

Consultation : Sexual Entertainment Venues

1. LICENSING

1.1 East Ayrshire Council is the licensing authority for East Ayrshire in relation to a wide range of activities.

1.1.1 Recent changes to the Civic Government (Scotland) Act 1982 allow the Council to introduce a new licensing regime for sexual entertainment venues (SEV's). These changes came in to effect on 26 April 2019. As a result of these changes, the Council can now decide whether SEVs in the Council's area should be licensed.

1.1.2 As it is a discretionary licensing regime, it is for local authorities to determine whether they wish to licence SEVs, it must determine what the appropriate number of SEVs in its area

2. WHAT IS A SEXUAL ENTERTAINMENT VENUE (SEV)

2.1 The Civic Government (Scotland) Act 1982 defines a SEV 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.

2.2 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.

'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 and member of the audience.

'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.

2.3 However, the 1982 Act provides that premises where sexual entertainment is provided on no more than three occasions in a twelve month period are not to be treated as a SEV.

3. Current Position

3.1 At present there is no legal requirement for SEVs to be licensed in Scotland. If the premises in which the sexual entertainment is taking place sells alcohol, at present, the premises would only require a Premises Licence under the Licensing (Scotland) Act 2005.

3.2 Case law in this area has established that the above legislation is limited to regulating the sale of alcohol only and not any other matters which do not relate to the sale of alcohol. Therefore, there is currently no direct licensing or regulation of sexual entertainment activities in these venues in Scotland.

3.3 At a meeting of the Licensing Panel on 10 October 2019 authorisation was given to carry out a public consultation in order to establish views on the following:

- Whether SEVs in East Ayrshire should be licensed
- If licensed, what the appropriate number of SEVs for East Ayrshire should be: and
- If licensed, what should be included in an SEV licensing policy statement.

4. Potential Impact

4.1 If following the consultation the Council decides to licence SEV's, the Civic Government (Scotland) Act 1982 requires the local authority to pass a resolution in order for SEV licensing to have effect in its area. If such a resolution is passed, all SEVs in East Ayrshire would require to apply for an SEV licence under the 1982 Act in order to operate.

4.2 If the Council does not adopt the discretionary power available to it under the 1982 Act to licence SEVs, these venues would not require to be licensed and could continue to operate without any direct regulation from the local authority.

4.3 A local authority which chooses to licence SEVs must publish a SEV policy statement. If the Council after the consultation decides to pass a resolution to licence SEVs, a draft policy statement would be the subject of a further formal consultation.

- 4.4** Local authorities who pass a resolution to licence SEVs must periodically determine the appropriate number of SEVs for both their area and for each relevant locality within their area. A decision on this would be made after a period of consultation.
- 4.5** There are various grounds for refusal of a SEV licence grant or renewal application under the 1982 Act, including that the number of SEVs in the local authority area or the relevant locality at the time the application is made is equal to or exceeds the number which the local authority consider appropriate for that locality.
- 4.6** When deciding whether to pass a resolution requiring SEVs to be licensed, the Council will require to consider potential implications that this may have in relation to the European Convention of Human Rights (ECHR), for example, in relation to existing operators of these venues. The Council is required to take account of the competing ECHR rights of individuals alongside those of the community. The Council will consider whether a decision to licence SEVs is proportionate and justifiable in accordance with these ECHR rights.
- 4.7** Further information on the licensing provisions relating to sexual entertainment venues is available in Guidance published by the Scottish Government and can be accessed via the undernoted link:
<https://www.gov.scot/publications/guidance-provisions-licensing-sexual-entertainment-venues-changes-licensing-theatres/>

5. Consultation – Your views

- 5.1** The Council has instructed that a consultation is undertaken to seek views on the licensing and regulation of SEVs, with the purpose of determining whether SEVs should be licensed within East Ayrshire.
- 5.2** In particular, the Council is seeking views on:
- Whether a licensing regime should be adopted to licence and regulate SEVs
 - What the appropriate number of SEVs in East Ayrshire, or localities within East Ayrshire, should be, if SEVs were to be licenced; and
 - If the Council were to decide to pass a resolution to licence SEVs, what matters should be taken into consideration in the development of an SEV policy statement.

As detailed above, a draft SEV policy statement would be subject to a separate consultation process.

5.3 This current initial consultation is an important first stage in determining whether or not SEVs in East Ayrshire should be licensed and for the possible development of an SEV licensing policy statement.

5.4 The Council is therefore seeking your views on a range of issues associated with SEVs. It is particularly keen to hear about the impact SEVs have or could have upon residents in relation to where they live and upon retailers and businesses in areas in their immediate vicinity.

6. How to respond to this consultation

6.1 **Appendix A** sets out further considerations and seeks your views as to whether SEVs should be licensed.

6.2 **Appendix B** sets out considerations which would be taken in to account when considering what the appropriate number of SEVs should be within East Ayrshire, or parts of East Ayrshire, and seeks your views on these matters.

6.3 **Appendix C** relates to the possible development of an SEV licensing policy statement and standard licence conditions if SEVs were to be licensed and regulated and seeks your views.

6.4 You can respond to as many or as few of the issues as you choose depending upon your particular area of interest or experience.

Where possible, please try to explain why you have a certain view, providing any evidence you have in support of that view.

6.5 Your response should be sent either :

By Post

Licensing Administration
East Ayrshire Council
Council Headquarters
London Road
Kilmarnock KA3 7BU

By Email:

licensing@east-ayrshire.gov.uk

- 6.6** Please indicate in your response the capacity in which you are responding, for example, a member of the public, elected member, Community Council, SEV operator or someone who works within a SEV
- 6.7** Your response should be received by no later than Friday 6 December 2019 in order to ensure that your views are considered as part of the consultation exercise.

7. Next Steps

- 7.1** Once the consultation has been concluded, the responses will be reported to the Licensing Panel, which will consider the responses received and assess the evidence available. If considered appropriate, the Council may agree to make a resolution to licence these venues. If a resolution is passed, an SEV draft policy statement will be issued for further consultation
- 7.2** All of the feedback received will be reviewed and evaluated before a final decision is made by the Council regarding whether or not a resolution should be passed requiring SEVs in East Ayrshire be licensed.

8. Further information

- 8.1** If you would like further information on the consultation exercise or any other aspect of the approach to SEV Licensing, please contact;

Stuart McCall – Legal Manager

Tel. 01563 576085 - Email stuart.mccall@east-ayrshire.gov.uk

9. Confidentiality & Data Protection

- 9.1** The local authority will process any personal data you provide in your response appropriately in accordance with the Data Protection Act 2018.
- 9.2** The local authority intends to publish a summary of responses received to the consultation exercise, this will include your name if you submit a response.
- 9.3** The Freedom of Information (Scotland) Act 2002 gives the public a right of access to information held by the local authority, this includes any responses we receive to the consultation exercise.
- 9.4** The local authority may disclose your response to third parties on request. In disclosing responses the local authority will take appropriate steps to redact personal data subject to the relevant provisions of the 2018 and 2002 Acts.

9.5 The local authority will hold your response for a period of 5 years from the date it is received. At the end of this period your response will be destroyed unless there are exceptional circumstances that require the response to be retained for a longer period.

APPENDIX A : SHOULD SEVs BE LICENSED

When determining the appropriate numbers of SEVs and which localities (if any) would be suitable for SEVs to be located, the local authority may consider;

- Whether there are any SEVs already operating in the locality and how they operate
- The character of the locality e.g. mainly residential, night time economy etc.
- The location of schools, places of worship, women's refuges or other services focussed on supporting women, children and young people and supported accommodation and recovery units and any other businesses or charities operating in the nearby vicinity.
- Whether the locality is of historical or cultural importance.
- The effect these venues have on local communities (relating to the licensing objectives explained above)
- Whether the locality contains premises or areas which are frequented by children, young persons or families for example parks, libraries or swimming pools
- Whether there have been incidents involving anti-social behaviour, sexual assaults, prostitution or more minor harassment reported within the locality.
- Whether there have been incidents of human trafficking or exploitation locally.
- The views of residents and other interested persons as far as possible.

QUESTIONS WE ARE SEEKING VIEWS ON:

Do you think SEVs in East Ayrshire should be licensed ? If so, why ?

What impact, if any, do you think SEVs currently have on the community

Do you think there would be positive/negative impacts on SEV operators or workers if they were licensed ? If yes, please explain what you think these would be ?

Do you think there would be positive/negative impacts on the communities and surrounding vicinity to SEVs if they were licensed? If yes, please explain what you think these would be ?

If SEVs were to be licensed, do you think the location of SEVs is an important consideration ? Please explain your answer.

APPENDIX B : IF SEVs ARE TO BE LICENSED, WHAT SHOULD THE APPROPRIATE NUMBER BE ?

If the Council was to pass a resolution to licence SEVs, they have to determine and publicise the number of SEVs that they consider appropriate for the local authority area and each relevant locality within it. When reaching this decision, the Council would be required to take specific local circumstances into consideration when determining the appropriate number of SEVs.

The Council would be required to reviews the set number of SEVs deemed appropriate from time to time and update this if necessary.

The number, taking in to account ECHR and the grounds of reasonableness, can be set below the current number of SEVs or even set at nil.

QUESTIONS WE ARE SEEKING VIEWS ON :

Taking in to account the factors referred to above, what do you think the appropriate number of SEVs should be for the various localities within the local authority area;

- residential areas
- rural areas
- industrial areas
- late night economy areas
- the town centres; and
- East Ayrshire as a whole

Where possible, please explain your answer.

What localities, if any, within East Ayrshire do you consider would be an appropriate location for an SEV ? Please describe the area as clearly as possible and explain your answer where possible.

APPENDIX C : DEVELOPING THE POLICY ON THE LICENSING AND REGULATION of SEVs

If the Council was to pass a resolution to licence SEVs, they would require to develop and publish an SEV policy statement which would provide the public with a clear indication of the Council's policy with regards to the licensing and regulation of SEVs. A draft SEV policy statement would be the subject of a future consultation.

The Council must have regard to its policy statement when exercising its functions in relation to the licensing of SEVs. It is also required, from time to time, to review the policy statement, revise it as appropriate and publish the revised statement.

When preparing an SEV policy, the 1982 Act provides that a local authority must consider the impact of the licensing of SEVs in their area, having particular regard 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

In addition to preparing an SEV policy statement, the Council may develop licence conditions, i.e specific requirements that the licence holder must comply with or risk having their licence suspended or revoked. The Council would have the authority to attach standard conditions for all licences granted for SEVs, and also impose individual conditions to licences. If the Council were to impose standard conditions for SEV licences, these would be set out within the SEV policy statement.

The following examples are all potential standard conditions which could be adopted as part of the SEV policy statement should the Council pass a resolution to licence SEVs:

1. list of full names, dates of birth, nationality and contact details (address or telephone number) for all performers to be available on the premises for immediate production if requested by authorised local authority officers.
2. ensure immigration status is in order and actively seek to identify performers who may have been the victim of human trafficking
3. provision of hygienic changing and showering facilities and a toilet with access to hot water exclusively for the use of the performers.

4. performers to be escorted by security to nominated taxi or to their car at the end of their shift.
5. regulation of the display of advertisements on or connected to the venue.
6. the interior of the SEV not to be visible to passers-by
7. the licence holder to ensure no physical contact between performers and customers
8. the licence holder to ensure that customers do not offer or ask for any form of contact details from performers.
9. the licence holder to ensure that no photographs or video recordings are taken of performers.

The purpose of imposing standard conditions for SEV licences is to help protect the safety and wellbeing of performers, customers and the wider public.

QUESTIONS WE ARE SEEKING VIEWS ON

Whether you believe that imposing standard conditions to SEV licences would assist in safeguarding the wellbeing of performers, customers and the wider public.

Whether you think that any of the sample standard licence conditions listed above should be adopted as policy and included as standard conditions in SEV licences. Where possible, please could you explain your answer ?

Are there any other standard licence conditions that you think would be relevant.

Can you make any other suggestions as to how the Council could adequately address the licensing objectives within an SEV policy statement, these being:

- Preventing public nuisance, crime and disorder
- Securing public safety
- Protecting children and young people from harm
- Reducing violence against women