

ABERDEENSHIRE COUNCIL

Policy Statement on the Licensing of Sexual Entertainment Venues ("SEV Policy Statement")

under the 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. OVERVIEW

Impact of Licensing Sexual Entertainment Venues (SEVS)

- 1.1. Aberdeenshire 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 (SEV) should be licenced in order that both performers and customers benefit from a safe, regulated environment. The Council also believes that the licensing of these ventures 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 those involved in these types of activities.

2. INTRODUCTION

- 2.1. The legislation defines many terms. In this document, terms which are defined are generally shown in *italics*. Other legislative provisions referred to may be in boxed format. The main definition is "Sexual Entertainment Venue", which the legislation shortens to "SEV".

- 2.2. This document deals with the licensing of SEVs. The legislation is in the Civic Government (Scotland) Act 1982. This is freely available on the Internet:

<http://www.legislation.gov.uk/ukpga/1982/45/contents>

- 2.3. In the Act, the SEV legislation is in:

- Sections 45A to 45F (in the main part of the Act), and
- Schedule 2 (at the end of the Act). The Schedule is divided into Paragraphs.

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

- 2.4. When this document refers to:

"Section" - it means a provision in the main part of the 1982 Act (Sections 45A to 45F).

"Paragraph" it means part of Schedule 2, at the end of the Act.

"Part" - it means one of the parts of this Policy Statement.

"Annex" - it means part of this Policy Statement at the end of the document giving more details.

- 2.5. The Civic Government (Scotland) Act 1982 ('the 1982 Act') covers the licensing of many activities, such as the operation and driving of taxis and private hire cars, street trading, public entertainment and window cleaning.
- 2.6. Instead of making Sexual Entertainment automatically illegal throughout Scotland, the Scottish Parliament amended the 1982 Act so as to leave the decision whether or not to regulate Sexual Entertainment Venues (SEV) to each of the 32 Councils in Scotland:
 - If a Council chooses not to make a Resolution, Sexual Entertainment will continue to be unregulated;
 - If a Council chooses to make a Resolution, Sexual Entertainment may be permitted, under Licence, and the Council would have to publish a "SEV Policy Statement".

This means that it is possible for one Council area to have a Licensing scheme, and a Policy limiting Sexual Entertainment Venue (SEV) numbers, but in a neighbouring Council area there may be no scheme and no Policy.

- 2.7. This change to the 1982 Act was made by the Air Weapons and Licensing (Scotland) Act 2015 with effect from 26 April 2019.
- 2.8. On 4th October 2019 Aberdeenshire Council's Licensing Sub-Committee made a "SEV Resolution" under Sections 45B(1) and 45B(2) of the duly amended 1982 Act, giving effect to Schedule 2 of that Act in respect of the regulation and licencing of Sexual Entertainment Venues (SEV) in the Council area from 4 December, 2020.
- 2.9. As a result of making a SEV Resolution, Aberdeenshire Council must produce and publish a policy statement on the licensing of SEV in their area (the 1982 Act, Section 45C). This document is Aberdeenshire Council's "SEV Policy Statement".

3. IMPLEMENTATION OF NEW LAW IN ABERDEENSHIRE

- 3.1. In Aberdeenshire, the new system has been implemented as follows:
 - 26 April 2019 – the SEV provisions commenced in Scotland.
 - 4 October 2019 – Aberdeenshire Council's Licensing Sub-Committee considered the new provisions, and made a Resolution, implementing

the SEV provisions at the end of a minimum statutory period of 12 months - 4 December 2020.

- 24 August 2020 to 21 September 2020: – public consultation of SEV Policy
- 2 October 2020– adoption of SEV Policy Statement.
- xx November 2020– public notice of the Resolution and publication of the SEV Policy Statement.
- 4 December 2020 – Aberdeenshire’s new SEV regulatory and licencing system commences.

3.2. The legal and other considerations, and the process which the Council followed in making the Resolution, are described in **Annexes B ("Legal Considerations")** and **C ("The SEV Licensing System")**.

4. WHAT NEEDS A LICENCE?

4.1. A Licence is needed for a "Sexual Entertainment Venue" unless the rules about "Occasional Use" or "Waivers" apply (see **Parts 8** and **9** below).

4.2. A "Sexual Entertainment Venue" (SEV) means:

'any premises at which sexual entertainment is provided before a live audience for (or with the view to) the financial gain of the organiser.' (Section 45A(2))

4.3. "Premises" *'includes any building, vehicle, vessel or stall, but not a private dwelling to which the public is not admitted'*.(Section 45A(3)(b))

4.4. Important definitions in the legislation are explained in **Annex N ("Definitions")**:

- (a) "Sexual Entertainment"
- (b) "Display of Nudity"
- (c) "Audience"
- (d) "Organiser"
- (e) "Financial Gain"

4.5. The following premises are not sexual entertainment venues:

- a) Sex shops and sex cinemas (which are separately defined in Schedule 2 of the 1982 Act)
- b) Premises which provide relevant entertainment on an infrequent basis, further explained at **Part 8 - "Occasional Use"**.

A Licence is needed for a "Sexual Entertainment Venue" unless the rules about "Occasional Use" or "Waivers" apply (see **Parts 8 and 9 below**).

5. HOW TO APPLY FOR A LICENCE OR A WAIVER

- 5.1. The Application must be in writing, giving the information and plans described in **Annex F ("Required Information")**.
- 5.2. See **Annex E ("Application Procedure & List of Application Consultees")** for the things which the Applicant has to do before applying to the Council, and when applying, including notifying those parties on the List of Application Consultees, and afterwards.
- 5.3. The Council will advertise, and consult third parties on, the Application. Third parties can state their views. (See **Annex G - "Objections and Representations"**).
- 5.4. Unlike Applications for the grant or renewal of other types of Licence, Applications for the grant or renewal of SEV Licences will be referred to the relevant Area Committee of Aberdeenshire Council for determination, Delegated Powers will not be used.
- 5.5. An application for the grant or renewal of a Licence or Waiver will be considered at a meeting of the relevant Area Committee. The Applicant and any third-party who has stated Objections or Representations will be invited to attend.
- 5.6. The Area Committee will not determine an Application until it is satisfied that the Applicant has completed the procedure (for example, giving the Council a Certificate confirming display of the Site Notice, publication if notice, as appropriate, and notification of consultees). See **Annex E - "Application Procedure & List of Application Consultees"**.
- 5.7. In deciding whether or not to grant or renew a Licence or Waiver, the Area Committee will consider each Application on its own merits and will take into account:
 - any Objections or Representations
 - this Licensing Policy Statement

- The statutory criteria (see **Annex M – “Legal Test”**)
 - Scottish Government Guidance
 - Any other relevant considerations
- 5.8. In relation to Licences, applicants should refer, in particular, to **Part 6 - “Policy of Aberdeenshire”**. See also **Part 10 (“Renewal of Licences”)**. Each application will be considered on its own merits.
- 5.9. In relation to waivers, the Area Committee will consider each application for a waiver on its individual merits. However, any establishment that would normally require a licence under the provisions of the 1982 Act is unlikely to be granted a waiver other than in exceptional circumstances. They will approach a Waiver Application with the presumption that it should be refused. The Applicant should attend the Area Committee hearing and seek to rebut that presumption. The Council is unlikely to consider it would be appropriate to permit waiver from the requirements to hold a SEV Licence, particularly as the legislation allows an Occasional Use exemption – **see Part 8 “Occasional Use”**.
- 5.10. Any Licence or Waiver will be subject to Conditions. (See **Annex H - “Standard Licence Conditions”**.)
- 5.11. Licences will generally last **12 months** but can be for a shorter period if the Council deems this appropriate (Schedule 2, Paragraph 12 of the 1982 Act). The Licence document will state the Expiry Date.

6. POLICY OF ABERDEENSHIRE

- 6.1. The SEV legislation is related to the Scottish Government Policies:

'Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls'

<https://www.gov.scot/publications/equally-safe-scotlands-strategy-prevent-eradicate-violence-against-women-girls/>

'Human Trafficking and Exploitation Strategy'

<https://www.gov.scot/publications/trafficking-exploitation-strategy/>

The Council endorses the objectives of those Policies.

- 6.2. In preparing this SEV Policy Statement, the Council has fulfilled its duties under Section 45C(3) of the 1982 Act to:

- (a) consider the impact of the licensing of Sexual Entertainment Venues in their area, having regard, in particular, to how it will affect the objectives of—
- i. preventing public nuisance, crime and disorder,
 - ii. securing public safety,
 - iii. protecting Children and Young People from harm (where “Children” are persons under 16 years', and “Young People” are 'persons aged 16 or 17 years' - Section 45C(8)), and
 - iv. reducing violence against women,
- and
- (b) consult such persons or bodies as they consider appropriate (see **Annex A - "List of Policy Consultees"**).

The Council has done these things by consulting* and, taking representations from the consultees and the general public, and by considering how it can exercise its functions so as to advance the above statutory objectives. The primary purpose of this Policy Statement is to ensure that Aberdeenshire Council promotes those objectives in exercising its licensing functions.

This being of primary importance, the Council have set out Standard Conditions required to assist compliance with the licensing objectives. (See **Annex H – “Standard Licensing Conditions”**) The Council have discretion to apply conditions to a SEV licence. In doing so, the Council must have regard to how additional conditions relate to the mandatory conditions set out in the 1982 Act, Regulations, Orders or other instruments set out in terms of the Act.

The Standard Conditions have been reviewed to reflect the licensing objectives that they promote. The Standard Conditions can be found in **Annex H – “Standard Licensing Conditions”**.

- 6.3. Any application for the grant or renewal of a SEV Licence will be considered against:
- the statutory criteria (see **Annex M – “Legal Test”**)
 - the Licensing Objectives (above)
 - the General Presumption (below)
 - the Sensitive Premises Presumption (below)

- any Objections or Representations
- any Scottish Government Guidance
- any other relevant considerations

In exercising their functions in relation to the licensing of SEVs, the Council must have regard to this policy statement or revised statement (1982 Act, Section 45C(7)). The Council will not follow this policy inflexibly but will take into consideration all relevant factors when determining applications. Each Application for a Licence or Waiver will be determined on its own individual merits.

The General Presumption

6.4. The Council must set the number of SEVs permitted in their area and for each relevant locality. (1982 Act, Section 45B(6)(e)(ii)(a) and Schedule 2, Paragraph 9(5A))

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

"that the number of SEVs in the local authority's area or 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 their area or that locality" (1982 Act, Section 45B(6)(e)(i) and Schedule 2; Paragraphs 9(4) and 9(5)(c))

6.6. *The '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 SEV.

(1982 Act, Schedule 2, Paragraph 9(7))

6.7. The Council has determined that there are 6 'Relevant Localities' in their area, coinciding with the 6 'Locality Areas' used by the Aberdeenshire Community Planning Partnership). These Localities are also used in the alcohol Licensing Policy Statement under the Licensing (Scotland) Act 2005. These are:

(1) “**Banff & Buchan**” (including Aberchirder, Banff, Cairnbulg/Inverallochy, Cornhill, Crovie, Crudie, Fordyce Fraserburgh, Gardenstown, Inverboyndie, Macduff, Memsie, New Aberdour, New Byth, Pennan, Portsoy, Rathen, Rosehearty, Sandend, Sandhaven & Pittulie, Tyrie and Whitehills);

(2) “**Buchan**” (including Ardallie, Auchnagatt, Boddam, Crimond, Cruden Bay, Fetterangus, Hatton, Longhaven, Longside, Maud, Mintlaw, New Deer, New Leeds, New Pitsligo, Old Deer, Peterhead, Rora, St Combs, St Fergus, St Fergus Gas Terminal, Strichen and Stuartfield);

(3) “**Formartine**” (including Balmedie, Barthol Chapel, Belhelvie, Blackdog, Collieston, Cultercullen, Cuminestown, Daviot, Ellon, Fintry, Fisherford, Foveran, Fyvie, Garmond, Kirkton of Auchterless, Methlick, Newburgh, Oldmeldrum, Pitmedden & Mildale, Potterton, Rashierieve Foveran, Rothienorman, St Katherines, Tarves, Tipperty, Turriff, Udney Green, Udney Station, West Pitmillan, Woodhead and Ythanbank);

(4) “**Garioch**” (including Auchleven, Blackburn, Chapel of Garioch, Cluny & Sauchen, Dunecht, Durno, Echt, Hatton of Fintray, Inch, Inverurie & Port Elphinstone, Keithhall, Kemnay, Kingseat, Kinmuck, Kintore, Kirkton of Skene, Lyne of Skene, Meikle Wartle, Midmar, Millbank, Newmachar, Old Rayne, Oyne, Westhill and Whiteford);

(5) “**Kincardine & Mearns**” (including Arbuthnott, Auchenblae, Catterline, Chapelton, Cookney, Drumlithie, Drumoak, Edzell Woods & Newesk, Fettercairn, Findon, Fordoun, Gourdon, Inverbervie, Johnshaven, Kirkton of Durris, Kirkton of Maryculter, Laurencekirk, Luthermuir, Marykirk, Marywell, Mill of Uras, Muchalls, Newtonhill, Park, Portlethen, Portlethen Village, Roadside of Kinneff, St Cyrus, Stonehaven, West Cairnbeg and Woodlands of Durris); and

(6) “**Marr**”; (including Aboyne, Alford, Banchory, Cairnie, Clatt, Caigwell, Crathes, Drumblade, Drumdelgie, Finzean, Fergie, Gartly, Glass, Glenkindie, Huntly, Inchmarlo, Keig, Kennethmont, Kincardine O’Neil, Kirkton of Tough, Logie Coldstone, Lumphanan, Lumsden, Monymusk, Muir of Fowlis, Rhyndyke, Ruthven, Strachan, Tarland, Torphins, Towie and Whitehouse).

6.8. A map showing the specific boundaries of each Locality can be found at:-

<https://www.ouraberdeenshire.org.uk/your-area/>

See **Annex F ("The Council area")** for a description of the Council area and population, and information about the Scottish Index of Multiple Deprivation (SIMD).

- 6.9. Following consultation with business groups and local communities and balancing respective interests, the Council have accordingly determined that the appropriate number of SEV in Aberdeenshire is zero. This is a rebuttable presumption. Each application will be determined on its own merits.
- 6.10. The Council have reviewed each town and village in their area and consider that the appropriate number of SEVs is:

Relevant Locality	Appropriate Number
(1) "Banff & Buchan"	Nil
(2) "Buchan"	Nil
(3) "Formartine"	Nil
(4) "Garioch"	Nil
(5) "Kincardine & Mearns"	Nil
(6) "Marr"	Nil

The Council have accordingly determined that the appropriate number of SEV in each relevant locality is zero. This is a rebuttable presumption. Each application will be determined on its own merits.

The Sensitive Premises Presumption

- 6.11. The presumption of refusal will be regarded as being enhanced if the proposed SEV is within **750 metres** of the following Sensitive Premises:

- (1) schools, play areas, nurseries, parks, swimming pools and other sports facilities
- (2) cinemas, theatres and concert halls
- (3) libraries and museums
- (4) premises likely to be frequented by people under 18 or families
- (5) public buildings including Council offices
- (6) retail shopping areas
- (7) residential areas (including care and nursing homes and other elderly accommodation)

- (8) places of worship, celebration or commemoration
- (9) community centres
- (10) services (including businesses and charities) focussed on supporting women, children and young people, such as women's refuges
- (11) services (including businesses and charities) focussed on supporting homeless people, people with substance abuse issues, mental health issues, or other vulnerable people
- (12) historic buildings or tourist attractions
- (13) roads, footpaths and other access routes to any of the above
- (14) medical centres (including hospitals and GP surgeries)

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

- a) Whether any SEVs are already operating, or have operated, in the Relevant Locality (whether under a SEV Licence, under the 'Occasional Exemption', or with a Waiver);
- b) Whether there have been reports to the Police or Home Office of incidents within the Relevant Locality (whether or not leading to prosecution or conviction) of human trafficking or exploitation, or breaches of immigration laws by the Applicant or anyone else concerned with the proposed SEV;
- c) Whether there have been reports to the Police of incidents within **50 metres** of the proposed SEV (whether or not leading to prosecution or conviction) of crime (including sexual assaults or minor harassment) or anti-social behaviour;
- d) The existing character and function of the area in which the SEV is to be located; and
- e) The views of residents and other relevant interested persons as far as is possible.

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

7. STAG PARTIES & HEN NIGHTS

- 7.1. If Customers in a Public House or other Premises with an alcohol licence under the Licensing (Scotland) Act 2005 themselves arrange a 'stripogram', the Premises need a SEV Licence (The Premises Licence covers the sale of alcohol. It does not cover Sexual Entertainment).

IMPORTANT TO NOTE: It is not enough for the Operating Plan in the Premises Licence to state that "Adult Entertainment" is permitted.

- 7.2. If the Premises accept a booking for a Stag Party, Hen Night or any other event where "Sexual Entertainment" might happen, the staff should tell the Customer that "Sexual Entertainment" is prohibited.
- 7.3. A SEV Licence is needed if:-

"Sexual Entertainment" is provided if (and only if) it is provided (or allowed to be provided) by or on behalf of the Organiser (Section 45A(5) of the 1982 Act). See **Annex N – definition of 'Organiser'**.

- 7.4. If "Sexual Entertainment" happens on Premises without a SEV Licence or a Waiver (for Waivers see **Part 9 below**):
- (a) both the Premises Manager and the Premises Licence Holder can be prosecuted for not having a SEV Licence;
 - (b) the Licensing Board can review the Premises Licence, and revoke or suspend it, on the basis that the Premises Licence Holder is not a fit and proper person having regard to the Licensing Objectives of "preventing crime and disorder" and "protecting and improving public health"; and
 - (c) the Licensing Board can review the Premises Manager's Personal Licence and revoke, suspend or endorse it, on a similar basis.

They can only avoid the possibility of these sanctions if they actively try to stop the Customers or if the "Occasional Use" exemption applies (see **Part 8 below**).

- 7.5. A Public Entertainment Licence for premises used as a place of public entertainment does not cover Sexual Entertainment.

Important to Note: It is not enough for an Organiser to hold a Public Entertainment Licence. A SEV Licence is needed if Sexual Entertainment is to be provided or allowed to be provided.

8. OCCASIONAL USE (“THE 4-IN-A-YEAR EXEMPTION”)

8.1. Premises can be used for Sexual Entertainment for a proposed event (not exceeding 24 hours) if the Premises have been used for Sexual Entertainment on not more than 3 previous occasions in the past 12 months (Section 45A(9) of the 1982 Act).

8.2. Each occasion can last no more than 24 hours. If your Premises operate as a Sexual Entertainment Venue for more than a 24 hour period, each period of 24 hours (and any part of a period of 24 hours) is to be treated as a separate occasion (Section 45A(10) of the 1982 Act).

8.3. The rule applies to a rolling year, not the calendar year running from 1st January to 31st December. To know whether a particular date can be used, count back 12 months from that date, and ask:

"Have the Premises been used for "Sexual Entertainment" on three or fewer occasions in this period?"

If the answer is "no", the exemption applies and the Premises do not need a Licence. You might send a letter to the Council and the Police (see **Para 9.4 below**).

If the answer is "yes", the exemption does not apply and the Premises need a Licence.

8.4. You do not have to tell the Council or the Police that you are using the 4-in-a-year exemption, but you can write to the Licensing Office in advance (see **Annex L below - "Occasional Use Exemption Letter"**).

NOTE: It will help to show that you do not need a Licence if you have already sent an Exemption Letter to both the Council's Licensing office and the Police.

You can send this letter for one occasion, or more than one occasion. There is no fee for using the Exemption or sending the Exemption Letter.

9. WAIVERS (1982 ACT, SCHEDULE 2, PARAGRAPH 5)

- 9.1. The Council can allow use of Premises without a Licence. There is no fee for a Waiver application.

Application procedure for Waivers

- 9.2. For at least 21 continuous days before applying to the Council the operator must display a "Notice of Application" (see **Annex E - "Application Procedure & List of Application Consultees"**) at or near the proposed Premises stating that they are proposed to be used as a Sexual Entertainment Venue, and stating:

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

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

- 9.3. The Application for a Waiver:
- must be in writing
 - must contain a copy of the Site Notice
 - must contain the same information and include a Layout Plan and Location Plan as if the operator was applying for a Licence (See **Annex F - "Required Information"**).

- 9.4. The Council will:
- copy the Application for a Waiver to the Police, and
 - put a public notice on its website.

Committee consideration of Waiver Application

- 9.5. An application for a Waiver of Licence will be considered at a meeting of Aberdeenshire Council's relevant Area Committee. The Area Committee will not entertain the Application until the Area Committee has the Certificate of Display.

9.6. The Area Committee can grant a Waiver if they consider that to require a Licence would be unreasonable or inappropriate. The Area Committee will take into account:

- any Objections or Representations
- this Licensing Policy Statement
- Scottish Government Guidance
- any other relevant considerations

9.7. The Area Committee will consider each Application on its own merits but is of the opinion that waivers will only be granted in exceptional circumstances. It will approach a Waiver Application with the presumption that it should be refused. The Applicant should attend the Area Committee hearing and seek to rebut that presumption. The Area Committee is unlikely to consider it would be appropriate to permit waiver from the requirements to hold a SEV Licence, particularly as the legislation allows an Occasional Use exemption.

9.8. If a Waiver is granted, it will be for a maximum period of **12 months**.

9.9. The Waiver will have the same conditions that a SEV Licence would have (see **Annex H - "Standard Licence Conditions"**) (including the same requirements for CCTV recording, checking staff records and assisting the Police and Council officers), except that **Condition 10.1. (Notices outside the Premises)** is instead:

'The Organiser must display on the exterior of the Premises at each Customer entrance, in a position where it may be easily read by people outside the Premises, a Notice stating:

"This is a Sexual Entertainment Venue. No-one under 18 can enter. The Premises are monitored by CCTV. These Premises have a Waiver granted by Aberdeenshire Council, which means that they do not need a Licence for Sexual Entertainment." '

9.10. The Council will tell the Police if a Waiver is granted (Schedule 2, Paragraph 5(6) Civic Government (Scotland) Act 1982).

After Grant of the Waiver

9.11. A Waiver cannot be renewed. Once it expires, the Premises can only be used if:

- a Licence has been granted (it is not enough that a Licence has been applied for) or
- a further Waiver has been granted.

9.12. If the Council grants a Waiver, it can later terminate it (Schedule 2 Paragraph 5(7) Civic Government (Scotland) Act 1982).

9.13. The Council will tell the Police if a Waiver is terminated (Schedule 2 Paragraph 5(8) Civic Government (Scotland) Act 1982).

10. RENEWAL OF LICENCES

10.1. If the Licence Holder applies for renewal before the Licence expires, the Licence stays in effect until a final decision on the Application is taken by the Council (Schedule 2, Paragraph 12(3) of Civic Government (Scotland) Act 1982).

10.2. If the Expiry Date passes and the Licence Holder then applies for a Licence, this will be treated as an Application for a new Licence (as opposed to an Application for the renewal of an existing Licence).

It can be treated as a 'renewal' (so that the Licence stays in effect) if both:

- the Application is made no later than 28 days after the Expiry Date, and
- the Council is satisfied that there is good cause (Schedule 2 Paragraph 13(3A) of the Civic Government (Scotland) Act 1982).

The Applicant should state in writing if he/she claims there is a 'good reason' and give details.

10.3. The procedures for a Renewal Application are the same as those for a New Grant of a Licence. The Licence is not guaranteed to be renewed - the Local Authority is not obliged to grant a renewal. The Council will take into account the operation of the Premises during the Licence, and any allegations of offences and/or breaches of Licence Conditions.

10.4. Unlike Applications for the grant or renewal of other types of Licence, Applications for the grant or renewal of SEV Licences will be referred to the relevant Area Committee, and Delegated Powers will not be used.

11. REVOCATION OF LICENCE

- 11.1 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 any of the "Mandatory Grounds of Refusal" (see ***Annex I - "Grounds of Refusal"***) apply;
 - (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.

12. POLICY - COMMENT AND REVIEW

- 12.1 Consultation on this document took place between 24 August, 2020 and 21 September, 2020. This Policy Statement was published on xxxx November, 2020. The Policy, including the zero SEV policy, will be kept under review and revised, if appropriate, by Supplementary Policy Statements. The Policy will be applied unless or until so revised. It may also be subject to legislative change.
- 12.2 Aberdeenshire Council adopted the Policy at the meeting of its Licensing Sub-Committee on 2 October, 2020.
- 12.3 How to make comments on this document:-

Any comments you may wish to make on the Policy can be submitted as follows:-

In writing to Licensing Team
 Aberdeenshire Council
 Legal and Governance
 Business Services
 Viewmount
 Arduthie Road
 Stonehaven
 AB39 2DQ

By e-mail to licensingpolicyreview@aberdeenshire.gov.uk

- 12.4 Copies of this Policy Statement will be available for public inspection, during normal office hours, free of charge at-
- The Town House, 34 Low Street, Banff, AB45 1AN
 - Gordon House, Blackhall Road, Inverurie, AB51 3WA
 - Viewmount, Arduthie Road, Stonehaven, AB39 2DQ

12.5 Copies of this Policy Statement will also be available in .pdf format on Aberdeenshire Council's website.

12.6 Any personal information collected will be held in accordance with the requirements of GDPR.

Electronic copies are also available by contacting licensingpolicyreview@aberdeenshire.gov.uk

Annexes

Annex A - List of Policy Consultees

In addition to a draft of this document being placed on a public website, notice of the consultation leading to the adoption of this SEV Policy Statement (where email addresses were available) was sent to:

Aberdeen & Grampian Chamber of Commerce

Aberdeen City Council

Aberdeen Mosque and Islamic Centre

Aberdeen Synagogue and Jewish Community Centre

Aberdeenshire Child Protection Committee

Aberdeenshire Community Councils

Aberdeenshire Council – Education Service

Aberdeenshire Council’s Adult Protection Team

Aberdeenshire Council’s Child Protection Team

Aberdeenshire Council’s Environmental Health Service

Aberdeenshire Council’s Housing Service

Aberdeenshire Council’s Licensing Standards Officers Team

Aberdeenshire Licensing Forum

Aberdeenshire Health and Social Care Partnership

Aberdeenshire Violence Against Women & Girls Partnership

Aberdeenshire Voluntary Action Project

Aberdeenshire Youth Forum

Angus Council

Banchory Business Association

Ellon Traders

Fraserburgh Community Development Trust

Free Church of Scotland

GMB Sex Workers Union

GMB Union (Scotland)

Grampian Women Against Violence Partnership

Grampians Women's Aid

Highland Council

Huntly Business Association

Inter Faith Group

International Committee on the Rights of Sex Workers in Europe (ICRSE)

Moray Council

Opportunity North East

Police Scotland Human Trafficking Champion

Police Scotland North East Division

Portlethen Business Association

Rediscover Peterhead BID

Roman Catholic Diocese of Aberdeen

Scottish Fire & Rescue Service

Scottish Licenced Trade Association

Scottish Trades Union Congress

Scottish Youth Parliament

Sex Workers Advocacy & Resistance Movement (SWARM)

Stonehaven Business Association

The Church of Scotland

Turriff Business Association

UNISON

UNITE

United Voices of the World

Visit Scotland

We Are Inverurie BID

Annex B – Legal Considerations

1. The Sub-Committee considered other legislation in deciding whether or not to make the Resolution to regulate and licence SEV:
 - (i) the EU Services Directive 2016/123/EC
 - (ii) the Regulatory Reform (Scotland) Act 2014
 - (iii) the European Convention of Human Rights
 - (iv) Equality legislation

2. The Sub-Committee also considered the Scottish Government Guidance quoted below (See "Scottish Government Guidance", paragraphs 17-18 below).

(i) EU Services Directive

3. Due to the EU Services Directive, Local Authorities should consider whether the decision to Licence SEVs is proportionate and justifiable. In the United Kingdom, the "Provision of Services Regulations", S.I. 2009-2999 implement the EU Services Directive ("Directive 2006/123/EC of the European Parliament on Services in the internal market"). For the purposes of the Regulations, the Council is a "Competent Authority" and is therefore prohibited by Regulation 14 from establishing an "Authorisation Scheme" (such as a new Licensing system) unless certain conditions are satisfied:

"(a) the Authorisation Scheme does not discriminate against a Provider of the Service,

(b) the need for an Authorisation Scheme is justified by an overriding reason relating to the public interest, and

(c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because inspection after commencement of the Service activity would take place too late to be genuinely effective."

Condition (a)

4. The Sub-Committee were satisfied that Condition (a) is satisfied, in that the Licensing system would be open to anyone who met the statutory criteria (the Applicant must be 18 years or older and must be a United Kingdom national).

Condition (b)

5. The Sub-Committee were satisfied that Condition (b) is satisfied:

- If there was a system of SEV Licensing: any Application for a Licence would be referred to the Police, who would have the opportunity to identify the people operating the business, where the funds for it came from, and where the workers in the business came from. If a Licence was granted, the Police and the Council's Civic Licensing Standards Officer would be entitled to enter the Premises as of right, but

- If there was no system of SEV Licensing: they could not do these things. This might limit the effectiveness of the Laws about people-trafficking, money-laundering, and Proceeds of Crime. As the Premises would be private property, the Police would only be able to enter if either the owner invited them in, or they had a Warrant or a reasonable belief that offences were or recently had been committed.

6. If there was a system of SEV Licensing: the Council could attach conditions to the Licence, for example:

- requiring Premises to have CCTV coverage of all areas (not just performance areas);
- requiring records to be kept of the full name, address, date of birth and place of birth of any Performer or anyone else working on the Premises (including copies of passports and other identity documents);
- requiring Premises to provide private spaces for Performers to use when not working;
- requiring Premises to be screened from outside so that no-one outside could see inside.

7. If there was no SEV Licensing system:

- there could be no such conditions;
- there would be no opportunity for the public to make objections or representations about any proposal to establish a SEV nearby;
- SEVs could be established within the Council area and there would be no opportunity for the Council to consider whether or not the proposal was appropriate for the particular locality. Unlike other Licensing legislation, the SEV legislation permits a Council

to decide, in advance of dealing with any Application, that no SEVs will be allowed anywhere in the Council area, or to limit SEVs to certain locations. If Aberdeenshire Council did not make a Resolution, it would have no opportunity to express a 'nil limit' in a SEV Policy Statement or to prevent an SEV from operating in a locality which might be thought unsuitable (for example, within a set distance of schools, residential areas and places of worship).

Condition (c)

8. The Sub-Committee were satisfied that Condition (c) is satisfied because there is no "less restrictive measure" available to the Council. Either the Council licences SEVs, or it does not. The new legislation followed an unsuccessful attempt by the City of Glasgow Licensing Board to regulate SEVs using the alcohol licensing system. The Court of Session decided that the alcohol licensing system could not be used to regulate SEVs (Brightcrew Ltd. v The City of Glasgow Licensing Board, [2011] CSIH 46, 2012 SC 67, 2012 SLT 140). The new legislation was a recognition by the Scottish Parliament that there was no other system of regulation available.
9. The Sub-Committee were satisfied that the EU Services Directive does not prevent the Council from establishing a system of SEV Licensing.

(ii) Regulatory Reform (Scotland) Act 2014

10. The Council is a "Regulator" under the Regulatory Reform (Scotland) Act 2014 and therefore has a duty, in exercising its regulatory functions, to contribute to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of those functions to do so (Section 4(1)).
11. This does not oblige the Council to grant a Licence:
 - where it would otherwise refuse it (for example, because the Applicant is not 'fit and proper' or the Premises are unsuitable for the proposed use);
 - where the proposal contravenes any Policy limiting numbers of SEVs (or prohibiting them altogether).
12. The Sub-Committee were satisfied that the Regulatory Reform (Scotland) Act 2014 does not prevent the Council from establishing a system of SEV Licensing.

(iii) European Convention on Human Rights

13. The European Convention on Human Rights protects the rights of SEV operators who have existing businesses. There are in fact no SEVs in Aberdeenshire. There are in other parts of Scotland. If the Council there refuses a Licence Application from an existing Organiser, one of the arguments which might be made by the SEV Organiser is that the Council's action has breached the Organiser's right to freedom of possessions (European Convention of Human Rights, Protocol 1, Article 1). It might also be argued that the Council's action had deprived employees of their jobs, by closing their employer's business.
14. The Convention right protects existing property rights, but not rights which do not yet exist. No action by a Council which did not already have SEVs in its area could be said to breach the Convention.
15. The Sub-Committee were satisfied that the Convention does not prevent Aberdeenshire Council from establishing a system of SEV Licensing.

(iv) Equality legislation

16. The Equality Act 2010 imposes duties on the Council:

(a) Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council:

"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

(b) The Council is a "Relevant Authority" for the purposes of Section 149(1) of the Equality Act 2010 ("Public Sector Equality Duty"), being listed in Schedule 18 to that Act, so:

"must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];

(b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;

(c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it."

The "Relevant Protected Characteristics" are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

The Sub-Committee considered these duties on 4 October 2019 and were satisfied that the Resolution was consistent with the Council's obligations under Equality legislation. The Committee noted that there are no SEVs in Aberdeenshire and the Council is not aware of any proposal for a SEV. Accordingly the Sub-Committee were satisfied that the adoption of a Resolution would not prejudice any existing businesses or workers.

The Sub-Committee considered that adoption of a Resolution would indicate the Sub-Committee's recognition of the concerns stated in the two Scottish Government Policies referred to. (see **Part 6.1.**)

An effective licensing system, for example monitoring the 'fit and proper' status of Licence Holders and the suitability of Premises, helps progress towards one of the Council Priorities in Aberdeenshire Council's Plan 2017-2022: "Work to reduce poverty and inequalities within our communities".

(e) Scottish Government Guidance

17. The Scottish Government recognises that there are competing considerations. In exercising functions under the new legislation, the Council is obliged to have regard to the Guidance issued by the Scottish Government in March 2019, which includes:

"19. The Scottish Government accepts the freedom of adults to engage in legal activities and employment. However, it will continue to promote, through all relevant means, gender equality and actions that tackle out-dated attitudes that denigrate or objectify particular groups or individuals.

20. 'Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls' was first published in 2014 and updated in 2016 and again in 2018. It sets out a definition of violence against women and girls which includes 'commercial sexual exploitation, including prostitution, lap dancing, stripping, pornography and human trafficking'.

21. Whilst recognising the conflict between this definition and the licensing of SEV, this guidance will help to ensure that such activities take place in safe and regulated environments. When deciding whether to licence, and whether to limit, SEV in their area, local authorities will need to consider the interaction with their own local policies and strategies, as well as the legal implications around limiting a legitimate business activity to minimise the risk of legal challenge.

22. Equally Safe's aim is to work collaboratively with key partners across all sectors to prevent and eradicate all forms of violence against women and girls

and the attitudes which perpetuate them. Its priorities are: achieving gender equality; intervening early and effectively to prevent violence; and maximising the safety and wellbeing of women, children and young people. 'Equally Safe: A Delivery Plan for Scotland's strategy to prevent and eradicate violence against women and girls' was published in November 2017. It will help to ensure that the ambitions of the Equally Safe Strategy make a tangible difference.

23. *The 'Trafficking and Exploitation Strategy' required under section 35 of the Human Trafficking and Exploitation (Scotland) Act 2015 was published on 30 May 2017. It sets out the Scottish Government's strategy to work with partners to make Scotland a more hostile place for human trafficking. The aims of the strategy are to identify victims and support them to safety and recovery; identify perpetrators and disrupt their activity; and address the conditions that foster trafficking and exploitation.*

24. *In developing the licensing regime, care has therefore been taken to balance the freedom of individuals to engage in legal employment and activities with the right of local authorities to exercise appropriate control and regulation of SEV that operate within their areas."*

18. The Guidance also contains:

"32. In considering whether to pass a resolution to licence SEV, local authorities may wish to look carefully at their localities and consider a range of issues such as:

- whether there are any Sexual Entertainment Venues already operating;*
- the location of schools;*
- the location of places of worship;*
- the location of heavily residential areas;*
- the location of women's refuges and shelters and other services focussed on supporting women, children and young people;*
- whether there have been incidents involving anti-social behaviour, sexual assaults, prostitution or more minor harassment reported in any particular area; and*
- whether there have been incidents of human trafficking or exploitation locally."*

Annex C – The SEV Licensing System

1. Introduction

- 1.1. Provisions of The Air Weapons and Licensing (Scotland) Act 2015 gave Scottish Councils the option of establishing a system to license Sexual Entertainment Venues ("SEVs").
- 1.2. These provisions commenced on 26 April 2019 (The Air Weapons and Licensing (Scotland) Act 2015 (Commencement No. 9 and Transitional Provisions) Order 2019 No. 99). In Aberdeenshire Council, the Licensing Sub-Committee considered the new legislation on 4th October 2019.
- 1.3. Once a Council have Resolved to License SEVs, the Council must publish a Licensing Policy Statement on the Licensing of Sexual Entertainment Venues ("SEV Policy Statement"): 1982 Act, Section 45C.
- 1.4. Premises are classed as an SEV where "Sexual Entertainment" is provided before a live Audience for the direct or indirect financial benefit of the Organiser. Sexual Entertainment is defined by the legislation as any live performance or live Display of Nudity provided for the sole or principal purpose of sexual stimulation of members of the Audience.

However, Premises where Sexual Entertainment is provided on no more than 4 occasions in a 12-month period are not to be treated as SEVs (so would not need a Licence).

2. Legal Background

- 2.1. Lap-dancing clubs and other SEVs do not require to be licensed anywhere in Scotland, except where:
 - the local Council have made a Resolution, and
 - that Resolution is in force.

There are no known lap-dancing clubs or SEVs in Aberdeenshire. There are clubs elsewhere in Scotland (mostly in Glasgow, Edinburgh, Dundee and Aberdeen).

- 2.2. These clubs hold a Premises Licence to sell alcohol.

That Licence will have been granted by a Licensing Board under the Licensing (Scotland) Act 2005, as opposed to a Licence granted by the Council under the Civic Government (Scotland) Act 1982.

The Court of Session decided in the case of Brightcrew Ltd. v The City of Glasgow Licensing Board, [2011] CSIH 46, 2012 SC 67, 2012 SLT 140 that Licensing Boards are not entitled to place conditions regulating lap-dancing clubs (for example, regulating the working environment in the Premises, requiring CCTV coverage of staff-only areas, and prohibiting physical contact between workers and Customers). The Court held that the licensing regime in the 2005 Act was limited to the regulation of the sale of alcohol and could not extend to matters not linked to the sale of alcohol.

- 2.3. Accordingly, the Scottish Parliament amended the 1982 Act so as to permit (but not require) Licensing Authorities to Resolve to adopt a new Licensing system. This change in the Law was made by the Air Weapons and Licensing (Scotland) Act 2015, which added new provisions to the Civic Government (Scotland) Act 1982. The parts affecting SEVs commenced on 26 April 2019, and the Licensing Sub-Committee considered this matter at its Meeting on 4 October 2019.
- 2.4. The new licensing system does not apply automatically. Instead of the Scottish Parliament simply prohibiting new lap-dancing clubs altogether, individual Councils throughout Scotland have to decide whether or not to apply the new licensing system in their area, even if there is no likelihood of a lap-dancing club being operated in their area. Before Resolutions were made, SEVs did not need a Licence anywhere in Scotland. SEVs would only need a Licence if and when
 - the local Council so Resolved and
 - that Resolution took effect

The legislation requires an interval of at least 12 months between the making of a Resolution and its Effective Date.

3. Procedure

- 3.1. The process of establishing this type of Licensing involves the following stages:
 - (a) a meeting of the Licensing Sub-Committee: consideration of the question of whether, in principle, the operation of a SEV is something that should be licensed by the Council; the Sub-Committee agreed and made a resolution to that effect, requiring SEVs in Aberdeenshire to have a SEV licence; the Sub-Committee stated a date when the new Licensing requirement will apply. This must be at least one year after the date the Resolution is made. In Aberdeenshire, it is 4th December, 2020;

Stage (a) occurred at the Licensing Sub-Committee meeting on 4th October 2019 after the legislation commenced on 26 April 2019.

If the Council had decided not to make a Resolution, the process would have stopped there. Since Aberdeenshire Council's Licensing Sub-Committee did make a Resolution, the process continues with further stages.

3.2. The further stages are:

- (b) following the Resolution being made, the Council must draft a statement on the Council's Policy with respect to the Licensing of Sexual Entertainment Venues (a "SEV Policy Statement"). To do this, the Council will consult the public and relevant interest groups (including violence against women partnerships).

The Council is entitled to set a limit to the number of SEVs in localities throughout Aberdeenshire. For example, the Council might:

- prohibit SEVs entirely throughout Aberdeenshire, or
- prohibit SEVs within a set distance of schools, residential areas and places of worship.

This would be done by the Policy Statement;

- (c) at least 28 days before the Resolution takes effect, the Council must publish notice (electronically or in a newspaper) of the Resolution, stating the general effect of the legislation (Section 45B(4) and (5));
- (d) at the same time and in the same manner as the Notice of Resolution is published, the Council must publish the SEV Policy Statement (Section 45C(4));

- (e) Unlike Applications for the grant or renewal of other types of Licence, Applications for the grant or renewal of SEV Licences will be referred to the relevant Area Committee, and Delegated Powers will not be used.

Annex D - Council Area

- 1.1. Aberdeenshire covers 6,313 km² (2,437 m²), or 8% of Scotland's overall territory, and includes the Cairngorm mountains, rich agricultural lowlands and varied coastal landscapes.
- 1.2. The main towns are Banchory, Banff, Ellon, Fraserburgh, Huntly, Inverurie, Kemnay, Kintore, Macduff, Newtonhill, Oldmeldrum, Peterhead, Portlethen, Stonehaven, Turriff and Westhill.
- 1.3. In 2011 Aberdeenshire's population numbered 252,973 and represented 4.8% of Scotland's total population of 5,295,403. Scotland's population was the highest ever recorded, as was Aberdeenshire's; Scotland's population grew by 4.6% between 2001 and 2011 whilst Aberdeenshire's grew by 11.5%, making it the fastest growing Scottish local authority over this period.
- 1.4. The table below shows the breakdown of the population by age bands and gender, and by comparison with Scotland:

Age group	males	females	Total	Total (%)	Scotland (%)
Children (0 to 15)			47,350	18.7	17.3
Working age (16-64)			164,950	65.2	65.9
Pensionable age (64+)			40,700	16.1	16.8
Total	125,300	127,700	253,000	100	100

Source: Census 2011 (National Records of Scotland)

Annex E – Application Procedure & List of Application Consultees

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

1.1. Before lodging the Application

- 1.1.1. The Applicant must ask the Council:

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

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

1.2. When making the Application

(a) The Application must be in writing and must contain the information set out in **Annex F ("Required Information")**. It can be submitted by post to: Licensing Team, Aberdeenshire Council, Legal and Governance, Business Services, Viewmount, Arduathie Road, Stonehaven, AB39 2DQ; or by email to licapps@aberdeenshire.gov.uk

(b) The Application should be accompanied by the prescribed fee. The fee will not be reduced or refunded if the Application is refused or the Licence is granted for less than was requested. The fee is the "Sex Shop" fee (those Licences are also under Schedule 2). In most of Schedule 2, references to a "Sex Shop" are to be read as references to a "Sexual Entertainment Venue" (Section 45B(6)(a) of the Civic Government (Scotland) Act 1982);

(c) The Applicant must display a "Notice of Application" (in the form prescribed below) on or near the Premises in a place where the Notice can conveniently be read by the public. This Notice must be displayed for 21 days, beginning with the date of the Application (Schedule 2, Paragraph 7(4) of the Civic Government (Scotland) Act 1982).

1.3. After making the Application

- 1.3.1. The Applicant must:

- (a) not later than 7 days after the date of the Application:
 - send a copy of the Application to each person or body listed below (see 1.5 "List as determined by the Council under Schedule 2, Paragraph 7(3C) of the Civic Government (Scotland) Act 1982");

- (b) not later than 7 days after the date of the Application:
- give the Council a certificate confirming that this has been done;
- (c) not later than 7 days after the date of the Application:
- Unless the Council has dispensed with newspaper advertisement, publish an advertisement in the newspaper circulating in the Council area previously specified by the Council; the advertisement must be in the prescribed form (see "Notice of Application" below). If the Council has dispensed with newspaper advertisement, the Council will publish such a Notice electronically not later than 7 days after the date of the Application.
- (d) as soon as possible after the expiry of the period of 21 days for display of the Site Notice:
- give the Council a Certificate stating that he/she has complied with the requirement to display the Site Notice, and a copy of the Site Notice.
- (e) if relevant, as soon as possible after newspaper publication:
- give the Council one complete copy of the newspaper containing the advertisement of the Application.

1.3.2. List as determined by the Council under Schedule 2, Paragraph 7(3C) of the Civic Government (Scotland) Act 1982:

- **Police Scotland**
northeastciviclicensing@scotland.pnn.police.uk
- **Scottish Fire & Rescue Service**
n.abmfiresafetylicensing@firescotland.gov.uk
- **Aberdeenshire Council - Adult and Child Protection Services**
adultprotectionnetwork@aberdeenshire.gov.uk
- **Aberdeenshire Council – Civic Licensing Standards Officers Team**
LSO@aberdeenshire.gov.uk
- **Aberdeenshire Council – Education Service (*contact details*)**
- **Aberdeenshire Council – Environmental Health Service**
environmental@aberdeenshire.gov.uk
- **local Churches/ Places of Worship**
- **Community Council**

The Application and all supporting documents should be sent to the Community Council for the area where the Premises are.

1.4. **Notice of Application**

1.4.1. If displayed at or near the proposed SEV the Notice must be:

- on A4-sized paper (or larger)
- printed legibly or typed in black ink
- in a font size of 16 points or larger
- arranged so as to ensure that it remains legible throughout the public notice period (for example, laminated or attached to the inside of a clear window facing out)

1.4.2. This Notice is prescribed by the Council under Schedule 2, Paragraph 7(7) of the 1982 Act.

<p>Licensing of <u>Sexual Entertainment Venues</u> Civic Government (Scotland) Act 1982 (as modified by Section 76 of the Air Weapons and Licensing (Scotland) Act 2015)</p> <p>On [date of lodging] an Application was made to Aberdeenshire Council by [Applicant's Name] for the [delete as appropriate]</p> <ol style="list-style-type: none">1. Grant of a Licence2. Renewal of a Licence3. Waiver of the need to have a Licence <p>for a "Sexual Entertainment Venue" at [Address of Premises].</p>

1.5. **Objections/ Representations**

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

- in signed writing (by letter or email);
- specifying the grounds of Objection or Representation;
- specifying the name and address of the person making it;
- stating whether or not the person consents to the name and address being given to the Applicant;

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

(See **Annexes G** and **I** below)

The letter must be sent to:

The email must be sent to:

Aberdeenshire Council
Licensing Team
Legal and Governance
Business Services
Viewmount
Arduthie Road
Stonehaven
AB39 2DQ

licapps@aberdeenshire.gov.uk

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

The sender will be invited to the meeting of the Area Committee which decides the Application.

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

The Council is entitled (but not obliged) to accept a late letter if there is a sufficient reason why it was not made in time, so if the person sends a late letter it should explain what the sufficient reason. There is no guarantee that the Council will accept a late letter. If a letter is sent late then there is the possibility that the Council will already have decided on the Licence Application. The Council cannot review decisions on the basis of late letters.

1.6. **Procedure in the Council**

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

1.6.2. The Council will send a copy of the application to:-

- the Chief Constable, and
- the Scottish Fire & Rescue Service or such other appropriate enforcing authority.

Annex F - Required Information

The Civic Government (Scotland) Act 1982 sets out at Paragraph 6 in Schedule 2 the information which is legally required to be included in an application. Anyone applying to the Council for the grant or renewal of a SEV Licence (or a Waiver removing the need to be licensed) should make a written Application to the Council, setting out:

1. Particulars of Applicant

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

- the owner of the Premises
- the Premises Manager

Where the owner is a partnership or company:

- the full name of the partnership or company
- the address of its registered or principal office
- the full names, private addresses, dates of birth and places of birth of all the people involved in the management or control of the partnership or company
- if the Applicant is a company, copies of the Memorandum and Articles of Association of the company
- if the Applicant is a partnership, a certified copy of the partnership deed
- the full name, private address, and date and place of birth of the Premises Manager

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

- (a) of what experience (if any) the person has had in operating SEVs or Premises Licensed for the sale of alcohol anywhere in the United Kingdom.
- (b) Subject to the Rehabilitation of Offenders Act 1974 (as amended by the Management of Offenders (Scotland) Act 2019), of any unspent convictions or alternatives to prosecution relating to that person;
- (c) any administrative penalties under legislation relating to Social Security or Immigration relating to that person;

A copy of any other licences for the Premises, vehicle, vessel or stall (for example, any Premises Licence under the Licensing (Scotland) Act 2005).

2. Layout Plan

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

The Layout Plan should describe the Premises, including:

- (a) the extent and dimensions of the external and internal walls of the Premises;
- (b) the location and names of any streets surrounding the Premises from which members of the public have access to the Premises;
- (c) the location and width of each point of access to and egress from the Premises;
- (d) the location and width of any other escape routes from the Premises;
- (e) the location of any equipment used for the detection or warning of fire or smoke or for fighting fires;
- (f) the location of any steps, stairs, elevators or lifts on the Premises;
- (g) the layout of rooms and features of the Premises (such as stages, bars, cloakrooms, performance areas, and dressing rooms);
- (h) the extent of the public areas outlined in blue;
- (i) the staff-only areas outlined in red;
- (j) the location of any toilets on the Premises (identified as male, female or disabled as appropriate);
- (k) the location and field of view of any CCTV camera;
- (l) drawings showing the front elevation as proposed including any proposed signage, advertising and window display;
- (m) for any stage or raised area, the location and height relative to the floor; and

- (n) the position of any ramps, lifts or other facilities for the benefit of disabled people.

3. Location Plan

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

- cover an area with a radius of not less than 1,000 metres from the boundary of the Premises, showing the Premises in relation to surrounding streets and buildings;
- identify Sensitive Premises in that area (defined in Part 4).

4. Premises etc.

The Application must state in writing:

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

5. Planning Permission

The Applicant should give the Licensing Office a copy of the Decision Notice or other document issued by the Planning Office confirming that the proposal to use the Premises as a SEV is consistent with Planning Permission.

6. Permitted Hours

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

Annex G – Objections and Representations

- 1.1. It is important that a comment should be specific. It is not enough to say, “I object” or “I complain”, without giving an explanation for that view. Objections must specify the basis of the objection. These are set out in the Civic Government (Scotland) 1982 Act, Schedule 2, Paragraphs 8(2), 9(4) and 9(5) (set out below).
- 1.2. A Petition is unlikely to be accepted as a valid Objection or Representation. If 100 people sign a Petition, they are unlikely to all have the same complaints. The Area Committee has to determine the weight to be placed on individual comments. In the common example of an objection or complaint based on nuisance or Anti-social behaviour, the Council is likely to be more influenced by comments from immediate neighbours of the Premises than from residents further away. If a person signs a Petition without specifying his address his comment is likely to be disregarded.
- 1.3. The Licence Applicant is entitled to fair notice of complaints. If the objection is based on alleged incidents, then for each alleged incident, the objector should answer questions such as:
 - what happened?
 - what was the day, date and time?
 - were the staff of the Premises advised? (if so, who was told and when?)
 - was there any official complaint (e.g. to Police, Council)?
 - if so, what action was taken?
 - if there was no complaint, why not?
- 1.4. It is not possible to raise issues with the Licensing Sub-Committee which relate to legislation other than the Civic Government (Scotland) Act 1982. For example, issues about parking and Planning Permission are dealt with by the Roads (Scotland) Act 1984 or the Town and Country Planning (Scotland) Act 1997, and the Licensing Sub-Committee cannot deal with these. However, the Sub-Committee may accept that the issues raised are also relevant to the statutory Grounds for Refusal (for example, the ground in Paragraph 9(5)(d), where the Grant or Renewal of the Licence is said to be inappropriate, having regard to specified factors).

1.5. Paragraph 8(2) of Schedule 2 to the 1982 Act provides:

“8(2) Any objection or representation relating to an application for the grant or renewal of a licence under this Schedule shall, subject to sub-paragraph (3) below, be entertained by the local authority if, but only if, the objection or representation—

(a) is in writing;

(b) specifies the grounds of the objection or, as the case may be, the nature of the representation;

(c) specifies the name and address of the person making it;

(d) is signed by him or on his behalf;

(e) was made to them within 28 days of whichever is the later or, as the case may be, latest of the following dates—

(i) the date of submission to them of the application;

(ii) the date when public advertisement was first given under paragraph 7(2) above;

(iii) the date, if any, specified by the local authority under paragraph 7(10) above.”

1.6. Paragraph 9(4) of Schedule 2 to the 1982 Act is:

“9(4) But without prejudice to sub-paragraph 9(3) above, the Local Authority shall refuse an Application for the Grant or Renewal of a Licence if, in their opinion, one or more of the grounds specified in sub-paragraph 9(5) below apply.

Because the legislation says "if, in their opinion", it is for the Council to decide whether or not the Licence should be granted or renewed.

So, the Council will consider whether or not any of the possible Grounds of Refusal apply. If the Council thinks that any of them apply, the Licence is refused. Otherwise, subject to Paragraph 9(3) and the mandatory grounds to not grant, the Licence is granted. (See **Annex I – “Grounds of Refusal”**.)

1.7. Paragraphs 9(5) to 9(6) of Schedule 2 to the 1982 Act are:

“9(5) The grounds mentioned in sub-paragraph (4) above are—

(a) that the Applicant or, where the Applicant is a person other than a natural person, any director of it or any partner in it or any person responsible for

its management, is unsuitable to hold the Licence by reason of having been convicted of an offence or for any other reason;

(b) that, if the Licence were to be Granted or Renewed, the business to which it relates would be managed by or carried on for the benefit of a person, other than the Applicant, who would be refused the Grant or Renewal of such a Licence if he made the Application himself;

(c) that the number of Sexual Entertainment Venues 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(5A) For the purposes of sub-paragraph (5)(c), a Local Authority must—

(a) from time to time determine the appropriate number of Sexual Entertainment Venues for their area and for each relevant Locality, and

(b) publicise the determination in such manner as they consider appropriate.

9(6) Nil may be an appropriate number for the purposes of sub-paragraph (5)(c) above."

- 1.8. Objectors can include individual residents or businesses, residents'/tenants' associations, community associations and trade associations.

Members of Parliament, Members of the Scottish Parliament, Councillors, and Community Councils may also raise objections.

Annex H – Standard Licence Conditions

Status of Conditions

Any SEV Licence will have the following Standard Conditions made by the Council under Section 45F of the Civic Government (Scotland) Act 1982.

Any SEV Licence may also be subject to additional conditions as determined by the Council, known as Special Conditions, determined by the Council in relation to a particular SEV licence. In the event of a conflict between the Standard Conditions and any Special Conditions, the Special Conditions shall prevail.

Both the Council's Standard Conditions and any Special Conditions are subject to any Mandatory Conditions prescribed by Scottish Ministers under Section 45E of the 1982 Act.

Where the proposed SEV has a Premises Licence under the Licensing (Scotland) Act 2005, all reasonable care will be taken to ensure that the SEV licence conditions do not contradict the Premises Licence conditions. If an SEV does not also need an alcohol licence, the Council may apply any of the conditions attached to such licences, as appropriate, to that particular SEV licence. For details of those conditions, please see [Aberdeenshire Licensing Board's Statement of Licensing Policy](#).

In this Policy, the following expressions shall have the following meanings:

- i. These conditions apply to all premises licensed as a "sexual entertainment venue" as defined by the said 1982 Act that is to say terms, conditions and restrictions on or subject to which licences under Schedule 2 of the 1982 Act are in general to be granted, renewed, varied or transferred;
- ii. "Sexual Entertainment Venue" ('SEV') means any premises at which relevant entertainment is provided before a live audience, directly or indirectly for the financial gain of the organiser or the entertainer;
- iii. "Premises" includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted;
- iv. "Relevant Entertainment" means any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means);
- v. The Council may at any time waive, modify or vary these conditions or impose additional special conditions in any particular case;

- vi. If the Licensee wishes any terms of the licence to be varies an application must be made to the Council;
- vii. "Performer" is a person who is engaged to provide "Sexual Entertainment";
- viii. "Customer" a person who is on the Premises but does not work for the Organiser;
- ix. "Premises Manager" is a natural person (not a company or partnership) so named on the Licence (or an "Acting Premises Manager" authorised under Condition 11). The Premises Manager is treated as a Joint Holder of the Licence and will be named in the Licence document;
- x. "Standard Conditions" these are conditions made by Aberdeenshire Council in terms of the Civic Government (Scotland) Act 1982 which will apply to all SEV licences unless specified otherwise;
- xi. "Special Conditions" these are additional conditions which Aberdeenshire Council will apply to an individual SEV licence depending on the circumstances of the particular application, over and above the Standard Conditions listed in this document.

Standard Conditions

1. Records and copy documents

- 1.1. Where these Conditions require the keeping of records and copy documents, these must be kept in writing or on computer.
- 1.2. The Licence Holder must ensure that at all times:
 - these things are available for viewing by the Police, the Civic Licensing Standards Officer, and any other authorised Council officer on request;
 - there is a member of staff who is able to access these things, display them (if on computer or television monitor), and make copies.
- 1.3. Where these Conditions require that records and copy documents should be kept, these things should be kept for 12 months beginning:
 - (a) if relating to a Performer or other member of staff, when that person **stopped** working on the Premises;
 - (b) if relating to a Customer, when that person was admitted to or excluded from the Premises;

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

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

2. Notices

- 2.1. Where these Conditions require the display of a Notice, Licence or other document that thing must be:
- On A4 sized paper (or larger)
 - Printed legibly or typed in black ink
 - In font size of 16 points or larger
 - Placed in a conspicuous and well-lit place where all Customers, Performers and staff can easily read it.

3. Incident Log

- 3.1. The Licence Holder must keep an incident log of:
- (a) All alleged crimes reported to the venue;
 - (b) All ejections of Customers;
 - (c) Any complaints received from anyone;
 - (d) Any incidents of disorder;
 - (e) Seizures of drugs or offensive weapons;
 - (f) Any faults in the CCTV system or searching or scanning equipment;
 - (g) Any refusal of the sale of alcohol;
 - (h) Any visit by the Council, Police Scotland or any other Statutory Service;
 - (i) Any breach of licence conditions reported by a Performer.

4. CCTV

- 4.1. CCTV shall be installed in each room, save for the toilets and staff only areas, within the premises where the public has access including areas outside the Premises near any Customer entrance to the Premises.
- 4.2. The CCTV must make recordings capable of providing pictures of evidential quality in all lighting conditions and must allow for facial recognition.
- 4.3. All cameras shall continuously record whilst the premises are open to the public and recordings shall be retained for a minimum of thirty days and if requested by Police, for such longer period or until such event as they specify.
- 4.4. A member of staff who is fully trained in the use of the CCTV system shall be on duty at all times when the premises are open until the premises are clear of customers.
- 4.5. The premises will provide copies of any recordings upon request by a Police Officer or an authorised officer of the Council within 24 hours of request.

5. Staff Records

- 5.1. The Licence Holder must, before allowing a Performer to work on the Premises, make a record of the following details of the Performer:
 - full name, and any alias or stage name
 - address
 - telephone number
 - date of birth
 - place of birth
 - nationality

These details must be available on the premises for immediate production if requested by Police or local authority officers.

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

(a) make a copy of the Performer's any official documents (such as Passport, Visa, EU driving licence, or National Identity Card; and

(b) contact the Home Office and obtain written confirmation that the Performer has a right to work in the United Kingdom.

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

5.5. The Licence Holder must be able to demonstrate their recruitment procedures actively identify potential victims of human trafficking. The Association of Licenced Adult Entertainment Venues in Scotland's 'Human Trafficking and Migrant Worker Toolkit - Guide for Employers' is recommended.

<http://www.alaevs.co.uk/news/2019/human-trafficking-migrant-worker-toolkit-download/>

6. Welfare of Performers

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

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

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

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

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

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

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

- 6.7. The Licence Holder must ensure Performers are fully clothed outwith the performance areas in the Premises.

7. First Aid

- 7.1. The Premises must have a First-Aid Kit and this should be readily-accessible to anyone on the Premises, whether Customers, Performers or other staff.
- 7.2. A member of staff (not a Performer) qualified in First Aid should be on duty in the Premises at all times that they are open to the public.

8. Stewards

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

9. Customers

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

"This is a Sexual Entertainment Venue. No-one under 18 can enter. The Premises are monitored by CCTV. The Premises are licensed by Aberdeenshire Council."

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

"Rules for Customers"

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

- (a) There must be no physical contact between Customer and Performers;*
- (b) Customers must not enter any 'Staff Only' areas*
- (c) Customers must remain fully clothed at all times;*
- (d) Customers must not seek sexual favours or offer Performers payment in return for sexual favours;*

- (e) Customers must not offer their contact details to Performers or ask for any form of contact details from Performers;*
- (f) Customers must not engage in any unlawful activity on the Premises;*
- (g) Customers must not take any photographs or video recording of the Performers (whether consent is given or not).*

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

10. Age Limit

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

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

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

11. Premises Manager

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

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

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

Except that

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

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

12. Management

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

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

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

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

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

12.6. The windows, doors, walls and all external parts of the Premises including the roof shall not contain any form of writing, sign or display save for:

- The address of the premises
- The licenced name of the premises (which shall not be offensive)
- A notice stating the opening hours of the establishment.

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

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

Annex I – Grounds of Refusal

- 1.1. These grounds are detailed in Paragraph 9 of Schedule 2 of the Civic Government (Scotland) Act 1982.
- 1.2. There are two types of Grounds for Refusal:
 - (a) **Discretionary**: Grounds of Refusal: these are possible reasons for the Council to grant or refuse a Licence, so the Council will hold a Hearing attended by the Licence Applicant, the Police, and anyone who has stated objections or representations (such as local residents), and after hearing from everyone the Council will decide whether or not to grant the Licence (see "Discretionary Grounds for Refusal" below);
 - (b) **Mandatory**: Grounds of Refusal: if these exist, the Council automatically refuses the Licence Application - it has no choice (see "Mandatory Grounds of Refusal" below).
- 1.3. The Civic Government (Scotland) Act 1982 sometimes refers to a "Sex Shop" instead of to a "Sexual Entertainment Venue". The reason for this is that the 1982 Act has always had a system of licensing "Sex Shops", and when the new provisions about "Sexual Entertainment Venues" were to be introduced, the Scottish Parliament did this by modifying the existing system rather than by creating a separate system. This was done by Section 45B(6)(a) of the 1982 Act, which is:
 - (a) *"references to a Sex Shop are to be read as references to a Sexual Entertainment Venue"*

Discretionary Grounds for Refusal:

- 1.4. These are in Paragraphs 9(4) to 9(6). For full details, see **Annex G ("Objections and Representations")**.
- 1.5. In summary, the Local Authority can refuse an Application for the Grant or Renewal of a Licence if, in their opinion, one or more of the grounds specified in Paragraph 9(5) apply. These are:
 - (a) that the Applicant or, where the Applicant is a person other than a natural person, any director of it or any partner in it or any person responsible for its management, is unsuitable to hold the Licence by reason of having been convicted of an offence or for any other reason;
 - (b) that, if the Licence were to be Granted or Renewed, the business to which it relates would be managed by or carried on for the benefit of a

person, other than the Applicant, who would be refused the Grant or Renewal of such a Licence if he made the Application himself;

(c) that the number of Sexual Entertainment Venues 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.

1.6. Nil may be an appropriate number for the purposes of sub-paragraph 9(5)(c) above (Paragraph 9(6)).

1.7. In determining whether or not the Applicant or anyone associated with the Applicant is a suitable person to hold the Licence, the considerations for the Council will include:

a) The relevant knowledge and experience possessed by that person;

b) Any evidence of the operation of any existing or previous licence(s), whether or not relating to SEVs, including any licence held in any part of the United Kingdom;

c) Any Objections or Representations.

Mandatory Grounds for Refusal:

(a) the Applicant is under the age of 18;

(b) the Applicant is disqualified from holding a SEV Licence;

(c) the Applicant has been convicted of an offence relating to the enforcement of SEV Licensing legislation;

(d) the Applicant has not resided in the European Union for at least 6 months (or, if a Company, is not registered in the European Union);

(e) the Applicant has been refused a SEV Licence in the past 12 months.

Annex J – Form of Licence

ABERDEENSHIRE COUNCIL

Sexual Entertainment Venue Licence

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

Section 1: Applicant

Full name of Organiser

Home Address

Date of Birth
(day/month/year)

Place of Birth

Where Organiser is a
Company, Firm or
Organisation

Name of Company, Firm or Organisation

Full names and private
addresses of all Directors,
Partners, Committee
Members or other persons
responsible for the
management of the
business (continue on a
separate sheet if
necessary)

**Full
Name(s)**

**Private
Address**

**Date of
Birth**

**Place of
Birth**

Section 2: Premises

Name of Premises

Address of Premises
Premises Manager

Brief description of
Premises including seating
and customer capacity,
toilet accommodation and
entrance and exits.

Expiry Date of SEV
Licence:

The Council grants a Sexual Entertainment Venue Licence for the above Premises permitting the use of The Premises for the provision of Sexual Entertainment during the Permitted Hours below:

Permitted Hours		
	From	To
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
Sunday		

This Licence is subject to the Council's Standard Licence Conditions stated in Annex H of the Council's Sexual Entertainment Venue Licensing Policy Statement.

The Licence is also subject to the additional Special Conditions:

The Premises Manager is regarded as a joint Licence Holder.

If the Licence Holder lodges with the Council an Application for renewal on or before the Expiry Date, this Licence will continue until the Council determines that Application.

Section 3: Declaration

Has the applicant or any person named on the application ever applied for and been refused such a Licence or had such a Licence suspended?

- YES
 Which Council?.....
 Date refused/suspended?

If YES, please give details of which council refused/suspended the Licence and the date it was refused/suspended.

- NO

23. Do you or the day to day manager have **any** convictions against you?

- YES
- NO

Note: “**Convictions**” includes **both** road traffic and criminal convictions. It includes **both** current and spent convictions

I declare that the particulars given by me on this form together with the details on the application attached are true, **the appropriate persons have read the attached privacy notice**, and I hereby make application to Aberdeenshire Council for the exemption of the Licence applied for.

Date:

Signature of Applicant:

Annex K - Form of Waiver

ABERDEENSHIRE COUNCIL

Sexual Entertainment Venue Licence Waiver

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

Section 1: Applicant

Full name of Organiser

Home Address

Date of Birth
(day/month/year)

Place of Birth

Where Organiser is a
Company, Firm or
Organisation

Name of Company, Firm or Organisation

Full names and private
addresses of all Directors,
Partners, Committee
Members or other persons
responsible for the
management of the
business (continue on a
separate sheet if
necessary)

**Full
Name(s)**

**Private
Address**

**Date of
Birth**

**Place of
Birth**

Section 2: Premises and Duration and Reason for Exemption

Name of Premises

Address of Premises to be
exempted

Premises Manager

Brief description of
Premises including seating
and customer capacity,
toilet accommodation and
entrance and exits.

Reason for exemption

Expiry Date of Waiver

The Council grants a Waiver dispensing with the need to have a Sexual Entertainment Venue Licence for the above Premises until the 'Expiry Date'. This Waiver permits the use of the Premises for the provision of Sexual Entertainment during the Permitted Hours below:

Permitted Hours		
	From	To
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
Sunday		

This Waiver is subject to the Council's Standard Licence Conditions stated in Annex H of the Council's Sexual Entertainment Venue Licensing Policy Statement subject to the terms of Condition 10.1 (Notices outside Premises) being as stated in Part 9.9 of said Policy Statement.

The Waiver is also subject to the additional Special Conditions:

Section 3: Declaration

Has the applicant or any person named on the application ever applied for and been refused such a Licence or had such a Licence suspended?

- YES
Which Council?.....
Date refused/suspended?

If YES, please give details of which council refused/suspended the Licence and the date it was refused/suspended.

- NO

23. Do you or the day to day manager have **any** convictions against you?

- YES
- NO

Note: “**Convictions**” includes **both** road traffic and criminal convictions. It includes **both** current and spent convictions

I declare that the particulars given by me on this form together with the details on the application attached are true, **the appropriate persons have read the attached privacy notice**, and I hereby make application to Aberdeenshire Council for the exemption of the Licence applied for.

Date:

Signature of Applicant:

Annex L – Occasional Use Exemption Letter

To

Aberdeenshire Council. Licensing Team, Viewmount, Arduthie Road,
Stonehaven, AB39 2DQ

licapps@aberdeenshire.gov.uk

Chief Constable, Police Scotland, Licensing Team, North East Division, Queen
Street, Aberdeen, AB10 1ZA

I want to use the exemption granted by the Civic Government (Scotland) Act 1982,
Section 45A(9) to use these Premises as a "Sexual Entertainment Venue" on the
occasion(s) below **without** having a SEV Licence:

The address of the Premises	
-----------------------------	--

Organiser			
Full Name			
Address			
Email address			
Date of birth			
Place of birth			

The First Occasion	
The date of the occasion:	
The occasion starts:	
The occasion ends:	

Description of the "Sexual Entertainment":	
--	--

The Second Occasion	
The date of the occasion:	
The occasion starts:	
The occasion ends:	
Description of the "Sexual Entertainment":	

The Third Occasion	
The date of the occasion:	
The occasion starts:	
The occasion ends:	
Description of the "Sexual Entertainment":	

The Fourth Occasion	
The date of the occasion:	
The occasion starts:	
The occasion ends:	
Description of the "Sexual Entertainment":	

Have the Premises been used for "Sexual Entertainment" before?	Yes	
	No	

If you have said "yes", tell us about the earlier occasions.

Date	Times (Start & End)	Description of the "Sexual Entertainment"

Date

Signed

Organiser

Annex M – Legal Test

Civic Government (Scotland) Act 1982
Section 45B and Schedule 2
Grant or Renewal – Sexual Entertainment Venue Licence

LEGAL TEST

In terms of Section 45B(6) of the 1982 Act, references to a “sex shop” are to be read as references to a sexual entertainment venue and references to the use by a person of a premises, vehicles, vessels or stalls as a sexual entertainment venue are to be read as references to their use by the organiser.

A licensing authority, **SHALL REFUSE** an application to grant or renew a licence if, in their opinion:

- 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 another 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 licence if he made the application himself;
- 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 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.

A licensing authority **SHALL NOT** grant a licence to:

- a. to a person under the age of 18;
- b. to a person who is for the time being disqualified under paragraphs 13(10) or 19(5) of Schedule 2 to 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 paragraphs 13(10) or 19(5) of Schedule 2 to the 1982 Act;
- d. to a person who has been convicted of an offence under paragraphs 19 to 21 of Schedule 2 to the 1982 Act;
- e. to a person who is not resident in a member state of the European Union 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 a member state of the European Union;
- 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 the 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

And otherwise **SHALL** grant the application.

1. In terms of Paragraph 9(1A), in granting or renewing a licence, a local authority may (either or both):-
 - (a) disapply or vary any standard conditions (Paragraph 9(1A)a).
 - (b) impose conditions in addition to mandatory or standard conditions to which the licence is subject (Paragraph 9(1A)b)).
2. In terms of Paragraph 9(2), subject to Paragraph 9(2ZA), the conditions referred to in Paragraph 9(1A)(b) above shall be such reasonable conditions as the local authority think fit and, without prejudice to that generality, may include conditions regulating:-
 - (a) the hours of opening and closing of sexual entertainment venues (SEVs),
 - (b) displays or advertisements on or in or otherwise connected with such SEVs ,
 - (c) the visibility of the interior of SEVs to passers-by.

3. In terms of Paragraph 9(2ZA), a variation made under Paragraph 9(1A)(a) or a condition imposed under Paragraph 9(1A)(b) has no effect in so far as it is inconsistent with any mandatory condition to which the licence is subject.
4. In terms of Paragraph 9(2A), the conditions referred to in Paragraph 9(1A)(b) above shall not relate to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of Part 3 of the Fire (Scotland) Act 2005.
5. In terms of Paragraph 9(6), Nil may be an appropriate number for the purpose of Paragraph 9(5)(c). (See refusal ground 'c' in '**LEGAL TEST**' above.)
6. In terms of Paragraph 9(7), "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

Annex N - Definitions

(a) "Sexual Entertainment"

The main definition is:

" '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)."

(1982 Act, Section 45A(3))

There does not have to be a performance, such as by Performers entertaining an Audience by singing, dancing, or acting. Any "live Display of Nudity" might need a Licence. Like any other activity where a Licence is needed, like driving a taxi or running a public house, if a person does the activity without a Licence, the Police can prosecute.

In deciding whether or not there is "Sexual Entertainment" the Council will judge each case on its own merits, but these things are likely to be treated as "Sexual Entertainment":

- Lap Dancing
- Pole Dancing
- Table Dancing
- Burlesque Dancing
- Strip Shows
- Peep Shows
- Live Sex Shows
- Sex Cinemas showing films with the British Board of Film Classification (BBFC) classifications "18" or "R18" or unclassified films

(b) "Display of Nudity"

The definition is:

(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."*

(1982 Act, Section 45A(4))

(c) "Audience"

An "Audience" 'includes an audience of one' (Section 45A(3)). So a 'peep show' has an "Audience" and needs a SEV Licence.

(d) "Organiser" in relation to the provision of sexual entertainment in premises, means -

(a) *" the person ("A") who is responsible for—*

(i) *the management of the Premises, or*

(ii) *the organisation or management of the Sexual Entertainment,*

or

(b) *where A exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise), that other person" (Section 45A(3)).*

(e) "Financial Gain"

"Financial Gain" 'includes Financial Gain arising directly or indirectly from the provision of the Sexual Entertainment' (Section 45A(3)).

Two examples of the word 'indirectly':

(a) suppose that Premises have a Licence to sell alcohol, and patrons can also see a 'free' live performance of Sexual Entertainment while only paying for their drinks.
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This live performance needs a **separate** SEV Licence from the Council (as well as the alcohol Licence which the Premises have from the Licensing Board). This is because

- the definition of Sexual Entertainment says "ignoring Financial Gain", and
- the definition of "Financial Gain" is "includes Financial Gain arising directly or indirectly from the provision of the Sexual Entertainment".

(b) a publican who allows Customers to book a stripper, or who holds an event where Customers themselves create or arrange a "Display of Nudity", obtains "Financial Gain arising ... indirectly from the provision of the Sexual Entertainment" since the Customers are paying for their drinks. The fact that "Sexual Entertainment" is happening on the Premises might increase the business for the Premises - they might sell more drink.

Both the Premises Manager and the Premises Licence Holder can be prosecuted for not having a SEV Licence. The Licensing Board might revoke or suspend the Premises Licence if they allow Sexual Entertainment without a SEV Licence. They can only avoid the possibility of prosecution if they actively try to stop the Customers.

See also ***Part 7 ("Stag Parties & Hen Nights")***.