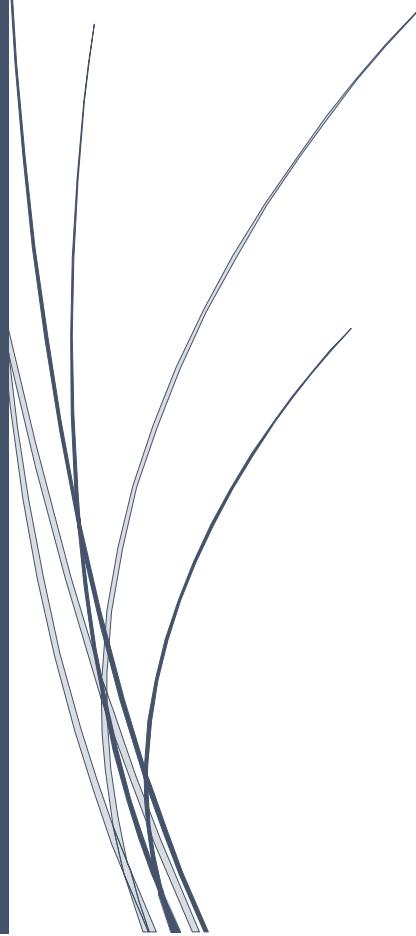


Licensing Policy Statement

Sexual Entertainment Venues



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Foreword

This policy statement is the first one published by the Highland Licensing Committee as required in terms of the Civic Government (Scotland) Act 1982.

Consultation on the draft policy statement took place during the period from 14 February 2022 to 28 March 2022.

A report providing details of comments received from consultees and consideration given to those comments was considered at the meeting of the Highland Licensing Committee which was held on 25 April 2022. A copy of the report is available on-line using the following link: https://www.highland.gov.uk/meetings/meeting/4620/highland_licensing_committee

This finalised version of the policy statement incorporates amendments which were approved by the Highland Licensing Committee on 25 April 2022 in response to comments received.

This policy will be reviewed regularly and revised when necessary.

1. Background to Licensing SEVs

1.1 On 26 April 2019, the Air Weapons and Licensing (Scotland) Act 2015 (“the 2015 Act”) introduced new provisions into the Civic Government (Scotland) Act 1982 (“the 1982 Act”) giving local authorities discretionary powers in relation to whether sexual entertainment venues (SEVs) within their local authority area should be licensed.

1.2 Prior to the introduction of these provisions there was no requirement to licence SEVs and, therefore, local authorities did not have the ability to regulate activities that fell within the definition of sexual entertainment. Following concerns raised about the lack of control in relation to adult entertainment activities, together with the Court of Session’s refusal to allow licensing boards to regulate these activities through legislation that regulated the sale of alcohol, a separate licensing regime was introduced by the Scottish Government.

1.3 Section 76 of the 2015 Act introduces a specific licensing regime into the 1982 Act that allows local authorities to determine whether to licence SEVs within their local authority.

1.4 The Highland Licensing Committee undertook a public consultation from 17 August 2021 to 21 September 21 which sought views on whether SEVs should be licensed. The consultation was available by means of an online survey. On 26 October 2021, The Highland Council, as licensing authority, agreed under section 45B of the 1982 Act agreed to pass a resolution to gain regulatory control of SEVs through a licensing regime with effect from 1 January 2023. This policy will apply to the whole of The Highland Council area.

1.5 The adoption of the resolution under section 45B(1) of the 1982 Act allows the Council, as licensing authority, to prescribe standard conditions and fees for the grant, variation, renewal and transfer of SEV licences and the appropriate number of premises to be licensed in a relevant locality, which may be nil.

1.6 Under section 45C of the 1982 Act, the local authority is required to produce a Sexual Entertainment Venue policy where it has passed a resolution to licence SEVs. The Council, as licensing authority, must prepare a statement of its policy with respect to the exercise of its functions in relation to the licensing of SEVs. The policy will have regard as to how it will affect the objectives of:

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

1.7 The policy will also provide guidance for prospective applicants, existing licence holders, those who may wish to object to an application and members of the Highland Licensing Committee when determining an application.

2. Purpose of the Policy
 - 2.1 This policy provides guidance for potential applicants, existing licence holders and members of the public on the licensing of SEVs.
 - 2.2 It must be made clear from the outset that the Highland Licensing Committee does not take a moral stance on SEVs in adopting this policy. The Highland Licensing Committee recognises that the Scottish Government has made it lawful for SEVs to operate and for a local authority to licence SEVs. It is the Highland Licensing Committee's role to regulate such venues in accordance with the law.
3. Defining Sex Entertainment Venues
 - 3.1 Section 45A (2) of the Civic Government (Scotland) Act 1982 defines SEVs as:

"any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser and where it is the sole or principal purpose of sexual stimulation of members of the audience".

'audience' includes an audience of one;

'financial gain' includes financial gain arising directly or indirectly from the provision of sexual entertainment;

'organiser' means either the person who is responsible for the management of the premises or the organisation or management of the sexual entertainment or where that person exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise), that other person;

'premises' includes any vehicle, vessel or stall but does not include any private dwelling to which the public is not admitted;

'sexual entertainment' means any live performance or any live display of nudity which is of such a nature, ignoring financial gain, must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience; and

"display of nudity" means in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus; and, in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals and anus.

- table dancing;
- strip shows;
- peep shows and
- live sex shows.

It must be noted that the above list is not exhaustive and does not include private dwellings to which the public are not admitted. Decisions to license premises as SEVs shall depend on the content of the entertainment provided and not the name it is given. As such each case will be considered on its own merits by the local authority as the Licensing Authority.

4. Venues that are not defined as SEVs in terms of the 1982 Act

4.1 The 1982 provides that there are various venues that do not fall within the definition of an SEV and are listed as follows:

4.2 A sex shop as defined in the 1982 Act.

Premises at which sexual entertainment is provided on a particular occasion if:

- a. Sexual entertainment has not been provided on more than 3 occasions which fall wholly or partly within the period of 12 months ending with the start of the particular occasion;
- b. Each continuous period during which sexual entertainment is provided on the premises is to be treated as a separate occasion; and
- c. Where the period during which sexual entertainment is provided on the premises exceeds 24 hours, each period of 24 hours (and any part of a period of 24 hours) is to be treated as a separate occasion.

4.3 Other premises exempted by an order of the Scottish Ministers. (It should be noted that no premises have currently been exempted by such an order).

5. Making an Application

5.1 All applicants for the grant, variation, renewal of a SEV licence must complete the SEV application form. The application should be submitted to [insert] together with the appropriate fee. ANNEX A ("Application Procedure & List of Application Consultees") sets out the procedure that must be followed by each applicant when applying for an SEV licence, including notifying those parties on the List of Application Consultees.

5.2 The 1982 Act allows the Council, as licensing authority, to issue a licence for a maximum period of one year. A licence can also be issued for a shorter period if it is deemed appropriate.

6. Notice of Application
 - 6.1 Under the terms of the 1982 Act, all applicants who apply for an SEV licence must, (unless the local authority consents to dispense with this requirement) advertise their application, in the local newspaper, no later than 7 days before the application is lodged with the local authority. A copy of the advert must be submitted to the local authority.
 - 6.2 The applicant must also, where the application is in respect of premises, display a notice for a period of 21 days from when the application has been lodged, on or near the premises in a place where the public can reasonably read the notice.
 - 6.3 The Highland Licensing Committee, under the 1982 Act, can determine the persons or bodies who the applicant must send a copy of the SEV application to. The applicant must send a copy of the application to these persons or bodies no later than 7 days after the date of the application. A copy of the application form can be found at ANNEX B of this policy. The applicant must provide a certificate to the local authority confirming that they have complied with this. The certificate can be found at ANNEX C.

In terms of the 1982 Act the Highland Licensing Committee may agree that the applicant sends a copy of the application to the following:

- 6.4 In terms of the consultees, the local authority will send a copy of any applications received to the following consultees:
 - Highland Council's Building Standards;
 - Highland Council's Environmental Health;
 - Highland Council's Planning Department
 - NHS Scotland;
 - Police Scotland; and
 - Scottish Fire and Rescue Service.

7. Objections and Representations

- 7.1 The 1982 makes provision for any member of the public to submit an objection or representation to a SEV licence application.

Objectors should limit their objection to matters which are relevant to the statutory grounds for refusal set out in the 1982 Act. The relevant grounds for refusal are detailed at paragraph 9 of this policy.

Objectors should note that moral objections will not be considered by the Highland Licensing Committee as these do not relate to grounds of refusal set out in the 1982 Act.

Objections will be considered by the Highland Licensing Committee when considering an application.

7.2 Objections must be in writing (email is acceptable), specify the grounds for objection, the name and address of the person making the objection and be provided to the local authority no later than 28 days after the later of:

- a) The date the application was made to the local authority;
- b) The date the newspaper article was first given; or
- c) If the date detailed in any notice which has to be re-advertised on request of the local authority.

7.3 Objectors should limit their objection to matters which are relevant to the statutory grounds for refusal set out in the 1982 Act. The relevant grounds for refusal are detailed at paragraph 9 of this policy.

7.4 **Objectors should note that moral objections will not be considered by the Highland Licensing Committee as these do not relate to grounds of refusal set out in the 1982 Act.**

7.5 Objections will be considered by the Highland Licensing Committee when considering an application.

All objections or representations received by the local authority to a SEV application will be sent to the applicant. The Privacy Statement detailing how your personal data is used can be found at ANNEX D.

8. Consideration of Late Objections

8.1 Although the local authority is under a duty to consider any objections made within 28 days of the application as detailed in para 7, it does have discretion to hear late objections *provided* it is satisfied with the reasons for lateness. Where a late objection has been received, it will be passed to the applicant to enable them to consider the objection in case the Highland Licensing Committee determine to hear the late objection. The Highland Licensing Committee are responsible for determining whether an objection or representation that is not received within the 28-day period stipulated by the 1982 Act, will be considered as part of an SEV application.

8.2 Where petitions are received from members of the local public, they are unlikely to be accepted as a valid objection or representation as it does not allow the local authority to understand individual complaints or know whether they are relying on a legal ground to make the objection or representation. Furthermore, it may not be possible for the Council, as licensing authority, to know clearly who has signed the petition. The Council, as licensing authority, will place more weight on objections and representations received from those directly impacted by the presence of an SEV and who live or work within the locality.

9. Determination of an Application

9.1 All applications for the grant of a SEV licence, where there have been objections and/or representations received, will be determined by the Highland Licensing Committee at a hearing. If no valid objections or representations to these types of application are received, then they will be determined by the Principal Solicitor/Solicitor – Regulatory Services under delegated powers. Valid objections to any application will be considered by the Highland Licensing Committee at the

hearing to consider the application. Applicants and objectors will be given an equal opportunity to state their case in accordance with the Highland Licensing Committee's procedure for hearings, which is available at:

https://www.highland.gov.uk/downloads/file/17628/licensing_hearings_procedure_licensing_committee

- 9.2 Late objectors, provided the objection is not based on moral grounds, will be invited to attend any hearing of the Highland Licensing Committee to determine the application and their objection may be brought into proceedings if the Highland Licensing Committee is satisfied with the reasons for lateness.
- 9.3 The 1982 Act provides six mandatory grounds for refusing a SEV licence and four discretionary grounds for refusal/refusal to renew a SEV licence. Each application will be decided upon its own merits and the licensing authority will give clear reasons for its decisions. Any decision to refuse an application **MUST** be relevant to one or more of the following grounds:
- 9.4 Specific mandatory grounds for refusal of a licence are set out in paragraph 9 of schedule 2. An SEV licence cannot be granted:
 - a. to a person who is under the age of 18;
 - b. to a person who has been disqualified where that person:
 - i. has held a licence that has been revoked by the same local authority area, within a period of 12 months, beginning from the date that the licence was revoked;
 - ii. has been convicted of operating an SEV or sex shop without a licence;
 - iii. has employed any person who they know would not be granted a licence under paragraph 9 (3) of the 1982 Act.
 - iv. has contravened a condition within the licence;
 - v. has permitted anyone under the age of 18 to enter the SEV or sex shop;
 - vi. has made a false or reckless statement in relation to the grant or renewal of a licence.
 - vii. has failed (without reasonable excuse) to allow an enforcement officer or police officer to enter, inspect or search the premise.
 - c. to a person who is not resident in the UK or was not resident 6 months immediately before the date that an SEV application was made.
 - d. to a body corporate that was not incorporated in the United Kingdom.
 - e. to a person who has been refused the grant or renewal of an SEV licence by the same local authority, within a 12-month period, beginning from the date that the application was made. The refusal must relate to the same premises, vehicle, vessel or stall detailed in the initial application; or
 - f. to a person other than a natural person, if any director, partner or a person who is responsible for the management of the premise, stall or vessel, has been refused the grant or renewal of a licence by the same local authority.

9.5 The discretionary grounds of refusal for a SEV licence that are referred to in the 1982 Act 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 SEVs in the local authority's area or 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;
- 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.

10. Appropriate Number of SEVs within the Highland Area

10.1 Under para 9, discretion is given to the local authority to refuse an application on the basis that the number of establishments, in the relevant locality at the time the application is determined “*is equal to or exceeds the number which the Local Authority consider is appropriate for their area or that locality*”.

10.2 The term “relevant locality” referred to under discretionary grounds (c) and (d) is defined within the 1982 Act and means:

- (a) in relation to premises, the locality where it is situated; and
- (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a SEV.

10.3 The local authority is able to determine that the appropriate number for a locality is nil and has the discretion to set an upper limit guide on the number of SEVs which it considers appropriate in any area within the local authority's control. That being the case, each application will be considered on its own merits at the time the application is submitted to the local authority.

10.4 The Highland Licensing Committee has made the decision:

1. not to break down the local area into discrete localities; and
2. not to set a maximum cap on the number of SEVs within the Highlands.

10.5 As a result of this decision, the Highland Licensing Committee will not be able to refuse an application on the grounds that an application exceeds the number which is appropriate for the Highlands.

10.6 Where an application is submitted by an applicant, the question of what is the “relevant locality” will be determined based on the facts and circumstances of the individual application together with the considerations listed in paragraph 11 of this policy.

11. Character and Vicinity of Relevant Locality

11.1 In considering whether the grant, renewal or variation of the licence would be inappropriate given the vicinity in which the SEV premises operates, the Highland Licensing Committee shall consider the existing character and function of the area. Due regard will be given to the following:

- a. Whether the premises are situated in a residential area;
- b. Whether there are any schools and other places of education near the vicinity of the premises;
- c. Whether there are any places of worship in that vicinity;
- d. Whether there are other relevant businesses or charities operating in the area e.g., homelessness shelters, women’s refuges, supported accommodation, recovery units;
- e. Whether there are certain landmarks or facilities in the vicinity (e.g., historic buildings, sports facilities, cultural facilities, family leisure facilities, play areas or parks, youth facilities, retail shopping areas, and places used for celebration of commemoration.
- f. Whether there have been incidents involving anti-social behaviour, sexual assaults or more minor harassment reported in that area; and
- g. Whether there have been incidents of human trafficking or exploitation in that area

The Council, as licensing authority, will consider relevant locality on a case-by-case basis, taking into account the particular circumstances of each application.

12. Suitability of Premises

12.1 Under the 1982 Act, the Council, as licensing authority, has the discretion to refuse applications relating to SEVs if it is considered that the grant or renewal of the licence would be unsuitable, having regard to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

12.2 It is expected that when an application for a SEV licence is made, that the applicant will be able to demonstrate that the layout, character and/or condition of the premises is appropriate to the relevant entertainment proposed at the premises.

13. Waivers

13.1 The Committee can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate.

13.2 The grant of a waiver may be considered in the following circumstances:

Borderline cases: where an applicant wishes to obtain a waiver for the avoidance of doubt, such as a nude scene in a burlesque show or a mainstream cinema with a festival of erotica.

Correction of Errors: where an event such as a show takes place in one local authority who deems the show not to require a licence, but that show moves into another local authority area and the local authority deem that the show does amount to sexual entertainment.

NB: that the above examples are not exhaustive and there may be other circumstances that the Committee deem appropriate to grant a waiver.

13.3 The Committee will take into account:

- Any objections or representations
- The Highland Licensing Committee's Licensing Policy Statement
- Scottish Government Guidance
- Any other relevant considerations.

13.4 The Highland Licensing Committee will consider each application on its own merits; however, the applicant will be expected to demonstrate exceptional circumstances which justify why the licensing requirement should be waived.

13.5 A Waiver may be for a period as the Council thinks fit and the duration of a waiver shall be determined on the facts and circumstances of each case.

13.6 The applicant is required to complete the Waiver application detailed at ANNEX E and submit their application to the Council. Any waiver will be subject to the standard licence conditions.

14. Occasional Use

14.1 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).

14.2 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).

14.3 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?"

- 14.4 If the answer is "no", the exemption applies, and the Premises do not need a SEV licence. You might send a letter to the Council and the Police.
- 14.5 If the answer is "yes", the exemption does not apply, and the premises need a licence. 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 using our Occasional Use Exemption Letter detailed at ANNEX F.
- 14.6 **IMPORTANT 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.
- 14.7 For the avoidance of doubt, where the organiser of an event seeks to carry out any further events that is not covered by an occasional use exemption (i.e. a fourth event), they must apply for an SEV licence.

14. Renewal

- 15.1 If a licence holder applies for renewal of an SEV licence before the expiry date, the licence will remain in effect until a final decision on the renewal application has been made.

Where the expiry date has already passed when the applicant makes a renewal application, this will be treated as an application for a new grant of licence unless the following conditions are met: -

- The application is made no later than 28 days after the expiry date; and
- The council is satisfied that there is good cause to accept a late application.

- 15.2 The applicant should state in writing if there is good reason to accept the late application. The procedures for a renewal application are the same as they are for a new Grant of a licence, but the licence is not guaranteed to be renewed - the Local Authority is not obliged to grant a renewal.
- 15.3 The local authority will take into account the operation of the premises during the previous Licence period(s), and any allegations of offences and/or breaches of licence conditions.

15. Variation

- 16.1 At any time, the holder of a SEV licence can apply to the local authority to vary the terms of the licence.
- 16.2 There is no requirement to advertise a variation however, the local authority will consult with the consultees as detailed in para 6.4 above.

16. Revocation

- 17.1 The Council, as licensing authority, may at any time revoke a licence if certain grounds under paragraph 13(1) of Schedule 2 of the 1982 Act are established.

17.2 These grounds are:

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

17.3 Before any revocation take place, the licence holder will ordinarily be given the opportunity to be heard before the Highland Licensing Committee. However, in certain circumstances and in accordance with the 1982 Act, a licence can be revoked without a hearing with immediate effect, where appropriate justification is provided.

17. Conditions

18.1 When issuing an SEV licence the licensing authority is permitted to issue it on such terms and conditions and subject to restrictions as are specified at the time the licence is issued either in the form of conditions specific to the individual (referred to as special conditions) or standard conditions applicable to all SEVs. Both the local authority's standard conditions and any special conditions are subject to any Mandatory Conditions prescribed by Scottish Ministers under Section 45E of the 1982 Act.

18.2 The relevant standard conditions detailed in ANNEX G shall apply to every licence granted, varied, renewed or transferred by the local authority.

18.3 In the event of a conflict arising between the standard conditions and the special conditions, the special conditions will prevail.

18.4 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 does not conflict with the conditions detailed in the Premises Licence.

18. Right to Appeal

19.1 An appeal against the decision of the Highland Licensing Committee in respect of the grant, renewal, variation or refusal of a licence must be made to the Sheriff Court within 28 days of the decision being made.

19. Equality

20.1 The 2010 Act introduced a new public sector equality duty which requires public authorities, including the Highland Licensing Committee, to try and eliminate discrimination; promote equality and good relations across a range of protected characteristics.

20.2 Prior to the Highland Licensing Committee implementing this policy an equality impact assessment was undertaken. This can be viewed using the following link https://www.highland.gov.uk/meetings/meeting/4620/highland_licensing_committee

20. Fees

21.1 The application process involves paying a non-returnable application fee, which covers the costs of administering the SEV licensing regime. The fees are reviewed annually against any rise in the local authority's costs of administering the licence regime.

21.2 The appropriate fees for SEV applications are as follows:

Grant of a SEV - £727

Renewal of a SEV - £727

Variation of an SEV licence - £363