# Introduction

* 1. Dundee City Council is the licensing authority for the City of Dundee in relation to a wide range of activities. The responsibility of licensing certain activities is delegated to the Licensing Committee (“the **Committee”**).
  2. Recently, the Scottish Government brought legislation into force to introduce a new discretionary licensing regime for sexual entertainment venues (“**SEVs**”). These changes came into effect on 26 April 2019. As of a result of these changes, the Committee now has discretionary powers in relation to whether SEVs in its area should be licensed.
  3. As it is a discretionary licensing regime, it is for local authorities to determine whether they wish to licence SEVs. If a local authority chooses to licence SEVs it must determine what the appropriate number of SEVs in its area should be.
  4. The responsibility for determining policy in relation to SEVs and applications is delegated to the Council’s Licensing Committee.

**What is a 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*”.

* 1. For the purposes of the definition of a SEV, the following terms and definitions apply:

‘*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;

‘*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, ignoring financial gain, must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience; and

“*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 and anus.

**2.3** However, the 1982 Act also states that premises where sexual entertainment is provided on no more than 4 occasions in a twelve month period are not to be treated as a SEV.

# 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 then, at present, the premises would only require a Premises Licence under the Licensing (Scotland) Act 2005, which would include “*adult entertainment*” as an activity on the approved operating plan.

**3.2** However, case law in this area has ruled that the licensing regime in the 2005 Act is limited to the regulation of the sale of alcohol only and cannot extend to matters not directly linked to the sale of alcohol. Therefore, there is currently no direct licensing or regulation of this particular type of activity in Scotland.

**3.3** At a meeting of the Committee on 7 November 2019 on the above changes, it agreed to instruct the Council’s Head of Democratic and Legal Services to carry out a public consultation and evidence gathering process in order to establish views on the following:

1. whether SEVs in Dundee should be licensed;
2. if licensed, what the appropriate number of SEVs for Dundee should be.

**Potential Impact**

**4.1** If following the consultation, the Committee decides to licence SEVs, the 1982 Act 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 Dundee would require to apply for a SEV licence.

**4.2** If the Committee does not adopt the discretionary power available to it 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 is obliged to publish a SEV policy statement. If the Committee decides to pass a resolution to licence SEVs, a draft SEV policy statement would be subject to a separate consultation process.

**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. Such determination 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 is appropriate for that

locality.

# Seeking Your Views

**5.1** The Committee has instructed that a consultation process is undertaken to seek views on the licensing and regulation of SEVs, with the purpose of determining whether SEVs should be licensed within Dundee.

**5.2** In particular, the Committee is seeking views on:

* Whether a licensing regime should be adopted to licence and regulate SEVs and what the appropriate number of SEVs in Dundee should be, if SEVs were to be licensed.

**5.3** This consultation is an important first stage in the future decision making process and possible development of a SEV policy statement and is essential in establishing whether or not SEVs in Dundee should be licensed.

**5.4** The Committee is therefore seeking your views on a range of issues associated with SEVs. It is particularly keen to hear about the impact SEVs have upon residents, retailers and businesses of the areas in their immediate vicinity.

# How to Respond

**6.1** Appendix A sets out further information on the Committee’s discretionary powers to licence SEVs, and the process by which they would be licensed and regulated should a resolution be passed.

**6.2** Appendix B sets out the matters which would be taken into consideration when considering what the appropriate number of SEVs should be within the city.

**6.3** 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.

**6.4** Your response should be sent either:

**By Post:** Head of Democratic and Legal Services

Dundee City Council

5 City Square

Dundee

**By Email:** [**licensing.board@dundeecity.gov.uk**](mailto:licensing.board@dundeecity.gov.ukn)

**6.5** 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.

**6.6** Your response should be received by no later than **Monday 28 January 2020** in order to ensure that your views are considered as part of the consultation exercise.

# Next Steps

**7.1** Once this consultation exercise has been completed, the Committee will consider the responses provided to it. If considered appropriate, it may agree a resolution and set an appropriate number of SEVs within Dundee. If a resolution is passed, a SEV draft policy statement will be issued for further consultation.

# Further Information

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

The Electoral Services and Licensing Office

**Email:** licensing.board@dundeecity.gov.uk

**Phone:** 01382 434433

# 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.

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| **A** |  | **Appendix A:**  **Should SEVs be licensed?** |

**A.1** The local authority now has the discretionary power to pass a resolution requiring SEVs to be licensed. If a resolution was passed by the Committee, all SEVs currently operating in Dundee would require to apply for a licence and the Committee would have to determine the appropriate number of SEVs.

**A.2** If the Committee were to pass such a resolution it would not come into effect until at least a year after the date in which the resolution is passed. As detailed above, if a resolution were passed, existing SEVs and any new SEVs in Dundee would require a SEV licence.

**A.3** As noted previously, if following this consultation the Committee were to decide not to pass a resolution providing for the licensing of SEVs, then no licence would be required to operate a SEV. Existing SEVs could continue to operate and new SEVs could be established without the need for a SEV licence.

**A.4** When determining the appropriate numbers of SEVs and which localities (if any) would be suitable for SEVs to be located, the local authority may have regard to the following factors:

* Whether there are any SEVs already operating in the locality;
* The character of the locality, e.g. principally 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;

* Whether the locality is of historical or cultural importance;
* Whether the locality contains premises or areas which are frequented by children, young persons or families for

example parks, libraries or swimming pools; and

* Whether there have been incidents involving anti-social behaviour, sexual assaults, prostitution or more minor

harassment reported within the locality.

**A.5 The Committee is seeking views on:**

* **Do you think SEVs in Dundee 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.**

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| **B** |  | **Appendix B:**  **If SEVs are to be licensed, what should the appropriate number be?** |

B.4 The Committee is seeking views on:

* **Taking into 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:**

**(a) residential areas;**

**(b) rural areas;**

**(c) industrial areas;**

**(d) late night economy areas;**

**(e) the city centre; and**

**(f) the city as a whole.**

**Where possible, please explain your answer**

* **What localities, if any, within Dundee do you consider would be an appropriate location for a SEV?**
* **What localities, if any, within Dundee do you consider would be inappropriate for the location of a SEV?**

**B.1** If the Committee were 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 Committee would be required to take specific local circumstances into consideration when determining the appropriate number of SEVs.

**B.2** The Committee would be required to review the set number of SEVs deemed appropriate from time to time and update this if necessary.

**B.3** The number, taking into account ECHR and the grounds of reasonableness, can be set below the current number of SEVs or even at nil.