



East Ayrshire Council
Comhairle Siorrachd Àir an Ear

**LICENSING POLICY STATEMENT ON THE
LICENSING OF SEXUAL ENTERTAINMENT
VENUES**

DRAFT

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

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1 PREAMBLE

East Ayrshire covers a land area of 490 square miles in west central Scotland, 30 miles southwest of Glasgow. The population of East Ayrshire in 2020 was estimated to be 121,600 of which there were 58,943 males and 62,657 females.

There are 23 main communities and settlements in a diverse geographical area, embracing both rural and urban areas. Established as a result of local government reorganisation in 1996, the area does not reflect any natural or traditional community, stretching as it does down the eastern length of the County of Ayrshire.

2 OVERVIEW

East Ayrshire Council's key aims in licencing are to preserve public safety and the prevention of crime and disorder. The Council consider that it is appropriate that Sexual Entertainment Venues (SEVs) should be licenced in order that both performers and customers benefit from a safe, regulated environment. The Council also believes that the licencing of these venues would limit the risk of criminality, such as prostitution and human trafficking. The Council were of the view that if a resolution was not made these activities would be unregulated and due to not being controlled could have a detrimental impact on public safety, local businesses and communities, as well as those involved in these types of activities.

In preparing this SEV Policy Statement, the Local Authority has considered the impact of the licencing of SEVs having regard to the objectives of:

- (i) Preventing public nuisance, crime and disorder
- (ii) Securing public safety
- (iii) Protecting children and young people from harm
- (iv) Reducing violence against women

3 INTRODUCTION

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 was introducing a new, discretionary and specific licencing regime for Sexual Entertainment Venues.

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

As this licencing scheme is discretionary, it is up to each Local Authority in Scotland to decide whether or not they wish to licence SEVs. 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. If a Local Authority chooses not to pass a Resolution then SEVs can operate within that Local Authority area without any regulation.

At a meeting on 28 April 2022 East Ayrshire Licencing Panel passed a Resolution in terms of sections 45B(1) and 45B(2) of the 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 28 April 2023.

In terms of section 45C of the 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.

This document sets out East Ayrshire Council’s Policy on the regulation of Sexual Entertainment Venues.

4. PUBLIC CONSULTATION

In developing this Policy, the Council has consulted widely by writing to/e-mailing consultees (see Appendix A) and providing information on the website. The Council has given due consideration to the views of all those who responded to that consultation process.

5 DEFINITIONS

The 1982 Act – This refers to Sections 45A to 45C of Part III, Schedule 2 of the Civic Government (Scotland) Act 1982.

The Council – East Ayrshire Council, Local Government Licensing Panel

Sexual Entertainment Venue – A Sexual Entertainment Venue (SEV) is defined as any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.

For the purposes of this definition, ‘audience’ includes an audience of one; ‘financial gain’ includes financial gain arising directly or indirectly from the provision of sexual entertainment; and ‘organiser’ means either the person who is responsible for the management of the premises or the organisation or management of the sexual entertainment or where that person exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise), that other person.

Sexual Entertainment – means any live performance or any live display of nudity which is of such a nature, ignoring financial gain, must be reasonably 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 in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus; and in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals or anus.

Premises – Includes any vehicle, vessel or stall but does not include any private dwelling house to which the public are not admitted.

Premises that are not Sexual Entertainment Venues – Premises, where sexual entertainment is provided on no more than 3 occasions in a 12 months period are not to be treated as a Sexual Entertainment Venue.

6 LICENSING (SCOTLAND) ACT 2005

Where alcohol, late night food or regulated entertainment is provided, the grant of a SEV Licence does not exempt the establishment from the requirement to possess a Premises Licence under the Licensing (Scotland) Act 2005.

If a premises is licensed under the Licensing (Scotland) Act 2005, it is not enough for that premises to state that “Adult Entertainment” is permitted. If such entertainment is being provided, an SEV licence will be required.

It is likely that the normal business of an SEV will include the performance of dance in the presence of an audience and/or the supply of alcohol. The Council will expect all applicants to possess any relevant permissions under the Licensing (Scotland) Act 2005 prior to an application for a SEV. An applicant will require to provide evidence to support their case should they believe a Licence under the Licensing (Scotland) Act 2005 would not be applicable to the premises.

7 RIGHT TO WAIVER

The Council may, upon application, waive the requirement for a licence in any case where it considers that to require a licence would be unreasonable or inappropriate.

The Council will consider each case on its merits, however it is unlikely that an establishment that normally would require a licence would be granted a waiver other than in exceptional circumstances.

8. OCCASIONAL USE

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 does not exceed the duration of 24 hours as long as the premises has not been used for ‘sexual entertainment’ on not more than 3 previous occasions in the past 12 months.

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

You are not required 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 to the Licensing Section. There is no fee for this requested notification of Occasional Use Exemption.

9 LOCATION/NUMBER OF PREMISES

The Council is mindful of its power to determine that no SEV be located in any relevant locality and can determine that the whole of the Local Authority area is a single locality.

The Council has determined that the number of venues able to operate within the whole of East Ayrshire be set at Nil.

Notwithstanding the above, the Council may grant a Licence after considering:

- The character of the relevant locality
- The use to which premises in the vicinity applied for are put
- The layout, character or condition of the premises to be licensed.

The Council believes it would not be appropriate to permit a SEV that would fall within an ‘inappropriate’ proximity to:

- Residential areas
- Schools, play areas or similar centres
- Retail shopping areas
- Places of worship
- Women’s refuges
- Community facilities and public buildings, for example swimming pools, leisure centres, parks, youth clubs, libraries and sheltered housing
- Premises likely to be frequented by persons under 18 or families
- Services (including businesses and charities) focussed on supporting homeless people, people with substance abuse issues, mental health issues or vulnerable people
- Tourist attractions and historic buildings
- Conservation areas

10 FITNESS OF APPLICANT

An applicant must be a fit and proper person to hold a Licence. The Council will consider the following in determining an applicant’s suitability:

- Any previous knowledge and experience of the applicant
- Any evidence of the operation of any existing or previous licence held by the applicant, including any Licence held in any other Authority
- Any report about the applicant and management of the premises received from statutory objectors/responsible authorities
- Any criminal convictions of the applicant

11 MAKING APPLICATION

While each application will be considered on its individual merits, this Policy Statement is intended to give prospective applicants an early indication of whether their specific application is likely to be successful and the facts that will be taken into consideration when determining an application.

An application for the grant, renewal or variation of a SEV Licence must be made in writing to The Council in accordance with the requirements set out below.

Applications must be made:

(a) By post to The Chief Governance Officer, East Ayrshire Council, Licensing Section, London Road, Kilmarnock, KA3 7BU

(b) By e-mail to licensing@east-ayrshire.gov.uk

(c) On-line via the Council's website

For all enquiries please contact the Licensing team on 01563 576014.

12 CONSULTATION

The Council would not normally consult with local residents on receipt of an application, however the applicant will be required to display a Notice at the premises for a period of 21 days from the date of application. The Notice must be displayed where it can be conveniently read by members of the public from the exterior of the premises.

On expiry of the 21 day period the applicant will require to provide a certificate stating that the requirement to display a Notice has been complied with.

The Council will publish Notice of the application on their website and Councillors will be notified of all applications within their Ward, together with those on, or near, their Ward boundary. The Council will also consult with Police, Fire Authority, Planning and Building Control, Environmental Health and the Community Council in which the premises are located.

13 OBJECTIONS

Any person objecting to an application for the grant, renewal or transfer of a Licence must give their objection in writing to the Council, stating in general terms the grounds of the objection, not later than 28 days after the date of the application. The Council will not consider any objection that does not contain the name, address and signature of the person making it.

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).

Objectors should limit their objection to matters which are relevant to the mandatory grounds for refusal as set out at Paragraph 9(3) of Schedule 2 of the 1982 Act and discretionary grounds for refusal detailed in Paragraphs 9(4) to 9(6) of Schedule 2 of the 1982 Act (see also paragraphs 17 and 18).

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.

Where the Council receives a written objection, it will, before considering the application, notify the applicant in writing of the general terms of the objection. The

Council will not reveal the name or address of the objector to the applicant without first receiving their consent.

14 CONSIDERATION OF APPLICATIONS

The Council is obliged, in considering applications for the grant, renewal or transfer of a Licence, to have regard to all observations received from Police, Fire Authority, Planning and Building Control, Environmental Health, the Community Council for the area and to any objections from the public received during the 28 day consultation period.

The licensing of SEVs generates emotive arguments and the Council recognises the controversial nature of such applications. In considering an application the Council has no right, and therefore will not give regard to, the morality of such establishments. The issue of whether or not the Council condones sexual entertainment venues is not a matter for consideration. As a result, objections on the grounds that establishments should not be allowed on moral grounds will not be considered.

15 HEARINGS

All applications for the grant of new SEVs will be considered by the Licensing Panel by means of a public Hearing.

Renewals and Variations will be considered by the Legal Manager in terms of delegated authority unless representations are received. In such cases the matter will be referred to the Licensing Panel for consideration.

In determining an application for the grant, renewal or variation of a Licence, the Licensing Panel must have regard to any representations it has received.

Prior to any Hearing, the applicant and objectors will be advised of the relevant date, time and venue. All parties will have the opportunity to address the Licensing Panel at the Hearing.

The Licensing Panel will communicate its decision at the close of the Hearing and will provide written confirmation to all parties within 7 days.

16 REVOCATION OF LICENCE

Under Paragraph 13 of Schedule 2 of the Civic Government (Scotland) Act 1982, the Council may at any time revoke a Licence under this Schedule:-

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

17 MANDATORY GROUNDS FOR REFUSAL

A Licence will not be granted:

- To a person under the age of 18 years
- To a person who is, for the time being disqualified due to the person having had a previous licence revoked within the last 12 months
- To a person other than a natural person if any director of it or partner in it or any other person responsible for its management is disqualified due to them having had a previous licence revoked within the last 12 months
- To a person who has been convicted of an offence relating to the enforcement of SEV legislation
- To a person who is not resident in the UK or was not so resident throughout the period of six months immediately preceding the application date
- To a body corporate which is not incorporated in the UK

If the Council finds any of these grounds apply then it must refuse the application

18 DISCRETIONARY GROUNDS FOR REFUSAL

The Council may refuse to grant a licence on one or more of the following grounds:-

- (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 a licence by reason of having been convicted of a relevant offence or for any other reason;
- (b) That if the licence were to be granted, 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 Local Authority area at the time the application is made, exceeds the number which the authority consider is appropriate for their area;
- (d) That the grant or renewal of the licence would be inappropriate having regard to:-
 - (i) The character of the relevant locality; or
 - (ii) The use to which any premises in the vicinity are put; or
 - (iii) The layout, character or condition of the premises, vehicle, vessel or stall, in respect of which the application is made.

19 STANDARD CONDITIONS

A full set of the Council's standard conditions is available at Appendix B.

20 ENFORCEMENT

The Council is responsible for the administration and enforcement of the licensing regime and will carry out its regulatory functions in a fair, open and consistent manner.

Specifically, the Council is committed to:

- (a) be proportionate – to only intervene when necessary and remedies will be appropriate to the risk posed;
- (b) be accountable – to justify decisions, be subject to public scrutiny and allow opportunities to resolve differences before enforcement action is taken, unless immediate action is needed;
- (c) be consistent – to implement rules and standards fairly;
- (d) be transparent – to be open and to provide clear explanations of what is needed, by when and the rights of appeal; and
- (e) target its regulatory action at cases in which action is needed.

The Council recognises the interests of both members of the public and businesses and will work closely, with partners, to assist licence holders to comply with the law and the conditions attached to the licence.

However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law or breach the conditions of the licence.

The Council has set clear standards of service and performance that the public and businesses can expect.

21 FEES

The fees set are deemed to be reasonable to cover the cost of administration, enforcement in relation to licensed operators, inspections and any hearings and are not refundable.

22 REVIEW

This Policy Statement will be reviewed at least once every 3 years.

LIST OF CONSULTEES

- Police Scotland
- Scottish Fire & Rescue
- Elected Members
- Community Councils
- Violence Against Women Partnership
- Child Protection Committee
- Adult Protection Committee
- Health & Social Care Partnership – Integrated Joint Board
- NHS
- Community Lead Action Plans
- Head of Education
- Churches
- Kilmarnock Business Association
- Cumnock Business Association
- Presbytery of Irvine and Kilmarnock
- Presbytery of Ayr
- Diocese of Galloway
- Al Huda Educational Society
- Ayrshire Muslim Association
- Relevant Interest Groups
- Local Businesses

STANDARD CONDITIONS

General

1. Access must be afforded at all reasonable times to authorised officers of the Council and the Police and Fire Services
2. Children shall not be allowed on the premises under any circumstances.
3. No person under the age of 18 years shall be permitted to view the entertainment.
4. No performers and other employees on the premises shall be under 18 years of age.
5. Signage must be prominently displayed at the entrance and within the premises stating that patrons may be searched as a condition of entry and at any time they are on the premises.
6. Fire escapes, service doors and loading bays etc. are not to be used as a point of entry or exit to the premises by any patron at any time with the exception of a bona fide emergency and the nature of that emergency will be recorded in the incident log

CCTV

7. Closed Circuit Television Cameras (CCTV) shall be provided on the premises by way of a recordable camera system capable of providing pictures of evidential quality in all lighting conditions and a type that indicates on the recording the date and time of the recording.
8. Cameras shall encompass all ingress and egress to the premises, the licensed area and the surrounding area of the premises, and any other areas as required by the Police.
9. CCTV equipment shall be maintained in good working order and recordings kept in date order, numbered consecutively and retained in a secure place for a period of 28 days.
10. Recordings shall be made available to the Licensing Panel or a Police Officer on demand.

Incident Log

11. 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 any person;
 - (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.

Staff Records

12. 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
13. 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.
14. 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 official documents (such as 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.
15. In either case the Licence-Holder must keep copies of any documents inspected.
16. The Licence-Holder must use his/her best endeavours to actively seek to identify Performers who may have been the victim of human trafficking.
17. 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

Conduct

18. Patrons must not be permitted to participate in the entertainment.
19. No persons other than the performers should be in the public area of the premises in a state of undress.
20. No performer should perform any sexually explicit or lewd act.
21. No performance shall involve the provocative use of live animals or other props.
22. Only the performers shall provide the entertainment, no audience participation must be permitted.

23. In the public area all performers shall at all times as a minimum requirement wear a non-transparent G-string or similar piece of clothing on the appropriate part of the body and at no time will reveal any part of their genitalia or anus in the public area.
24. There shall be no physical contact between dancers and/or any other members of staff whilst performing.
25. Customers shall remain seated whilst watching a performance. Performers must report all inappropriate behaviour and breaking of the house rules to management.
26. Performers shall not:
 - Climb onto furniture provided for patrons
 - Simulate sex acts
 - Remain in a state of undress when they have completed their act
 - Sex articles as defined by the (Miscellaneous Provisions) Act 1982 must not be used and there shall be no penetration of the genital area or anus by any means.
27. Only the performers shall provide the entertainment, no audience participation must be provided.
28. During any performance of lap dancing, striptease or nude dancing (including performances usually termed 'private dances') there must not be any physical contact, by the performer, with any person in the viewing audience except:-
 - Leading a patron hand in hand to and from a chair or private room
 - Simple handshake greeting at the beginning and/or end of the performance
 - The placing of monetary notes or dance vouchers in the hand or garter worn by the performer
 - Pecking the cheek of a patron at the conclusion of the performance
 - A minimum distance of 300mm must be maintained between performers and customers during a performance.
29. Notices to the effect of the above must be clearly displayed on each table, at each bar area and at the entrance to the premises.
30. No still or moving photographic recordings or other recordings, other than the CCTV shall be made of any performances.

Welfare of Performer

31. 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

32. No locks or fastenings shall be fitted to any public area of the Premises (other than toilet cubicles)
33. The Licence-Holder must set break times for Performers.
34. Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking area.
35. 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.
36. The Licence-Holder must allow Performers access to medical checks and sexual health advice on the Premises.
37. The Licence-Holder must keep the Premises clean and tidy.
38. There shall be no alterations to the layout plan of the venue without the prior written approval of the Council.

First Aid

39. 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.
40. 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.

Management

41. Customers and dancers must be properly supervised at all times.
42. House rules should be developed and actively promoted to control the behaviour of both the dancers and customers.
43. The Licence Holder shall take all reasonable precautions and exercise all due diligence to ensure that the soliciting for the purposes of prostitution does not occur.
44. The Licence Holder shall take all reasonable precautions and exercise all due diligence to ensure the safety of performers whilst on the premises, whilst entering the premises and on leaving the premises.
45. The Licence Holder or other responsible person over the age of 21 years, nominated by the Licence Holder in writing, shall be in charge and be present on the premises during the whole of the time that entertainment is taking place.
46. All glasses that are used in the premises shall be made from toughened glass or plastic.
47. A refusals book shall be maintained to record those suspected of being under the age of 18 years. This book must be regularly inspected to ensure that it is being properly maintained.

External Appearance

48. A notice should be displayed at the main entrance to the premises informing customers of the house rules that affect them and a warning that entertainment involving male and/or female performers is provided within the premises.
49. No advertising should be outside the premises, of striptease, lap dancing, table-dancing or similar entertainment, which may give rise to offence.
50. No part of the performance shall be visible from outside the premises.
51. Any person who can be observed from outside of the premises must be properly and decently dressed. Scantily clad individuals must not exhibit in the entranceway or in the area surrounding the premises. There shall be no attempt made outside the premises to solicit people to enter.
52. There shall be no external advertising of the striptease entertainment either at the premises or in its immediate vicinity.
53. The Licence Holder must not display outside the premises or on any advertising material, photographs or other images that indicate and suggest that erotic dancing takes place on the premises and which may be offensive.
54. Promotional leaflets shall not be distributed to the public outside the premises (whether immediately outside or some distance away).
55. All external doors and windows to the room/s where regulated entertainment is being provided shall remain closed during the course of the entertainment, other than for normal access and egress.
56. All external doors (including fire exit doors and patio doors) to the premises shall not be propped open during the course of the relevant entertainment.

Door Supervisors

57. A minimum of two Door Supervisors registered with the Security Industry Authority must be on duty at all times the premises are operating with adult entertainment.
58. Door Supervisors shall continually monitor all entrances, exits and toilets
59. The Licence Holder must maintain a Door Supervisor register which shall be made available to Police Officers or authorised Officers of the Council on request.
60. The Designated Premises Manager shall, as soon as is reasonably practicable within 72 hours, notify the Security Industry Authority of any door supervisors dismissed for serious misconduct (which might reasonably affect the continuation of such registration).