
Sexual Entertainment Venues

Report by Chief Legal Officer
SCOTTISH BORDERS COUNCIL

27 OCTOBER 2022

1 PURPOSE AND SUMMARY

- 1.1 This report advises members of the responses received to the Stage 2 consultation on the content of the Council's draft Policy Statement on the Licensing of Sexual Entertainment Venues ("SEV's) in the Scottish Borders area.**
- 1.2 At its meeting on 31 March 2022, Council approved the draft Policy Statement and instructed the Executive Director Finance and Regulatory Services to carry out a Stage 2 public consultation. Following the conclusion of the stage 2 consultation on 18 September 2022, 17 responses have been received and these responses are detailed in Appendix 1.
- 1.3 The responses received to the stage 2 consultation were overwhelmingly in favour of the content of the Council's draft Policy Statement on the Licensing of SEV's. A copy of the Council's draft Policy Statement on the Licensing of SEV's can be found at Appendix 2.

2 RECOMMENDATION

- 2.1 It is recommended that Council adopt the draft Policy Statement on the Licensing of SEV's with immediate effect.**

3 BACKGROUND

- 3.1 The Air Weapons and Licensing (Scotland) Act 2015 has, from 26 April 2019, amended the Civic Government (Scotland) Act 1982 to introduce a discretionary power for Local Authorities in Scotland to licence SEVs within their individual areas.

A SEV is any premises at which sexual entertainment is provided before a live audience for financial gain and where its purpose is the sexual stimulation of members of the audience.

There are no SEV's in the Scottish Borders area and as far as the Council is aware, there are no plans to open one. There are SEV's in some of the cities or larger towns in Scotland.

- 3.2 Since the new power falls within the Council's responsibilities for Civic Government Licensing, its introduction was intimated to the Civic Government Licensing Committee at an informal meeting held on 25 October 2019. Members of the Committee expressed support for the idea that Council should consider adopting a Resolution. They were keen to explore the option of having a regulatory framework in place that would be operative if an SEV seeks to operate within the Scottish Borders area in future.
- 3.3 The Committee Members asked that a short term working group consisting of Members, SBC Officers and multi-agency representatives be formed to ensure that the statutory objectives in relation to SEV activity are properly considered. The working group met twice and their findings formed the basis of the recommendation in the report considered by Council on 27 August 2020.
- 3.4 At the meeting on 27 August 2020 Council agreed that a stage 1 consultation on whether the Council should resolve to licence SEV's should be carried out and instructed the Executive Director Finance and Regulatory Services to do so. The stage 1 consultation was carried out over a period of 12 weeks between 19 November 2020 and 14 February 2021. The responses received were overwhelmingly in favour of the Council resolving to licence SEV's and at its meeting on 25 March 2021 Council adopted a resolution to licence SEV's and instructed the preparation of a draft policy statement and to subsequently report to Council on the content of the draft prior to a stage 2 consultation.
- 3.5 At its meeting on 31 March 2022, Council considered the terms of the draft policy statement. In particular, Council considered the terms of paragraph 7 of the draft policy statement whereby provision was made that the Council, as set out in the legislation, may refuse an application if it is satisfied that the number of SEV's in the relevant locality at the time the application is made is equal to or exceeds the number which the authority considers is appropriate for that locality. The draft policy statement determined that the appropriate number of SEV's permitted within all relevant authorities within the Scottish Borders area should be nil and at the meeting on 31 March 2022, Council endorsed that view, approved the draft policy statement and instructed the Executive Director Finance and

Regulatory Services to conduct a stage 2 public consultation. The stage 2 consultation was carried out over a period of 12 weeks between 16 June 2022 and 18 September 2022.

- 3.6 A total of 17 responses were received as detailed in Appendix 1. All 17 responses were in favour of the appropriate number of SEV's in the Scottish Borders area being nil and that the whole of the Scottish Borders be treated as one area for the purpose of SEV Licensing. Some of the responders made comments all as detailed in Appendix 1. Of the 17 responses received, 13 were in favour of the suggested licence conditions as set out in parts 9 and 10 of the draft policy statement with 4 not being in favour although members will note from Appendix 1 that some of the comments accompanying a "no" response indicate that there should be no SEV's. Although the draft policy statement sets the appropriate number at nil, the policy still requires to set out proposed licence conditions. In closing, the consultation sought final comments about the licensing of SEV's in the Scottish Borders and members will further note from Appendix 1 that none of the additional comments received were in favour of SEV's.

4 NEXT STEPS

- 4.1 The adoption of the terms of the draft policy statement will enable will enable officers to take the necessary steps to ensure that the licensing of SEV's becomes effective with immediate effect.

5 IMPLICATIONS

5.1 Financial

There are no costs attributed to any of the recommendations contained in this report. There are no costs associated with the publication of the policy statement as this will be published online.

5.2 Risk and Mitigations

The adoption of the draft policy statement will eliminate the current risk that an operator of an SEV could open in the Scottish Borders area without having to seek an SEV licence.

5.3 IIA

An IIA has been carried out. Both a decision to licence and a decision not to licence SEVs have the potential to create considerations for our Fairer Scotland duties. In terms of Equalities, the decision is one which has the potential to create impact in relation to the protected characteristics of Sex and of Religious Belief. It is therefore important that any groups representing those potentially impacted are made aware of this Consultation and their views be actively sought.

5.4 Sustainable Development Goals

There are no sustainable development goals arising from the proposals contained in this report.

5.5 Climate Change

There are no climate change impacts arising from the proposals contained in this report.

5.6 Rural Proofing

There are no rural proofing impacts arising from the proposals contained in this report.

5.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

5.8 Changes to Scheme of Administration or Scheme of Delegation

No changes to either the scheme of administration or the scheme of delegation are required as a result of the recommendations in this report.

6 CONSULTATION

- 6.1 The Director (Finance & Corporate Governance), the Monitoring Officer/Chief Legal Officer, the Chief Officer Audit and Risk, the Director (People Performance & Change), the Clerk to the Council and Corporate Communications are being consulted and any comments will be incorporated into the final report.

Approved by

Nuala McKinlay
Chief Legal Officer

Signature

Author(s)

Name	Designation and Contact Number
Ron Kirk	Managing Solicitor – Property and Licensing

Background Papers: None

Previous Minute Reference: **27 August 2020**
25 March 2021
31 March 2022

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Ron Kirk can also give information on other language translations as well as providing additional copies.

Contact us at Legal & Licensing, Scottish Borders Council, Council Headquarters, Newtown St.Boswells, Melrose, TD6 0SA, 01835-825225, Legal@scotborders.gov.uk

Appendix 1

Scottish Borders Council

Sexual Entertainment Venue Licensing Policy 2022

<https://scotborders.citizenspace.com/regulatory-services/sexual-entertainment-venue-licensing-policy-2022>

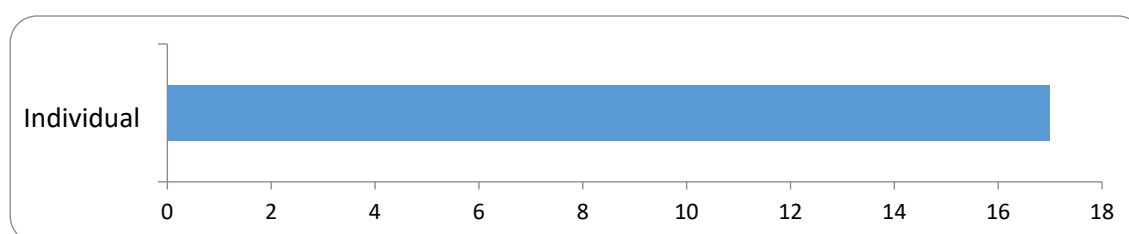
This report was created on Monday 26 September 2022 at 15:35

The activity ran from 16/06/2022 to 18/09/2022

Responses to this survey: **17**

How are you responding to this consultation?

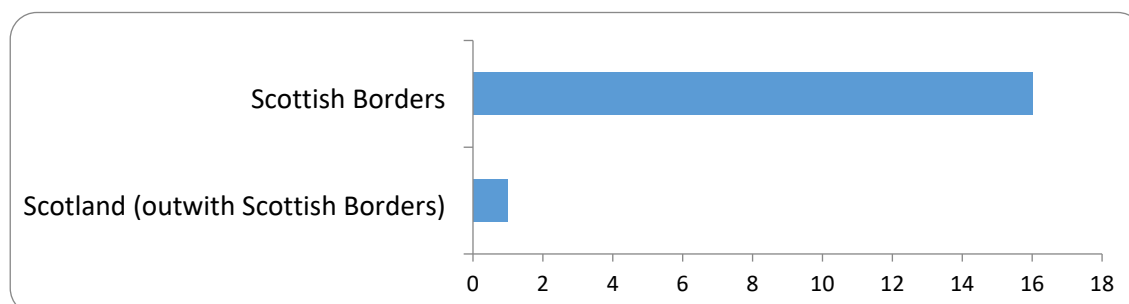
There were 17 responses to this part of the question.



Option	Total	Percent
Individual	17	100.00%
Group or Organisation	0	0.00%
Not Answered	0	0.00%

Where are you based?

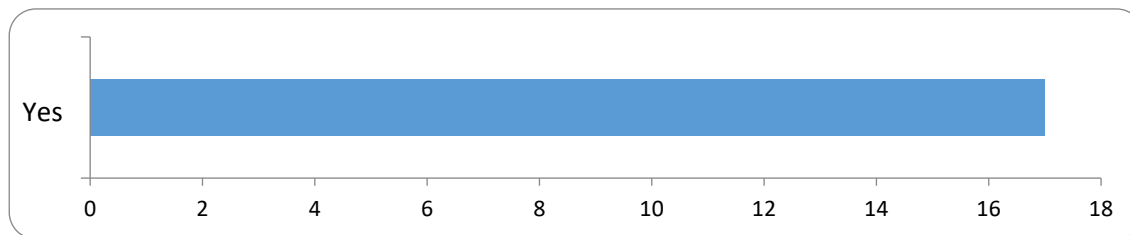
There were 17 responses to this part of the question.



Option	Total	Percent
Scottish Borders	16	94.12%
Scotland (outwith Scottish Borders)	1	5.88%
Other area	0	0.00%
Not Answered	0	0.00%

The Council is suggesting that the appropriate number of Sexual Entertainment Venue's throughout the Scottish Borders area is nil (0/ zero).

There were 17 responses to this part of the question.



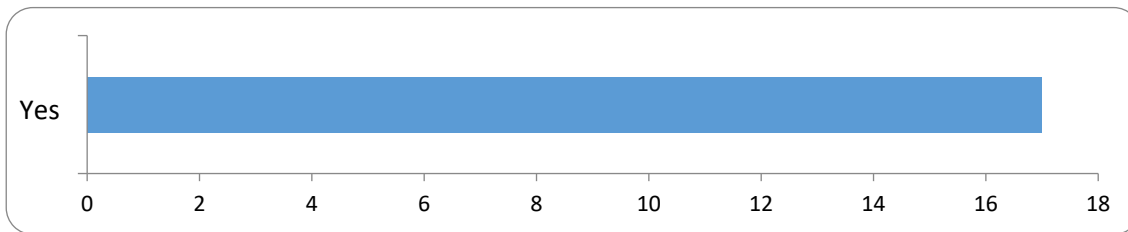
Option	Total	Percent
Yes	17	100.00%
No	0	0.00%
Not Answered	0	0.00%

Comments about nil (o/zero) venues:

<p>From the information in the draft policy I would agree that it would not be viable without changing the character of the larger towns in the Scottish Borders. It is also unlikely to be a successful venue in smaller downs due to the population of each.</p>
<p>Given the low population of the Borders and access to this entertainment in larger cities, it is appropriate that the number in the Borders remains nil. Small town centres will be less attractive to a wider clientele if there are sexual entertainment venues.</p>
<p>I do not agree with anything that allows women or men to be degraded or sexualised. I am aware of the argument that everyone working in these venues WANTS to but that is not 100% true and people of both sexes that are vulnerable or in financially difficult situations often find this is their only option. This is exploitation and to be an active part in that on any level or to any degree is totally unacceptable.</p>
<p>I do not believe in the exploitation of women or men for another's self-gratification. I fear that the more vulnerable in our society maybe targeted for this work.</p>
<p>I totally agree with the Scottish Borders Council proposal being zero. I feel that this is for a financial gain of the organisation of these sexual entertainments venues. It creates a dangerous power dynamic against men and woman. I attracts vulnerable young woman who see this as easy way to make money which then results in the being sexual exploited.</p>
<p>It would put people at risk of harm, is demeaning to people, objectifying them and there are enough problems and risks to people without these such venues.</p>
<p>My personal opinion</p>
<p>SEVs promote a culture of sexism and misogyny. It is mostly men who frequent those venues and mostly women who perform. SEVs employ exploitative practices when recruiting women to perform and they do not provide any protection from exploitation or abuse. They are further linked to wider organised crime, including drugs, human trafficking and prostitution. Sexual entertainment should not be a business as it abuses women's bodies and sexuality and objectifies them.</p>
<p>We should not be encouraging women being seen as sexual objects.</p>

The Council is also proposing that the whole region of the Scottish Borders be treated as one area for the purpose of Sexual Entertainment Venue licensing. This means that if zero is an adopted number no Sexual Entertainment Venues will be permitted throughout the whole region.

There were 17 responses to this part of the question.



Option	Total	Percent
Yes	17	100.00%
No	0	0.00%
Not Answered	0	0.00%

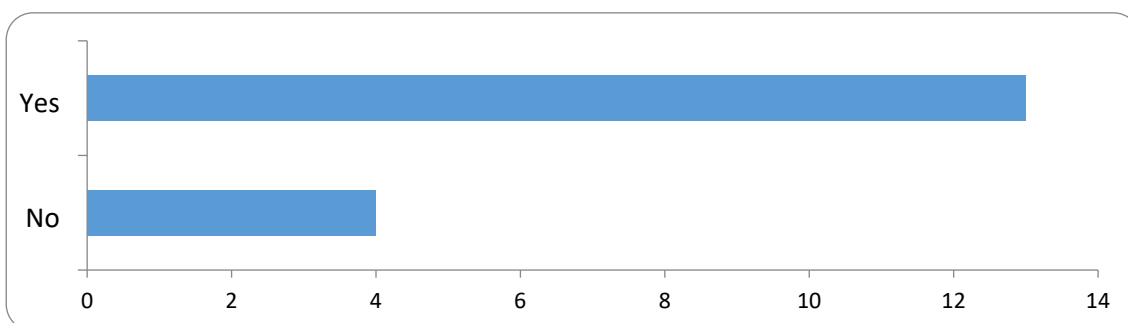
Comments about whole area:

I don't see any reason why not to treat the area as a whole
It is the sensible thing to do!
It protects the whole area.
My personal opinion
Women are more than sex objects. We do not need sexual entertainment venues.

There are suggested licence conditions in parts 9 and 10 of the draft policy statement.

agree - conditions

There were 17 responses to this part of the question.



Option	Total	Percent
Yes	13	76.47%
No	4	23.53%
Not Answered	0	0.00%

Comments about part 9 and 10 conditions:

Option	Comment
No	I do not agree with sexual entertainment venues regardless of the licensing conditions
	Really don't believe we need such venues.
	Should be no venues
Yes	The conditions in place are supportive of the safety of the workers and customers.
	Though not relevant if the total number of venues is nil.

Do you have any final comments about Sexual Entertainment Venue licensing in the Scottish Borders?

They would only cause harm.
I feel very strongly that this is not appropriate for small rural community. There are other avenues individuals with certain needs can pursue to satisfy whatever needs they have. It is not appropriate in small town to have establishments that glorify sexual exploitation, violence against women/men, and that prey on the vulnerable and financially needy individuals in our community. Young people in our communities are exposed to enough online we do not need to expose them to the idea of it in our small towns.
i would oppose any such venue being licensed through the council. The council should uphold their commitment to keep the borders safe and free from sexual exploitation - any such venue would involve the exploitation of people to varying degrees with financial gain for those doing the exploiting.
Sexual Entertainment Venues should never be allowed in Scotland.
This venues should not be considered for the Scottish Borders area.
zero tolerance.

Appendix 2

SCOTTISH BORDERS COUNCIL

Policy Statement on the Licensing of Sexual Entertainment Venues

Section 45C of the Civic Government (Scotland) Act 1982

This Statement of Licensing Policy of the Scottish Borders Council, the Licensing Authority for the Scottish Borders area was prepared in relation to the licensing of Sexual Entertainment Venues under the Civic Government (Scotland) Act 1982 as amended. Publication of the policy was approved on XXXXXXXX.

This Policy is operative from XXXXXX

Contents

1. *Definitions*
2. *Making an Application*
3. *Fees*
4. *Making Objections to Applications*
5. *Mandatory Grounds for Refusal*
6. *Discretionary Grounds for Refusal*
7. *Number of Sexual Entertainment Venues*
8. *Relevant Locality.*
9. *Licence Conditions*
10. *Standard Conditions*
11. *Duration of Licences*
12. *Waivers*

Licensing Policy Vision Statement

We want to make sure that Scottish Borders Council regulates and restricts Sexual Entertainment Venues to ensure that the Scottish Borders continues to offer a wide choice of high quality and well managed entertainment and cultural venues within a safe, orderly and attractive environment; valued by those who live here, work here and come to visit.

The statutory Statement of Licensing Policy published under the Civic Government (Scotland) Act 1982 as amended sets out how the council as a Licensing Authority promotes the licensing objectives behind the Civic Government (Scotland) Act 1982 as amended relating to the provision of regulated entertainment, and the potential provision of late night refreshment.

Resolution

On 25 March 2021 the council passed a resolution in terms of Section 45B of the Civic Government (Scotland) Act 1982 as amended by The Air Weapons and Licensing (Scotland) Act 2015. The effect of passing this resolution is to require sexual entertainment venues to be licenced under the 1982

Act. A licence issued by the council may last up to 1 year and subject to these policies, may be renewed.

1. Definitions

- 1.1 "Sexual entertainment venue" means any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser. "Sexual entertainment" means:-
- (a) any live performance, or
 - (b) 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).
- For the purposes of the definition of "sexual entertainment", "display of nudity" means:-
- (a) in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus,
 - (b) in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals or anus.
- Sexual entertainment is provided if (and only if) it is provided (or allowed to be provided) by or on behalf of the organiser.
- References in Schedule 2 (as modified for the purposes of section 45B) to the use of any premises by a person as a sexual entertainment venue are to be read as references to their use by the organiser.
- The following are not sexual entertainment venues:-
- (a) a sex shop (within the meaning of paragraph 2(1) of Schedule 2),
 - (b) such other premises as the Scottish Ministers may by order specify.
- 1.2 This policy sets out the councils approach to the regulation of sexual entertainment – premises under the Civic Government (Scotland) Act 1982 as amended by The Air Weapons and Licensing (Scotland) Act 2015.
- 1.3 The aims and objective of this policy are therefore to promote;
- (a) Preventing crime and disorder,
 - (b) Securing public safety,
 - (c) Preventing public nuisance,
 - (d) Protecting and improving public health, and
 - (e) Protecting children and young persons from harm.
- 1.4 The council will always consider the individual circumstances of each application made under the 1982 Act. It may make exceptions to its own policies where it is appropriate to do so and it will give reasons for doing this.
- 1.5 This statement of SEV Licensing Policy does not undermine the right of any individual to apply under the terms of the 1982 Act and have any such application considered on its individual merits.

2. Making an Application

- 2.1 The SEV licensing regime will take place from xxxxxx. Under paragraph 25(3) of Schedule 2 of the 1982 Act, we as the local authority cannot consider any application for an SEV licence prior to the date specified in the resolution and cannot grant any licence until we have considered all applications received prior to that date.
- 2.2 Application forms for SEVs will be available from XXXXXX and will only be considered on or after that date.
- 2.3 The application must be in writing, and shall state the full name and address of the applicant, the date and place of birth of the applicant, where the applicant is not to be carrying on the day to day management of the SEV, the full name, address and date and place of birth of the person who is and shall be signed by the applicant or his agent under Schedule 2 of the 1982 Act.

- 2.4 The application must be in writing, giving the full address and name of applicant, the date and place of birth of the applicant or if the applicant is not a person, its name, registered or principal office address and the names and private addresses of the directors or other person responsible for its management under Paragraph 10 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Additional information may be requested as a part of the application. What is reasonable should be judged in the context of the aims of the act.
- 2.5 An applicant for the grant, renewal or transfer of a licence under this Schedule shall give public notice of the application.
- 2.6 Notice shall in all cases be given by the applicant publishing an advertisement in a local newspaper circulating in the appropriate authority's area. The licensing authority may also require the applicant to display a public notice at the proposed premises and applications will be advertised on the Council's website.
- 2.7 The publication shall not be later than 7 days after the date of the application.
- 2.8 Where the application is in respect of premises, notice of it shall in addition be displayed for 21 days beginning with the date of the application on or near the premises and in a place where the notice can conveniently be read by the public.
- 2.9 Every notice under this paragraph which relates to premises shall identify the premises. Every such notice which relates to a vehicle, vessel or stall shall specify where it is to be used as a sex establishment
- 2.10 Where an SEV is trading in the area before the resolution has been published and before the specified day of effect has applied for a SEV licence under Schedule 2 of the 1982 Act, then they may continue trading until the application is considered. If the application is refused they may continue to trade until the timescale for an appeal under paragraph 24 has lapsed or the appeal has been determined or abandoned.

3. Fees

- 3.1 The Civic Government (Scotland) Act 1982 permits the authority to set a reasonable fee as the authority shall seek to ensure that from time to time the total amount of fees receivable by the authority is sufficient to meet the expenses of the council in exercising their functions under the Act. The fees will be reviewed annually in line with a review of Licensing fees and will be incorporated within the list of Civic Government Licensing fees. The fees will not be reduced or refunded if the application is refused or the licence is granted for less than was requested.

4. Making Objections to Applications

- 4.1 An objection or representation relating to an application for the grant or renewal of a licence under this schedule shall be considered on if the objection or representation is
 - (a) 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;
 - (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 2.6 above;
 - (iii) the date, if any, specified by the local authority under paragraph 7(10) above.
- 4.2 The authority before reaching a final decision upon such an application, give the applicant and any person who has made a relevant objection or representation an opportunity to be heard by them and where they propose to do so, must within such reasonable period (not

being less than 14 days) of the date of hearing, notify the applicant and each such person of that date.

5. Mandatory Grounds for Refusal

- 5.1 Specific mandatory grounds for refusal are set out in Schedule 2 of the 1982 Act. A licence cannot be granted or renewed by the authority if:
- (a) to a person under the age of 18;
 - (b) to a person who is for the time being disqualified under paragraph 13(10) or 19(5) of the 1982 Act
 - (c) 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 under paragraph 13(10) or 19(5) below of the 1982 Act;
 - (d) to a person who has been convicted of an offence under paragraphs 19 to 21 of the 1982 Act;
 - (e) to a person who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made;
 - (f) to a body corporate which is not incorporated in the United Kingdom;
 - (g) to a person who has, within the period of 12 months immediately preceding the date when the application was made, been refused by the same local authority the grant or renewal of a licence under this Schedule for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal; or
 - (h) 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 has, within that period, been refused by the same local authority the grant or renewal of such a licence, unless the refusal has been reversed on appeal.

Paragraph 13(10) of the 1982 Act

Where a licence under this Schedule is revoked, its holder shall be disqualified from holding or obtaining such a licence in the Scottish Borders area for a period of 12 months beginning with the date of revocation unless the revocation has been reversed on appeal.

Paragraph 19(5) of the 1982 Act

- (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/she made the application;
- (c) that the number of sexual entertainment venues in the relevant locality at the time the application is made is equal to or exceeds the number which the Scottish Borders Council consider is appropriate for that locality. Nil may be an appropriate number;
- (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.

6. Discretionary Grounds for Refusal

- 6.1 A licence may be refused where:
- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - (b) if the licence were to be granted, renewed, or transferred 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, renewal or transfer of such a licence if he/she made the application;
 - (c) the number of sexual entertainment venues in the relevant locality at the time the application is determined is equal to or exceeds the number which the 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.

7. Number of Sexual Entertainment Venues

- 7.1 As set out within the 1982 Act ,Schedule 2 provides that a Local Authority may refuse an application if it is satisfied that the number of sexual entertainment venues in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality. The Council is able to determine that the appropriate number for a locality is nil.
- 7.2 Sexual entertainment venues cater for a particular adult audience and by attracting those customers can affect the character of the locality in which they are situated. The council considers that localities which are characterised by particular uses, whether by residents, visitors or workers, should not include sexual entertainment venues.
- 7.3 After consultation with local residents and consideration of the geography and layout of towns and villages within the Scottish Borders area, Scottish Borders Council has determined that the appropriate number of sexual entertainment venues in the Scottish Borders is nil for all localities.
- 7.4 Towns with surrounding communities with fewer than 2,000 residents are considered too small to be able to support sexual entertainment venues. There would be too few local residents and tourists to make a sexual entertainment venue commercially viable. Furthermore, the nature of sexual entertainment venues and the impact that they and their customers can have in these localities would significantly distort the character of these communities. In these smaller communities it is extremely difficult to identify premises that are not in close proximity to the areas mentioned in the guidance to the act: residential areas, schools, including the routes to and from school regularly used by children, or places of worship. Therefore, the appropriate number of sexual entertainment venues licenced in towns and all other communities or villages in the Scottish Borders area with fewer than 2,000 residents is nil. According to data provided by the National Records of Scotland the population estimate for the following settlement areas as at 2020 was:

Tweedbank	-	1996
Coldstream	-	1887
West Linton	-	1843
Lauder	-	1837
Earlston	-	1727

Newtown St.Boswells	-	1474
Chirnside	-	1449
St.Boswells	-	1443
Darnick and Gattonside	-	910
Cardrona	-	849
Newcastleton	-	757
Walkerburn	-	714
Denholm	-	702
Stow	-	697
Greenlaw	-	604
Yetholm	-	599
Ayton	-	595
Coldingham	-	501

- 7.5 Larger towns with populations in excess of 2000 residents have the most potential for hosting sexual entertainment venues. The larger towns have established town centres that contain several licenced premises and, in some cases, nightclubs. Town centres would appear to be the most likely areas to establish a sexual entertainment venue. However, the town centres of the larger towns are heavily used by local residents going about their daily business and include routes to and from schools regularly used by children. In addition, the town centres are also close to places of worship and tourist attractions. The town centres are the only viable location a sexual entertainment venue could be considered but such a venue would be outwith the existing character and functions of the larger towns and would potentially reduce their appeal to visitors especially those with children. Consequently, it is considered that the number of sexual entertainment venues in the larger towns in the Scottish Borders area with more than 2000 residents is nil. According to data provided by the National Records of Scotland the population estimate for the following settlement areas as at 2020 was:

Hawick	-	13,653
Galashiels	-	12,568
Peebles	-	8,519
Kelso	-	6,833
Selkirk	-	5,435
Jedburgh	-	3,774
Eyemouth	-	3,480
Innerleithen	-	3,174
Duns	-	2,766
Melrose and Newstead	-	2,492

- 7.6 From time to time the Scottish Borders Council will review the appropriate number of sexual entertainment venues for their area.
- 7.7 With the appropriate number of sexual entertainment venue licenced premises set to nil for all relevant localities within the Scottish Borders area there is a presumption against the granting of new licences. Applicants will therefore have to demonstrate exceptional reasons as to why a licence should be granted in order to overcome this presumption. For the avoidance of doubt the council considers that responsible management and the implementation of appropriate operating policies at sexual entertainment venues are essential to ensure the promotion of the licensing aims and objectives and so being a responsible operator is a basic requirement and is not considered as exceptional.

8. Relevant Locality

- 8.1 With reference to Schedule 2 of the 1982 Act “relevant locality” means:
- (a) in relation to premises, the locality where they are situated; and
 - (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex shop.
 - (c) that the number of sex shops 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.

9. Licence Conditions

- 9.1 The council considers that responsible management and the implementation of appropriate operating policies at sexual entertainment venues are essential to ensure the promotion of the licensing aims and objectives.
- 9.2 Under the 1982 Act, the council may grant or renew a sexual entertainment venue licence on such terms and conditions and subject to such restrictions as it may specify.
- 9.3 Additionally, and notwithstanding its power to condition licences when determining their grant or renewal, the council may make regulations prescribing standard conditions applicable to licences for sexual entertainment venues, that is to say, terms, conditions and restrictions on or subject to which licences are in general to be granted, renewed or transferred by the council.
- 9.4 It will only impose such conditions as are appropriate to promote the policy aims and objectives.
- 9.5 In ensuring compliance with the sexual entertainment licence regime the council will aim to promote the policy aims and objectives.
- 9.6 Through standard conditions the council seeks to ensure that sexual entertainment venues are well managed and supervised, restrict the sexual entertainment activities and the manner in which they are permitted to be provided, protect performers, and control the impact of the venue and its customers in relation to its locality.
- 9.7 The council will prescribe, and from time to time revise, standard conditions which will apply generally to licences that the council will grant or renew.

10. Standard Conditions

Location

- 10.1 Premises should fit in with the character of the area and surrounding premises to the satisfaction of the licensing authority.
- 10.2 The name of the premises must be approved by the council in writing. Any change to the name of the premises must be approved by the council in writing.
- 10.3 The use of any cruising cars or any other wheeled carriage [whether for the purposes of hire or reward or not] by the premises to solicit customers and/or transport to or from the premises is prohibited.

Appearance, displays and layout of premises

- 10.4 Copies of the licence and the conditions attached to the licence shall be clearly displayed so that every person entering the premises can see a copy of both the licence and the conditions.
- 10.5 Any charge for entering the premises shall be clearly and legibly displayed outside the premises.
- 10.6 No display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing or similar matter shall be displayed outside the premises without the written permission of Scottish Borders Council, except for those signs or notices that are required to be displayed by these licence conditions.
- 10.7 Price lists for both drinks and sexual entertainment and the code of conduct for customers will be clearly displayed at each table and at each entrance to the premises.
- 10.8 Price lists and the code of conduct for customers must be printed in a manner which is clear and easy to read during the normal operation of the premises.
- 10.9 The entrance to the premises shall be so designed and constructed as to prevent persons outside the premises having a view of the interior. No part of the performance shall be visible from outside the premises.
- 10.10 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.
- 10.11 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.
- 10.12 All windows must be dressed or designed so as to prevent persons outside the premises having a view of the interior.
- 10.13 No window shall contain any sign, advertising material, goods or display likely to cause an offence to persons passing the window. This includes any advertising material, photographs or other images that indicate and suggest that erotic dancing takes place on the premises and which may be offensive.
- 10.14 Lighting in all parts of the premises must be in operation continuously during the whole time the premises are open as a sex establishment.
- 10.15 The premises shall be maintained in good repair and condition. All parts of the Premises shall be kept in a clean and hygienic condition to the satisfaction of the Council.
- 10.16 Doors and openings which lead to parts of the premises which are not open to the public shall be clearly marked "staff only" or by some other sign that deters the public from using such doors or openings.
- 10.17 The external doors to the Sex Establishment shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
- 10.18 The Licensee shall make provision in the means of access both to and within the Sex Establishment for the needs of members of the public visiting the establishment who are disabled.
- 10.19 All exhibits, displays, demonstrations and like activities must be open and available to all customers at no charge other than any initial entrance fee to the establishment and there shall be no individual cubicles or rooms designed to accommodate individual persons or groups of persons where exclusive demonstrations, displays, exhibits or similar activities may take place, unless authorisation/consent is first granted by the Council.
- 10.20 The authorised entertainment must only take place in designated areas approved by the Council;
- 10.21 Suitable changing rooms with restricted access should be provided for performers, separate from customers and other staff, where they may prepare for their performance;
- 10.22 Safe and controlled access to the dressing room for performers must be maintained at all times when the performance is taking place and immediately afterwards;
- 10.23 The agreed activities will take place only in designated areas as indicated on the plans authorised by the Licensing Authority and in the full view of the audience. No part of the premises accessible to the audience shall be concealed from observation without the appropriate authorisation from the Licensing Authority.

- 10.24 No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
- 10.25 No change of use of any portion of the Premises from that approved by the Council shall be made until the consent of the Council has been obtained thereto.

Opening times

- 10.26 Except with the previous consent of the Council a sexual entertainment venue shall not be open to the public before 22:00 hours and shall not be kept open after 03:00 hours. Opening hours may be aligned to alcohol licensing hours.
- 10.27 Except with the previous consent of the Council a sexual entertainment venue shall not be open on Sundays, Good Friday and Christmas Day.

Control of entry

- 10.28 No person under 18 years of age shall be admitted on the premises.
- 10.29 The Challenge 25 proof of age scheme shall be operated at the premises whereby any person suspected of being under 25 years of age shall be required to produce identification proving they are over 18 years of age. The only acceptable forms of identification are recognised photographic identification cards, such as driving licence or passport.
- 10.30 Any person who appears to be drunk / intoxicated or under the influence of illegal drugs shall not be permitted entrance to the premises.
- 10.31 A policy of random searches of persons entering the premises shall be operated.
- 10.32 Any person found to be in possession of illegal drugs upon entry shall be prevented entry and, where possible, restrained until the Police can take such person into custody. Any persons found using illegal drugs on the premises shall be removed from the premises or, where possible, restrained until the Police can take such person into custody.
- 10.33 The premises shall maintain a refusals log whereby on any occasion a person is refused entry details shall be recorded. The log must be made available on request by Police Scotland or an authorised officer of the Council.
- 10.34 No tickets shall be sold and no admission money taken in a place to which members of the public, other than permitted customers of the Sex Establishment, have access.
- 10.35 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.
- 10.36 Door Supervisors shall continually monitor all entrances, exits and toilets.
- 10.37 The Door Supervisor register shall be made available to Police Officers or authorised officers of the Council on request.
- 10.38 The Designated Premises Supervisor 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.

Conduct of performers

- 10.39 No person under 18 years of age shall be admitted on the premises.
- 10.40 Dancers will only perform on the stage area or when providing a private dance.
- 10.41 Dancers will only be present in the licenced area in a state of nudity when they are performing on stage or providing a private dance.
- 10.42 Relevant entertainment will only be performed by the dancer. There must be no audience participation.
- 10.43 There must be no physical contact between dancers.
- 10.44 There must be no physical contact between the dancer and the customer at any time.
- 10.45 Any performance will be restricted to dancing and the removal of clothes. There will not be any other form of sexual activity or stimulation which, for the avoidance of doubt, includes kissing.

- 10.46 Sex toys must not be used and penetration of the genital area by any means must not take place.
- 10.47 Customers must remain seated for the duration of the performance.
- 10.48 Customers will not be permitted to throw money at the dancers.
- 10.49 Patrons or members of the audience shall not take photographs or record digital images of performers by any means.
- 10.50 All booths and VIP areas used for private dances must be visible to supervision and must not have closing doors, curtains or coverings of any description.
- 10.51 All booths and VIP areas used for private dances must be directly supervised by either a SIA registered door supervisor, or a member of staff who has direct contact with SIA registered door supervisors working on the premises at all times the booths/areas are in use. Direct supervision does not include remote supervision by CCTV.
- 10.52 Any person on the premises who can be observed from outside the premises will be properly and decently dressed.
- 10.53 The licensee will ensure dancers have secure dressing rooms, facilities to secure valuables and proper sanitation facilities available to them.
- 10.54 The practice of filming is prohibited.
- 10.55 Exit routes for performers must be kept clear.

Protection of performers and prevention of crime (including safety of public and performers)

- 10.56 There shall be a written code of conduct for performers. All performers shall be required to certify their agreement to comply with the code and a record shall be kept on the premises and be made available upon request by the police or an authorised officer of the Council. The code shall include the following:
 - (a) The licence conditions relating to performances of sexual entertainment.
 - (b) House rules.
 - (c) Internal disciplinary procedure and details of any financial penalties that may be imposed. This should include a system to ensure that performers suffering a genuine sickness or domestic emergency are not made subject to unfair punitive financial penalties.
 - (d) Drugs monitoring.
 - (e) No contact with customers outside the club.
 - (f) The arrangements for breaks and smoking facilities provided.
 - (g) Copies of approved forms of ID supplied by each performer i.e. passport, photo card driving licence or PASS card.
- 10.57 Performers shall be provided with secure and private changing facilities
- 10.58 Means to secure personal property shall be provided for the performers
- 10.59 Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking area. If no smoking area is provided a maximum of 3 performers may be permitted to take a break at any one time.
- 10.60 The licence holder shall implement a written policy to ensure the safety of performers when leaving the premises following any period of work
- 10.61 All fees and charges for performers shall be stated in writing and prominently displayed in the changing area.
- 10.62 The Licensee shall take all reasonable precautions for the safety of the public and employees.
- 10.63 There must be a minimum of one member of security staff present on any floor where a performance of sexual entertainment is taking place and one member of security staff at the entrance to the premises, at all times the premises is open to the public.
- 10.64 The Licensee shall comply with any fire prevention and safety measures that may be required by the Scottish Fire and Rescue Service and shall maintain and keep available for use all specified fire-fighting equipment and extinguishers.

Management

- 10.65 Before a dancer is permitted to work on the premises the licensee will ensure that the dancer:
- (a) has not been convicted of theft, drug offences or prostitution,
 - (b) has the right to work in the UK.
- 10.66 The licensee will keep records of the checks, including copies of any documentation such as a basic disclosure, passport, visa, driving licence or national insurance number provided by the dancer.
- 10.67 All premises that provide relevant entertainment will be expected to provide new dancers with a pack of information. This pack will include:
- (a) A copy of the sexual entertainment venue licence, including the conditions applied by the Licensing Committee,
 - (b) Details of any other conditions applied by management of the premises,
 - (c) Details of how to report crime to the relevant authority,
 - (d) Details of the premises public liability insurance,
 - (e) Information on how dancers can obtain personal liability insurance,
 - (f) Details of unions, trade organisations or other bodies that represent the interests of dancers,
 - (g) Details of local women's specialist support services and how to access them,
 - (h) Instructions on the use of mobile phone apps re personal safety
 - (i) A copy of the code of conduct for dancers,
 - (j) A copy of the code of conduct for customers, and
 - (k) Price lists for drinks and sexual entertainment.
- 10.68 The information provided in the pack will be provided in the dressing rooms or a sign will be placed in the dressing room advising the pack is available on request.
- 10.69 All performers who engage in an evening of work at the premises shall sign a document to confirm the start and finish time of the shift. The document should be dated and contain the performer's true name as well as the stage name. These records shall be kept for a minimum period of six months and shall be produced on request by an authorised officer.
- 10.70 Employment records for performers and staff shall be kept for a minimum of six months following the cessation of their employment.
- 10.71 Accurate payment and remuneration records shall be maintained and shall be made available upon request to the Police or an authorised officer of the Council.

Maintenance and repair

- 10.72 The licence holder shall maintain the licenced premises in good order, repair and state of cleanliness at all times.
- 10.73 Should an authorised officer take issue with the condition of any parts of the premises internal or external, notice will be given in writing and must be rectified within a period of 28days from the date of the notice. Any appeal against such notice must be made in writing to the licensing service within 14days of issue. The appeal will be determined by the Public Protection Sub Committee.
- 10.74 The licence holder shall take appropriate measures to ensure that refuse from the premises are kept secure from public accessibility pending removal from site.
- 10.75 The licence holder shall comply with any fire prevention and safety measures that may be required by the Fire Authority or suitably competent local authority officer.

CCTV

- 10.76 The CCTV system must comply with: British Standard 7958:2015 - Closed circuit television (CCTV). Management and operation. Code of practice.

- 10.77 Where CCTV system incorporates a digital recording function, it must also comply with: BS EN 62676-4:2015 - Video surveillance systems for use in security applications. Application guidelines.
- 10.78 The designated premises manager (as specified in any licence in force for the premises granted under the Licensing (S) Act 2005)/premises owner must maintain an annual registration with the Information Commissioner's Office - as stipulated under the Data Protection Act 2018.
- 10.79 At all times, the CCTV system and recordings must be kept in a secured environment under the control of the designated premises manager (as specified in any licence in force for the premises granted under the Licensing (S) Act 2005) or other nominated responsible named individual. Also a full instruction manual for the CCTV system must be available to the Police and other Responsible Authorities.
- 10.80 The CCTV system must be maintained in good working order to:
- (a) Operate on 'real-time' at a minimum rate of 20 frames-per-second, with constant, correct time/date generation.
 - (b) Have a recording capability capable of providing individual pictures.
 - (c) Provide clean, clear and unobstructed camera views of evidential quality in all lighting conditions.
 - (d) Provide correctly timed and date stamped recordings - which must be stored in date order, numbered sequentially and kept for a period of 31 days and handed to the Police on request.
 - (e) Export footage to a removable storage medium with a time and date integral to the image – where possible, to also include any software needed to replay the footage.
 - (f) Ensure exported footage at the same, or similar quality to that recorded on the system recording.
- 10.81 During all periods of licensable activity a nominated and trained 'CCTV Operator' must be on duty, who is competent in the operation of the CCTV equipment in order to:
- (a) inspect the CCTV system on a daily basis, and ensure that all cameras are in full working order.
 - (b) record each inspection on a 'CCTV maintenance' log sheet, and endorse with their signature.
 - (c) facilitate the downloading CCTV footage.
- 10.82 During all periods of non-licensable activity, a 'CCTV Operator' must be contactable by the police on a designated emergency-only telephone number. This number must be registered with the local police licensing officer.
- 10.83 The CCTV system must:
- (a) Incorporate at least one camera on every entrance and exit to the premises - individuals must identifiable.
 - (b) Incorporate at least one camera on all areas where the sale/supply of alcohol occurs - individuals must identifiable.
 - (c) Incorporate at least one camera on any potential queue area external to the premises, and car parking area within the boundary of the premises - individuals must be identifiable.
 - (d) Ensure that all other cameras at the premises allow for individuals to be recognisable.
 - (e) Incorporate a dedicated CCTV camera for each booth – individuals must be clearly identifiable.
- 10.84 In the event of a technical failure of the CCTV system, the nominated CCTV Operator will ensure the matter is reported to the Scottish Borders Council Licensing Team within 24 hours.
- 10.85 A camera which records a facial picture of customers entering the premises shall be situated at the reception and a monitor situated there so customers entering can see same.
- 10.86 CCTV shall cover all public areas of the premises including all areas where performances of sexual entertainment are conducted.

Enforcement

- 10.87 Inspection and enforcement will be based on the principles of risk assessment, having a graduated response and targeting problem premises. Inspections will not be undertaken routinely. Enforcement of the legislation will be objective and transparent.
- 10.88 An intelligence led approach will be adopted and information regarding incidents of violent crime, disorder and nuisance in and around licenced premises will be collated to provide a risk assessment basis for inspection and, where appropriate, surveillance, with high-risk operations receiving more attention than premises carrying low public safety/nuisance risks.
- 10.89 The Scottish Borders Licensing Authority may take appropriate enforcement action against those responsible for unlicenced premises/activity.
- 10.90 Any complaints received by the council about unlicenced activity or the way licenced premises may be operating will be dealt with in accordance with the council's relevant policies and may result in an adjustment to the risk rating, prompting more frequent visits. We will work with businesses in an attempt to resolve issues that are of concern.
- 10.91 Following a hearing, the Licensing Committee may attach further conditions to a licence, considered necessary and proportionate in the public interest including, but not limited to, the interest of public policy, public security, public health or the protection of the environment. This could include conditions restricting the opening and closing times of the premises.

Staff Training

- 10.92 Staff must be trained appropriately to ensure compliance with all policies, procedures and conditions.

11. Duration of Licences

- 11.1 Unless a shorter period is specifically stated, all licences will be granted for one year, which shall be the maximum duration of any licence.

12. Waivers

- 12.1 A waiver may be applied for. An application has to be made in writing. The Authority may waive the requirement of a licence in any case where they consider that to require a licence would be unreasonable or inappropriate in accordance with Schedule 2 of the 1982 act.