing Standards Officer, and any other authorised Council officer on request at all times;

2. Notices

Where these Conditions require the display of a Notice, Licence or other document, that item must be

- on A4-sized paper (or larger)
- printed legibly or typed in black ink
- in a font size of 16 points or larger
- placed in a conspicuous and well-lit place where all Customers, Performers and staff can easily read it.

3. Incident log

The Licence-Holder must keep an incident log of:

- (a) all alleged crimes reported to the venue;
- (b) all ejections of Customers;
- (c) any complaints received from anyone;
- (d) any incidents of disorder;
- (e) seizures of drugs or offensive weapons;
- (f) any faults in the CCTV system or searching equipment or scanning equipment;
- (g) any refusal of the sale of alcohol;
- (h) any visit by the Council, Police Scotland or any other statutory service;
- (i) any breach of licence conditions reported by a Performer.

4. CCTV

4.1. There must be continual CCTV coverage while the Premises are open to the public of:

- (a) all areas inside the Premises (not just performance areas) and
- (b) of the areas outside the Premises near any Customer entrance to the Premises.

4.2. The CCTV must make recordings capable of providing pictures of evidential quality in all lighting conditions and must allow for facial recognition.

4.3. CCTV recording equipment, tapes or discs shall be kept in a secure environment under the control of the Licence-Holder or Premises Manager.

4.4. The CCTV recordings shall be retained for at least thirty (30) days (and, if requested by the Police, for such longer period or until such event as they specify).

4.5. The Licence-Holder must ensure that at all times (whether or not the Premises are open to the public) there is a member of staff who is able to access CCTV recordings, display them and make copies if requested these to the Police or other officers.

5. Staff Records etc.

5.1. The Licence-Holder must, before allowing a Performer to work on the Premises, make a record of the following details of that Performer:

- full name, and any alias or stage name
- address
- telephone number
- date of birth
- place of birth

5.2. If the Performer has a current Passport issued in the United Kingdom, the Licence-Holder must, before allowing the Performer to work on the Premises, keep a copy.

5.3. If the Performer does not have a current Passport issued in the United Kingdom, the Licence-Holder must, before allowing the Performer to work on the Premises, both:

- (a) make a copy of the Performer's any official documents (such as Passport, Visa, EU driving licence, or National Identity Card; and
- (b) contact the Home Office and obtain written confirmation that the Performer has a right to work in the United Kingdom.

5.4. In either case the Licence-Holder must keep copies of any documents inspected.

5.5. The Licence-Holder must use his/her best endeavours to actively seek to identify Performers who may have been the victim of human trafficking.

5.6. The Licence-Holder must keep a Staff Register for each day that the Premises are open to the public, recording (for each member of staff, including Performers):

- the person's name

- the person's address
- what time the person's duty started
- what time the person's duty ended.

6. Welfare of Performers

6.1. The Premises shall provide private spaces for Performers to use when not working. These spaces must have

- lockable doors
- the provision of hygienic changing and showering facilities
- a toilet with access to hot water exclusively for the use of the Performers
- prominent 'Staff Only' sign-posting.

6.2. No locks or fastenings shall be fitted to any public area of the Premises (other than toilet cubicles)

6.3. The Licence-Holder must set break times for Performers;

6.4. The Licence-Holder must arrange for Performers to be escorted by security staff to a nominated taxi or to their car at the end of shift where applicable;

6.5. The Licence-Holder must allow Performers access to medical checks and sexual health advice on the Premises;

6.6. The Licence-Holder must keep the Premises clean and tidy.

7. First Aid

7.1. The Premises must have a First-Aid Kit and this should be readily-accessible to anyone on the Premises, whether Customers, Performers or other staff.

7.2. A member of staff (not a Performer) qualified in First Aid should be on duty in the Premises at all times that they are open to the public.

8. Stewards

The Licence-Holder must, before allowing a steward to work on the Premises, make a copy of his/her SIA authorisation and keep it. All stewards must hold current SIA authorisations.

9. Customers

9.1. The Licence-Holder must display on the exterior of the Premises at each Customer entrance, in a position where they may be easily read by people outside the Premises, Notices stating:

“This is a Sexual Entertainment Venue. No-one under 18 can enter. The Premises are monitored by CCTV. The Premises are licensed by Dumfries and Galloway Council”.

9.2. The Licence-Holder must display within the Premises, at each Customer entrance, Notices stating:

"Rules for Customers

Any Customer breaking any of these rules will be excluded from the Premises and barred permanently.

- (a) there must be no physical contact between Customers and Performers;*
- (b) Customers must not enter any 'staff-only' area*
- (c) Customers must remain fully clothed at all times;*
- (d) Customers must not seek sexual favours or offer Performers payment in return for sexual favours;*
- (e) Customers must not offer their contact details to Performers or ask for any form of contact details from Performers;*
- (f) Customers must not engage in any unlawful activity on the Premises;*
- (g) Customers must not take photographs or video recordings of the Performers (whether they consent or not);*

9.3. The Licence-Holder must eject any Customer who breaks any of these rules and bar him/her from the Premises permanently.

9.4. The Licence-Holder must keep a written record of the name, address and date of birth of any Customer ejected and barred, with the date and time the Customer was ejected and the reason for this.

10. Age Limit

10.1. No person under the age of 18 years of age (whether a Customer or a Performer) shall be admitted to or allowed on the Premises.

10.2. Before admitting a Customer to the Premises, the Licence-Holder must carry out the same age verification processes which are required before alcohol is sold on Premises Licensed under the Licensing (Scotland) Act 2005.

10.3. The Licence-Holder must keep a written record of the name, address and date of birth of any person who is refused entry due to being under 18.

11. Premises Manager

11.1. The Licence will name a natural person (not a company or partnership) to be "Premises Manager".

11.2. The Premises Manager will have day-to-day responsibility for the Premises and for compliance with the Licence Conditions and any other legal obligations.

11.3. The Premises Manager must be on the Premises at all times that they are open to the public,

except that

the Premises Manager or the Licence-Holder may authorise, in writing, another natural person to be "Acting Premises Manager" for a maximum period of thirty (30) continuous days, provided that the total days authorised do not exceed sixty (60) days per calendar year (1 January to 31 December). That person will have all the responsibilities of the Premises Manager. Both the Licence-Holder and the Premises Manager will be responsible for that Acting Premises Manager.

11.4. The Licence-Holder will be held responsible for any conduct or omission by the Premises Manager or the "Acting Premises Manager".

12. Management

12.1. At all times that the Premises are open to the public, the Licence (or a copy of it certified by the Council) will be displayed prominently on the Premises.

12.2. The Premises must only be used in accordance with the Layout Plan and during the Licensed Hours stated in the Licence. The Premises must not exceed the Customer capacity stated in the Licence.

12.3. No alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the Premises shall not be made without the prior written approval of the Council.

12.4. The Licence-Holder must notify the Council in writing within seven days if the Licence-Holder or any person working on the Premises is charged or convicted of any crime or offence, where-ever the incident leading to the prosecution is alleged to have happened.

12.5. The Premises shall be screened from outside so that no-one outside can see inside.

12.6. The Licence-Holder shall not display outside the Premises, or on any advertising material, photographs or other images which indicate that Sexual Entertainment can be seen on the Premises.

12.7. No-one concerned in the conduct or management of the Premises (the Licence-Holder, Premises Manager, Performers and other staff) shall seek to obtain custom by means of personal solicitation or touting, nor enter into any agreement with a third party to do so.

APPENDIX 6**LIST OF POLICY CONSULTEES**

In terms of the law, in preparing a SEV Policy Statement the Council must consult such persons or bodies as they consider appropriate. Having regard to the statutory Guidance (Guidance on the Provisions for Licensing of Sexual Entertainment Venues and Changes to Licensing of Theatres – March 2019), the list of consultees are as follows:

- All members of the SEV Working Group
- Police Scotland (including Police Scotland's National Human Trafficking Unit)
- Scottish Fire and Rescue Service
- NHS Dumfries and Galloway
- Community Councils
- Faith Groups
- Places of Worship
- Local Businesses and Business Groups
- Dumfries and Galloway Council's Public Protection Committee and its sub Committees including Violence Against Women and Girls' Sub Committee;
- Youth Councillors
- Dumfries and Galloway College, Universities of Glasgow, West of Scotland and Rural
- Citizens across Dumfries and Galloway

This draft Policy Statement is also being place on the Council's website and in various social media fora for advertising during the consultation period.

APPENDIX 7**PROFILE OF DUMFRIES AND GALLOWAY REGION AS A LOCALITY**

Dumfries and Galloway is a mainly rural area in south west Scotland. It covers around 6475 square kilometres (2500 square miles), with a population of around 148,000. The main settlements are Dumfries (around 31,600 residents), Stranraer (10,510), and Annan (8,920). All other settlements have populations of under 5,000. The region is divided into four traditional areas: Annandale & Eskdale, Nithsdale, the Stewartry and Wigtonshire.

- Annandale & Eskdale Division – is essentially a rural area without any city or large town to provide a central or focus point. The population is around 38,000. Among its settlements, Annan has the highest population. The other main settlements are Lockerbie, Gretna, Eastriggs, Moffat, Lochmaben and Langholm.
- Nithsdale Division – is Dumfries and Galloway’s most populated area with a total population of some 59,000 with Dumfries as the largest town in Dumfries and Galloway. The other main settlements include Sanquhar, Kirkconnel and Thornhill.
- Stewartry Division – covers an area of 1,760 square kilometres (680 square miles) and has a high quality natural environment that includes 2 National Scenic Areas, with the coastal waters providing an important recreational resource.

Stewartry is the least densely populated area within Dumfries and Galloway with a population of some 24,000. More than half the population live in the countryside or in settlements of fewer than 1,000 people. The remainder are concentrated in the towns of Dalbeattie, Castle Douglas and Kirkcudbright.

- Wigton Division – with a population of under 29,000, Wigton accounts for nearly 20% of the total population of Dumfries and Galloway. The 2 main towns, Stranraer and Newton Stewart, account for around 50% of the population. All other settlements in the area have populations of under 1,000.

Wigton enjoys a vast length of varied coastline, boasts a main ferry route and indeed the “gateway” to Ireland.

