



Licensing Committee

Wednesday, 02 December 2020

NOTICE IS HEREBY GIVEN that a Meeting of the **Licensing Committee** is to be held at **remote locations via video conference**, on **Wednesday, 02 December 2020** at **09:30**.

BUSINESS

1. **Sederunt**
2. **Declaration of Group Decisions and Members Interests ***
3. **Minute of Meeting of 30 September 2020** 5 - 8
4. **Sexual Entertainment Licence Report** 9 - 42
Report by the Depute Chief Executive (Education, Communities and Organisational Development)
5. **Annual Functions Report** 43 - 52
Report by the Depute Chief Executive (Education, Communities and Organisational Development)
6. **Question Time *****
Consider any oral question on matters delegated to the Committee in terms of the Council's Scheme of Administration.

Moray Council Committee meetings are currently being held virtually due to Covid-19. If you wish to watch the webcast of the meeting please go to:
http://www.moray.gov.uk/moray_standard/page_43661.html
to watch the meeting live.

* **Declaration of Group Decisions and Members Interests** - The Chair of the meeting shall seek declarations from any individual or political group at the beginning of a meeting whether any prior decision has been reached on how the individual or members of the group will vote on any item(s) of business on the Agenda, and if so on which item(s). A prior decision shall be one that the individual or the group deems to be mandatory on the individual or the group members such that the individual or the group members will be subject to sanctions should they not vote in accordance with the prior decision. Any such prior decisions will be recorded in the Minute of the meeting.

** **Written Questions** - Any Member can put one written question about any relevant and competent business within the specified remits not already on the agenda, to the Chair provided it is received by the Proper Officer or Committee Services by 12 noon two working days prior to the day of the meeting. A copy of any written answer provided by the Chair will be tabled at the start of the relevant section of the meeting. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than 10 minutes after the Council has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he or she can submit it in writing to the Proper Officer who will arrange for a written answer to be provided within 7 working days.

*** **Question Time** - At each ordinary meeting of the Committee ten minutes will be allowed for Members questions when any Member of the Committee can put a question to the Chair on any business within the remit of that Section of the Committee. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than ten minutes after the Committee has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he/she can submit it in writing to the proper officer who will arrange for a written answer to be provided within seven working days.

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THE MORAY COUNCIL

Licensing Committee

SEDERUNT

Councillor Louise Nicol (Depute Chair)
Councillor George Alexander (Member)
Councillor James Allan (Member)
Councillor David Bremner (Member)
Councillor Theresa Coull (Member)
Councillor Gordon Cowie (Member)
Councillor Paula Coy (Member)
Councillor John Divers (Member)
Councillor Ryan Edwards (Member)
Councillor Donald Gatt (Member)
Councillor Marc Macrae (Member)
Councillor Aaron McLean (Member)
Councillor Maria McLean (Member)
Councillor Ray McLean (Member)

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Minute of Meeting of the Licensing Committee

Wednesday, 30 September 2020

remote locations via video conference,

PRESENT

Councillor George Alexander, Councillor James Allan, Councillor David Bremner, Councillor Theresa Coull, Councillor Gordon Cowie, Councillor Paula Coy, Councillor John Divers, Councillor Ryan Edwards, Councillor Donald Gatt, Councillor Aaron McLean, Councillor Louise Nicol

APOLOGIES

Councillor Marc Macrae, Councillor Maria McLean, Councillor Ray McLean

IN ATTENDANCE

Also in attendance at the above meeting were Sean Hoath, Senior Solicitor, Jo Larsen, Licensing Standards Officer and Tracey Sutherland, Committee Services Officer.

1. Chair

The meeting was chaired by Councillor Louise Nicol.

2. Declaration of Group Decisions and Members Interests *

In terms of Standing Order 20 and the Councillors' Code of Conduct, there were no declarations from Group Leaders or Spokespersons in regard to any prior decisions taken on how Members will vote on any item on the agenda or any declarations of Member's interests in respect of any item on the agenda.

3. Application for Late Hours Catering Licence - LHC-20-001 Report

A report by the Depute Chief Executive (Education, Communities and Organisational Development) asked Committee to consider an application for the granting of a later hours catering licence received on 3 February 2020 subject to adverse representations from local residents.

Councillor Cowie left the meeting during the discussion of this item.

During the consideration of the item, Councillor Alexander moved to refuse the application on the grounds of location and public nuisance and for the opening hours to be kept at 4pm - 11pm 7 days per week. This was seconded by Councillor Gatt.

Councillor Aaron McLean proposed, seconded by Councillor Coy to support the application to extend the opening hours Monday - Thursday 4pm - 12am, Friday - Saturday 4pm - 1.30am with the exception of Keith Show day extended until 2.30am.

On the division there voted:

For the Motion (3) Councillors Alexander, Gatt and Allan

For the Amendment (7) Councillors A McLean, Coy, Bremner, Coull, Coy, Edwards, Divers

Abstention (0)

Accordingly the amendment became the finding of the meeting and the Committee agreed to grant the late hours catering licence.

4. Application for Late Hours Catering Licence - LHC-20-002 Report

The Senior Solicitor informed the Committee that this application had been withdrawn and the licence will be granted under delegated authority following the applicants agreement to accept the Police Scotland recommendations.

5. Civic Government Licensing Fee Review Report

A report by the Depute Chief Executive (Education, Communities and Organisational Development) updated the Committee on the overall income versus expenditure for Civic Government and other miscellaneous licensing for the last financial year by way of an annual financial report and make predictions in respect of likely future income and expenditure.

Following consideration the Committee agreed to consider and note:

- i) the financial report on income and expenditure data at Appendix 1; and
- ii) the position on future fees and the planned revision of the same.

6. Sex Entertainment Venues Report

A report by the Depute Chief Executive (Education, Communities and Organisational Development) presented to the Committee the draft policy statement for approval so it can be published for public consultation and invited the Committee to consider the draft policy in relation to a resolution which was passed on 6 November 2019 for the provision of a new licensing regime for Sexual Entertainment Venues (SEVs) in Moray.

During consideration of the report, Councillor Divers moved that the number of Sexual Entertainment venues in Moray be set at zero, this was seconded by Councillor Alexander.

Councillor Coy, seconded by Councillor Bremner proposed that the number of Sexual Entertainment venues in Moray be set at 1.

On the division there voted:

For the Motion (8) Councillor Divers, Alexander, Allan, Cowie, Coy, Edwards, Gatt and Nicol

For the Amendment (3) Councillors Coy, Bremner and Coull

Abstention (0)

Accordingly the motion became the finding of the meeting and the Committee agreed to set the number of Sexual Entertainment Venues in Moray at zero.

Following further consideration the Committee agreed to:

- i) note the draft policy put together by the research team at Moray Council and all attached at Appendix 1 to the report;
- ii) set the number of Sexual Entertainment Venues in Moray to zero;
- iii) not make any further changes before publishing for public consultation;
- iv) instruct the head of Governance, Strategy and performance to publish the draft policy as required either electronically or in a newspaper circulating locally for consultation along with supporting information around the proposed processes, forms, fees and guidance;
- v) officers bringing back the results of the consultation along with final drafts of the policy and supporting documentation for approval to the next meeting of the Committee on 2 December; and
- v) agree that the implementation date of the complete licensing system for SEVs be 7 January 2021.

7. Question Time ***

Under reference to Item 4 on the agenda, Councillor Gatt sought clarification on whether, in the future any applications on the agenda at publication and subsequently withdrawn for consideration are considered by the Committee.

Councillor Coull further asked whether the Ward members for the withdrawn applications could be consulted if not considered by the Committee.

In response, the Senior Solicitor confirmed that withdrawn applications could be discussed but Members would need to be specific about which applications they

wished to consider as this would require changes to the Delegated Authority permissions. He further added that he could look at permutations but was it just Late Hours Catering Licence applications that members of the Committee wished to consider. The Senior Solicitor said that he was happy to take forward ideas and circulate to the Committee for comment.



REPORT TO: LICENSING COMMITTEE ON 2 DECEMBER 2020

**SUBJECT: CIVIC GOVERNMENT (SCOTLAND) ACT 1982 AS AMENDED BY
THE AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015-
SEXUAL ENTERTAINMENT VENUES**

**BY: DEPUTE CHIEF EXECUTIVE (EDUCATION, COMMUNITIES AND
ORGANISATIONAL DEVELOPMENT)**

1. REASON FOR REPORT

- 1.1 The reason for this report is to present to the Committee the Policy Statement and supporting documents for the provision of a new licencing regime for Sexual Entertainment Venues (SEVs) in Moray.
- 1.2 This report is submitted to the Committee in terms of Section III (H) (1) of the Council's Scheme of Administration relating to the exercise of the function of the Council as licensing authority for The Moray Council area.

2. RECOMMENDATION

2.1 It is recommended that the Committee:-

- (i) **consider, amend as necessary and approve the statement of licensing policy attached at Appendix 1 to this report;**
- (ii) **consider and approve the full licence package including application form, fees and supporting documents to licence SEVs in Moray produced at Appendix 2.**
- (iii) **agree a final date for the implementation of the complete licensing system for SEVs as 11 January 2021.**

3. BACKGROUND

- 3.1 The Air Weapons and Licensing (Scotland) Act 2015 introduced new provisions within the Civic Government (Scotland) Act 1982 to allow local authorities to license Sexual Entertainment Venues (SEVs). This new licensing regime provides local authorities with the power to determine whether they wish to licence SEVs, whether to limit their numbers and to determine individual licence applications. However, these powers are not mandatory and will only apply where they are adopted by local authorities.

- 3.2 The Committee, at its meeting on 6 November 2019 passed a resolution saying that SEVs should be licensed in Moray. The Committee acknowledged that at present there were no SEVs within Moray; however, SEVs may decide to operate in the area in the future.
- 3.3 Where an authority determines to licence SEVs there is a corresponding obligation to produce an SEV licence policy.
- 3.4 At the meeting on the 30 September 2020 (para of the minute refers) the Committee approved a draft statement of licensing policy for formal consultation. The draft policy had been prepared after an extensive initial consultation exercise as well as extensive research around the subject.
- 3.5 Officers subsequently undertook a formal, second consultation exercise on the draft policy for a further period of just under 5 weeks. There was very little response to that second consultation and the draft has not been materially amended as a result.
- 3.6 Attached at **Appendix 1** is the final draft Moray Council SEV Statement of Licensing Policy for approval.
- 3.7 Also attached is **Appendix 2** is the supporting package of documents to be placed on the licensing pages of the council's website to take effect on the agreed date, suggested to be the 11th January 2021.

4 SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

The provisions of licensing directly relate to the priorities within the 10 Year Plan in relation to healthier citizens, a growing and diverse economy and safer communities. Licensing exists to promote public safety, in this context for both staff and customers. Industries that undertake licensable activities can have positive effects on tourism and aid a growing economy.

(b) Policy and Legal

Section 76 of the Air Weapons and Licensing (Scotland) Act 2015 provides for a new licensing regime for SEVs by amending Part III and Schedule 2 of the Civic Government Act 1982. The Council as licensing authority are now permitted to licence sexual entertainment venues. However, this new regime is not mandatory and in resolving to licence SEVs it will be for local authorities to give consideration to the circumstances of the local area balanced against the freedom of individuals to engage in legal employment and activities.

The licensing authority should also take cognisance of human rights issues and the rights potentially engaged. These rights include the right to freedom of expression (Article 10) which could arguably include the right to express oneself through dance as well as the right to peaceful enjoyment of possessions under Article 1 of the First Protocol. Possessions may include not only the physical property in which a business is conducted, but arguably also the goodwill of a business and all rights attached to it. Other relevant legislation such as the Provision of Services Regulation should also be considered. Regulation 24 provides that any refusals of licences under the act

must not discriminate against the applicant on the basis of nationality, they must be justified on the basis of public policy, and health etc. and the refusal must be proportionate.

(c) Financial implications

The costs associated with the review of licensing SEVs represents a large amount of staff time engaged in gathering and presenting information. Further considerable staff time will be required to develop a full application process and policy should the Committee decide to proceed with this licensing regime. This time is being met from existing budgets.

(d) Risk Implications

Human rights implications are discussed at para (b) above. Equalities issues at para (g) below.

Currently an SEV operator would be free to open a venue in Moray without the need for a licence. There may be other regulatory requirements e.g. planning and alcohol licensing. However it should be noted that alcohol licensing cannot be used to regulate sexual entertainment itself. Alcohol licensing is to regulate the sale of alcohol. That was made clear by the Courts in the Brightcrew v Glasgow Licensing Board case. That case was precisely the reason why the Scottish Government has legislated for SEVs to potentially be licensed through the Civic Government regime.

By choosing not to licence SEVs the current status quo is maintained. By choosing to licence SEVs the Council would be imposing an additional regulatory burden on proposed operators. This may make Moray less attractive to proposed operators. Such an effect would likely be enhanced by the Council choosing to set an overall limit of zero on the number of licences to be issued.

It seems likely that neighbouring authorities, Highland, Aberdeenshire and Aberdeen City will all choose to licence SEVs. It is unknown whether such a move would make Moray even more attractive to proposed SEV operators if Moray chose not to implement the licensing system.

The relative merits of opening an SEV in Moray are unknown. It may boost the night time economy. Equally some respondents were of the view it may be damaging to the current tourist economy.

In choosing to licence SEVs, a lot more staff time and resource will be required to develop a licensing system, for this licence type, that may never be used. However the development of a licence system will be a one off cost.

(e) Staffing Implications

Staff time is being met from existing resources.

(f) Property

There are no property implications arising from this report.

(g) Equalities/Socio Economic Impact

An equality impact assessment attached to the last report informed members in this respect.

(h) Consultations

Full consultation has been carried out as previously described

5. CONCLUSION

- 5.1 The Committee is invited to consider and approve all documents created for the new licence type of SEVs including the policy and supporting documents to be the Licensing regime to start on the 11 of January 2021.**

Author of Report: Sean Hoath

Background Papers:

Ref:

Draft Moray Council Sexual Entertainment Venue Statement of Licensing Policy

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

This Policy is operative from 11 January 2021.

Contents

To be completed once finalised

Licensing Policy Vision Statement

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

1. OVERVIEW

Strategy and Policy Objectives and Background

Moray Council is situated in the County of Moray. The Council area has a population of 95,520 (2018 mid-year estimate) with the main centre of population being Elgin, which is home to more than one quarter of the people living here. Other towns of population between 5,000 and 10,000 are Forres, Buckie, Lossiemouth and Keith. The Council is a mix of Urban, Residential, Countryside and Commercial. The Council has wide experience in regulating entertainment however this does not include sexual entertainment venues. Licensed entertainment in Moray contributes to Moray's appeal to tourists and visitors to the Area. It is not however the only factor which brings in tourists and visitors amongst the licensed entertainment lies the picturesque views of the Moray Coastal route and the Whisky trails. Moray has around 330 licensed premises including 2 night clubs. It does however have many other premises which have licensed and this includes cultural venues, shops and distilleries. The entertainment industry does not bring as much cultural and financial benefit to the Moray area compared to the distilleries and other licensed premises and the beauty of the picturesque townships.

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

Resolution

On the 6th of November 2019 the council passed a resolution that in terms of Section 45B of the Civic Government (Scotland) Act 1982 as amended by The Air Weapons and Licensing (Scotland) Act 2015. The effect of passing this resolution is to require sexual entertainment venues to be licensed under the 1982 Act. A licence issued by the council may last up to 1 year and subject to these policies, may be renewed.

1. Definitions

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

2. Making an Application

- 2.1 The SEV licensing regime will take place from the 7 January 2020. Under paragraph 25(3) of Schedule 2 of the 1982 Act, we as the local authority cannot

consider any application for an SEV license prior to the date specified in the resolution and cannot grant any licence until we have considered all applications received prior to that date.

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

3. Fees

- 3.1 The Civic Government (Scotland) Act 1982 permits the authority to set a reasonable fee as the authority shall seek to ensure that from time to time the total amount of fees receivable by the authority is sufficient to meet the expenses of the council in exercising their functions under the Act.
- 3.2 The fees for an SEV Licence are currently set at:
 - Initial application: £1500.00
 - Upon grant of licence: £TBC to successful applicants
 - Renewal of licence: £1500.00
 - Variation of licence details: £500.00
 - Transfer of licence: £275.00

- Issue of duplicate licence: £40.00

4. Making Objections to Applications

- 4.1 An objection or representation relating to an application for the grant or renewal of a licence under this schedule shall be considered on if the objection or representation is
- (a) In writing;
 - (b) specifies the grounds of the objection or, as the case may be, the nature of the representation;
 - (c) specifies the name and address of the person making it;
 - (d) is signed;
 - (e) was made to them within 28 days of whichever is the later or, as the case may be, latest of the following dates—
 - (i) the date of submission to them of the application;
 - (ii) the date when public advertisement was first given under paragraph 2.6 above;
 - (iii) the date, if any, specified by the local authority under paragraph 7(10) above.
- 4.2 The authority before reaching a final decision upon such an application, give the applicant and any person who has made a relevant objection or representation an opportunity to be heard by them and where they propose to do so, must within such reasonable period (not being less than 14 days) of the date of hearing, notify the applicant and each such person of that date.

5. Mandatory Grounds for Refusal

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

Paragraph 13(10) of the 1982 Act

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

Paragraph 19(5) of the 1982 Act

- (a) that the applicant or, where the applicant is a person other than a natural person, any director of it or any partner in it or any person responsible for its management, is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) that, if the licence were to be granted or renewed, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he/she made the application;
- (c) that the number of sex shops in the relevant locality at the time the application is made is equal to or exceeds the number which the Moray Council consider is appropriate for that locality. Nil may be an appropriate number;
- (d) that the grant or renewal of the licence would be inappropriate, having regard—
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

6. Discretionary Grounds for Refusal

6.1 A licence may be refused where:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) if the licence were to be granted, renewed, or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he/she made the application;
- (c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- (d) that the grant or renewal of the licence would be inappropriate having regard—
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

7. Number of Sexual Entertainment Venues

- ### **7.1 As set out within the 1982 Act under Schedule 2 provides that a Local Authority may refuse an application if it is satisfied that the number of SEVs or of a particular kind in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality. The Council is able to determine that the appropriate number for a locality is nil.**

- 7.2 Sexual entertainment venues cater for a particular adult audience and by attracting those customers can affect the character of the locality in which they are situated. The council considers that localities which are characterised by particular uses, whether by residents, visitors or workers, should not include SEVs.
- 7.3 After consultation with local residents and consideration of the geography and layout of Moray's towns and villages the Moray Council Licensing Committee has determined that the appropriate number of SEVs in Moray is nil for all localities.
- 7.4 Towns with fewer than 2,000 residents are considered too small to be able to support an SEV. There would be too few local residents and tourists to make an SEV commercially viable. Furthermore, the nature of SEVs and the impact that they and their customers can have in these localities would significantly distort the character of these communities. In these smaller communities it is extremely difficult to identify premises that are not in close proximity to the areas mentioned in the guidance to the act: residential areas, schools, including the routes to and from school regularly used by children, or places of worship. Given the constraints on local authorities' budgets there are insufficient licensing staff to effectively police and carry out the necessary inspections to ensure compliance with licence conditions. Evidence suggests strongly that a comprehensive and rigorous inspection regime is vital if the club is to be a safe place to work. The capacity of the current licensing team virtually rules out any SEV in locations other than the larger towns. Therefore, the appropriate number of SEVs licensed in Burghead, Dufftown, Rothes and Aberlour and all other communities or villages in Moray with fewer than 2,000 residents is nil.
- 7.5 In Buckie there are 7 places of worship in the centre of town close to and located on West and East Church Street and the High Street making this area inappropriate. Commercial Road is away from the main residential areas, schools and places of worship although there are a large number of commercial premises associated with fishing, boatbuilding and engineering activities that would make much of this area an inappropriate location for an SEV.
- 7.6 The location of schools and places of worship in Lossiemouth and its largely residential nature limits where an SEV could be sited. Given the mixed residential and commercial character of the town and the reliance on tourists, who visit the beaches, play golf or moor up in the harbour, for example, an SEV could be considered inappropriate. It is considered that the number of SEV premises licensed in Lossiemouth be nil.
- 7.7 Another mainly residential town Keith is dominated by the 2 distilleries and their associated warehouses. The main A96 road connecting Inverness and Aberdeen runs through Keith and Fife Keith and there is no clearly delineated town centre that would support a night-time economy, without impacting on nearby residents. Consequently, it is considered that the number of SEV premises licenced in Keith (including Fife Keith and Strathisla) should also be nil.
- 7.8 Forres is a predominantly residential town with limited locations for an SEV that do not impact upon residential areas or the 4 schools. The central area of the

High Street and the side-streets leading from it are not directly adjacent to schools or places of worship and include pubs and restaurants. If a request for an SEV were submitted the central area is the only location that could be considered, but to maintain the existing character and function of the area the premises that could be used are limited. Consequently, it is considered that the number of SEV premises licenced in Forres should also be nil.

- 7.9 The largest town in Moray, Elgin has the most potential for hosting an SEV. With an established town centre that contains several licensed premises, and 2 nightclubs located off the High Street, this would appear to be the most likely area to establish an SEV. However, the central pedestrianised area is dominated by a place of worship, ruling out a significant proportion of the town centre. Furthermore, Elgin town centre is a significant element of the Castle to Cathedral to Cashmere (CCC) tourism project, which has been acknowledged as being successful in achieving its aims . The CCC trail takes visitors to Elgin right through the town centre, including many of the alleyways, lanes and side-streets. A prominent SEV in this area would be out of keeping with the aims of the CCC project and potentially reduce the appeal of Elgin to visitors, especially those with children. This potential conflict of interest would require the opening hours, entrance façade and siting to be controlled carefully. The remainder of Elgin, including New Elgin, does not have any sites that would avoid being close to residential areas in particular, as well as schools, places of worship and cemeteries. Consequently, it is considered that the number of SEV premises licenced in Elgin should also be nil.
- 7.10 From time to time the Moray Council Licensing Committee will review the appropriate number of SEVs for their area and for each relevant locality within their area.
- 7.11 With the appropriate number of SEV licensed premises set to nil for all localities there is a presumption against the granting of new licences. Applicants will therefore have to demonstrate exceptional reasons as to why a licence should be granted in order to overcome this presumption. For the avoidance of doubt the council considers that responsible management and the implementation of appropriate operating policies at sexual entertainment venues are essential to ensure the promotion of the licensing aims and objectives and so being a responsible operator is a basic requirement and is not considered as exceptional.

8. Relevant Locality

- 8.1 With reference to Schedule 2 of the 1982 Act “relevant locality” means:
- (a) in relation to premises, the locality where they are situated; and
 - (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex shop.
 - (c) that the number of sex shops in the relevant locality at the time the application is made is equal to or exceeds the number which the local authority consider is appropriate for that locality;
 - (d) that the grant or renewal of the licence would be inappropriate, having regard—
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or

- (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

9. Licence Conditions

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

10. Standard Conditions

Location

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

Appearance, displays and layout of premises

- 10.4 Copies of the licence and the conditions attached to the licence shall be clearly displayed so that every person entering the premises can see a copy of both the licence and the conditions.
- 10.5 Any charge for entering the premises and any compulsory purchases within the venue shall be clearly and legibly displayed outside the premises so that all persons can read it before entering the premises.
- 10.6 No display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing or similar matter shall be displayed outside the premises without the written permission of Moray Council, except

- for those signs or notices that are required to be displayed by these licence conditions.
- 10.7 Price lists for both drinks and sexual entertainment and the code of conduct for customers will be clearly displayed at each table and at each entrance to the premises.
 - 10.8 Price lists and the code of conduct for customers must be printed in a manner which is clear and easy to read during the normal operation of the premises.
 - 10.9 The entrance to the premises shall be so designed and constructed as to prevent persons outside the premises having a view of the interior. No part of the performance shall be visible from outside the premises.
 - 10.10 Any person who can be observed from outside of the premises must be properly and decently dressed. Scantily clad individuals must not exhibit in the entranceway or in the area surrounding the premises. There shall be no attempt made outside the premises to solicit people to enter.
 - 10.11 All external doors (including fire-exit doors and patio doors) to the premises shall not be propped open during the course of the relevant entertainment.
 - 10.12 All windows must be dressed or designed so as to prevent persons outside the premises having a view of the interior.
 - 10.13 No window shall contain any sign, advertising material, goods or display likely to cause an offence to persons passing the window. This includes any advertising material, photographs or other images that indicate and suggest that erotic dancing takes place on the premises and which may be offensive.
 - 10.14 Lighting in all parts of the premises must be in operation continuously during the whole time the premises are open as a sex establishment.
 - 10.15 The premises shall be maintained in good repair and condition. All parts of the Premises shall be kept in a clean and hygienic condition to the satisfaction of the Council.
 - 10.16 Doors and openings which lead to parts of the premises which are not open to the public shall be clearly marked "staff only" or by some other sign that deters the public from using such doors or openings.
 - 10.17 The external doors to the Sex Establishment shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
 - 10.18 The Licensee shall make provision in the means of access both to and within the Sex Establishment for the needs of members of the public visiting the establishment who are disabled.
 - 10.19 All exhibits, displays, demonstrations and like activities must be open and available to all customers at no charge other than any initial entrance fee to the establishment and there shall be no individual cubicles or rooms designed to accommodate individual persons or groups of persons where exclusive demonstrations, displays, exhibits or similar activities may take place, unless authorisation/consent is first granted by the Council.
 - 10.20 The authorised entertainment must only take place in designated areas approved by the Council;
 - 10.21 Suitable changing rooms with restricted access should be provided for performers, separate from customers and other staff, where they may prepare for their performance;
 - 10.22 Safe and controlled access to the dressing room for performers must be maintained at all times when the performance is taking place and immediately afterwards;
 - 10.23 The agreed activities will take place only in designated areas as indicated on the plans authorised by the Licensing Authority and in the full view of the audience. No part of the premises accessible to the audience shall be

concealed from observation without the appropriate authorisation from the Licensing Authority.

10.24 No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.

10.25 No change of use of any portion of the Premises from that approved by the Council shall be made until the consent of the Council has been obtained thereto.

Opening times

10.26 Except with the previous consent of the Council an SEV shall not be open to the public before 22:00 hours and shall not be kept open after 03:00 hours. Opening hours may be aligned to alcohol licensing hours.

10.27 Except with the previous consent of the Council a Sex Establishment shall not be open on Sundays, Good Friday and Christmas Day.

Control of entry

10.28 No person under 18 years of age shall be admitted on the premises.

10.29 The Challenge 25 proof of age scheme shall be operated at the premises whereby any person suspected of being under 25 years of age shall be required to produce identification proving they are over 18 years of age. The only acceptable forms of identification are recognised photographic identification cards, such as driving licence or passport.

10.30 Any person who appears to be drunk / intoxicated or under the influence of illegal drugs shall not be permitted entrance to the premises.

10.31 A policy of random searches of persons entering the premises shall be operated.

10.32 Any person found to be in possession of illegal drugs upon entry shall be prevented entry and, where possible, restrained until the Police can take such person into custody. Any persons found using illegal drugs on the premises shall be removed from the premises or, where possible, restrained until the Police can take such person into custody.

10.33 The premises shall maintain a refusals log whereby on any occasion a person is refused entry details shall be recorded. The log must be made available on request by Police Scotland or an authorised officer of the Council.

10.34 No tickets shall be sold and no admission money taken in a place to which members of the public, other than permitted customers of the Sex Establishment, have access.

10.35 A minimum of two Door Supervisors registered with the Security Industry Authority must be on duty at all times the premises are operating with adult entertainment.

10.36 Door Supervisors shall continually monitor all entrances, exits and toilets.

10.37 The Door Supervisor register shall be made available to Police Officers or authorised officers of the Council on request.

10.38 The Designated Premises Supervisor shall, as soon as is reasonably practicable within 72 hours, notify the Security Industry Authority of any door supervisors dismissed for serious misconduct which might reasonably affect the continuation of such registration.

Conduct of performers

10.39 No person under 18 years of age shall be admitted on the premises.

- 10.40 Dancers will only perform on the stage area, or in booths/areas for VIPs as identified on the plan attached to the licence.
- 10.41 Dancers will only be present in the licensed area in a state of nudity when they are performing on stage or providing a private dance.
- 10.42 Relevant entertainment will only be performed by the dancer. There must be no audience participation.
- 10.43 There must be no physical contact between dancers.
- 10.44 There must be no physical contact between the dancer and the customer at any time, with the exception of leading a customer by the hand to and from an area permitted for performances of sexual entertainment.
- 10.45 Any performance will be restricted to dancing and the removal of clothes. There will not be any other form of sexual activity or stimulation which, for the avoidance of doubt, includes kissing.
- 10.46 Sex toys must not be used and penetration of the genital area by any means must not take place.
- 10.47 Customers must remain seated for the duration of the performance.
- 10.48 Customers will not be permitted to throw money at the dancers.
- 10.49 Patrons or members of the audience shall not take photographs or record digital images of performers by any means.
- 10.50 All booths and VIP areas used for private dances must be visible to supervision and must not have closing doors, curtains or coverings of any description.
- 10.51 All booths and VIP areas used for private dances must be directly supervised by either a SIA registered door supervisor, or a member of staff who has direct contact with SIA registered door supervisors working on the premises at all times the booths/areas are in use. Direct supervision does not include remote supervision by CCTV.
- 10.52 Any person on the premises who can be observed from outside the premises will be properly and decently dressed.
- 10.53 Customers and staff must not be allowed to interact while using smoking areas.
- 10.54 Dancers must be covered up at all times with knee length robes whilst using the smoking areas.
- 10.55 The licensee will ensure dancers have secure dressing rooms, facilities to secure valuables and proper sanitation facilities available to them.
- 10.56 The practice of fining is prohibited.
- 10.57 Panic alarms are to be fitted to all booths and VIP performance areas and will be operational at all times.
- 10.58 Exit routes for performers must be kept clear.

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

- 10.59 There shall be a written code of conduct for performers. All performers shall be required to certify their agreement to comply with the code and a record shall be kept on the premises and be made available upon request by the police or an authorised officer of the Council. The code shall include the following:
- (a) The licence conditions relating to performances of sexual entertainment.
 - (b) House rules.
 - (c) Internal disciplinary procedure and details of any financial penalties that may be imposed. This should include a system to ensure that performers

- suffering a genuine sickness or domestic emergency are not made subject to unfair punitive financial penalties.
- (d) Drugs monitoring.
 - (e) No contact with customers outside the club.
 - (f) The arrangements for breaks and smoking facilities provided.
 - (g) Copies of approved forms of ID supplied by each performer i.e. passport, photo card driving licence or PASS card.
- 10.60 Performers shall be provided with secure and private changing facilities
- 10.61 Means to secure personal property shall be provided for the performers
- 10.62 Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking area. If no smoking area is provided a maximum of 3 performers may be permitted to take a break at any one time.
- 10.63 The licence holder shall implement a written policy to ensure the safety of performers when leaving the premises following any period of work
- 10.64 All fees and charges for performers shall be stated in writing and prominently displayed in the changing area.
- 10.65 The Licensee shall take all reasonable precautions for the safety of the public and employees.
- 10.66 There must be a minimum of one member of security staff present on any floor where a performance of sexual entertainment is taking place and one member of security staff at the entrance to the premises, at all times the premises is open to the public.
- 10.67 The Licensee shall comply with any fire prevention and safety measures that may be required by XXXXX Fire Service and shall maintain and keep available for use all specified fire-fighting equipment and extinguishers.

Management

- 10.68 Before a dancer is permitted to work on the premises the licensee will ensure that the dancer:
- (a) has not been convicted of theft, drug offences or prostitution,
 - (b) has the right to work in the UK.
- 10.69 The licensee will keep records of the checks, including copies of any documentation such as a basic disclosure, passport, visa, driving licence or national insurance number provided by the dancer.
- 10.70 All premises that provide relevant entertainment will be expected to provide new dancers with a pack of information. This pack will include:
- (a) A copy of the SEV Licence, including the conditions applied by the Licensing Committee,
 - (b) Details of any other conditions applied by management of the premises,
 - (c) Details of how to report crime to the relevant authority,
 - (d) Details of the premises public liability insurance,
 - (e) Information on how dancers can obtain personal liability insurance,
 - (f) Details of unions, trade organisations or other bodies that represent the interests of dancers,
 - (g) A copy of the code of conduct for dancers,
 - (h) A copy of the code of conduct for customers, and
 - (i) Price lists for drinks and sexual entertainment.
- 10.71 The information provided in the pack will be provided in the dressing rooms or a sign will be placed in the dressing room advising the pack is available on request.

- 10.72 All performers who engage in an evening of work at the premises shall sign a document to confirm the start and finish time of the shift. The document should be dated and contain the performer's true name as well as the stage name. These records shall be kept for a minimum period of six months and shall be produced on request by an authorised officer.
- 10.73 Employment records for performers and staff shall be kept for a minimum of six months following the cessation of their employment.
- 10.74 Accurate payment and remuneration records shall be maintained and shall be made available upon request to the Police or an authorised officer of the Council.

Maintenance and repair

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

CCTV

- 10.79 The CCTV system must comply with: British Standard 7958:2015 - Closed circuit television (CCTV). Management and operation. Code of practice.
- 10.80 Where CCTV system incorporates a digital recording function, it must also comply with: BS EN 62676-4:2015 - Video surveillance systems for use in security applications. Application guidelines.
- 10.81 The designated premises manager (as specified in any licence in force for the premises granted under the Licensing (S) Act 2005)/premises owner must maintain an annual registration with the Information Commissioner's Office - as stipulated under the Data Protection Act 2018.
- 10.82 At all times, the CCTV system and recordings must be kept in a secured environment under the control of the designated premises manager (as specified in any licence in force for the premises granted under the Licensing (S) Act 2005) or other nominated responsible named individual. Also a full instruction manual for the CCTV system must be available to the Police and other Responsible Authorities.
- 10.83 The CCTV system must be maintained in good working order to:
- (a) Operate on 'real-time' at a minimum rate of 20 frames-per-second, with constant, correct time/date generation.
 - (b) Have a recording capability capable of providing individual pictures.
 - (c) Provide clean, clear and unobstructed camera views of evidential quality in all lighting conditions.

- (d) Provide correctly timed and date stamped recordings - which must be stored in date order, numbered sequentially and kept for a period of 31 days and handed to the Police on request.
 - (e) Export footage to a removable storage medium with a time and date integral to the image – where possible, to also include any software needed to replay the footage.
 - (f) Ensure exported footage at the same, or similar quality to that recorded on the system recording.
- 10.84 During all periods of licensable activity a nominated and trained 'CCTV Operator' must be on duty, who is competent in the operation of the CCTV equipment in order to:
- (a) inspect the CCTV system on a daily basis, and ensure that all cameras are in full working order.
 - (b) record each inspection on a 'CCTV maintenance' log sheet, and endorse with their signature.
 - (c) facilitate the downloading CCTV footage.
- 10.85 During all periods of non-licensable activity, a 'CCTV Operator' must be contactable by the police on a designated emergency-only telephone number. This number must be registered with the local police licensing officer.
- 10.86 The CCTV system must:
- (a) Incorporate at least one camera on every entrance and exit to the premises - individuals must identifiable.
 - (b) Incorporate at least one camera on all areas where the sale/supply of alcohol occurs - individuals must recognisable.
 - (c) Incorporate at least one camera on any potential queue area external to the premises, and car parking area within the boundary of the premises - individuals must be detectable.
 - (d) Ensure that all other cameras at the premises allow for individuals to be recognisable.
 - (e) Incorporate a dedicated CCTV camera for each private booth – individuals must be clearly identifiable.
- 10.87 In the event of a technical failure of the CCTV system, the nominated CCTV Operator will ensure the matter is reported to the Moray Council Licensing Team within 24 hours.
- 10.88 A camera which records a facial picture of customers entering the premises shall be situated at the reception and a monitor situated there so customers entering can see same.
- 10.89 CCTV shall cover all public areas of the premises including all areas where performances of sexual entertainment are conducted.

Enforcement

- 10.90 Inspection and enforcement will be based on the principles of risk assessment, having a graduated response and targeting problem premises. Inspections will not be undertaken routinely. Enforcement of the legislation will be objective and transparent.
- 10.91 An intelligence led approach will be adopted and information regarding incidents of violent crime, disorder and nuisance in and around licensed premises will be collated to provide a risk assessment basis for inspection and, where appropriate, surveillance, with high-risk operations receiving more attention than premises carrying low public safety/nuisance risks.
- 10.92 The Licensing Authority may take appropriate enforcement action against those responsible for unlicensed premises/activity.

- 10.93 Any complaints received by the council about unlicensed activity or the way licensed premises may be operating will be dealt with in accordance with the council's relevant policies and may result in an adjustment to the risk rating, prompting more frequent visits. We will work with businesses in an attempt to resolve issues that are of concern.
- 10.94 Following a hearing, the Licensing and Appeals Committee may attach further conditions to a licence, considered necessary and proportionate in the public interest including, but not limited to, the interest of public policy, public security, public health or the protection of the environment. This could include conditions restricting the opening and closing times of the premises.

Staff Training

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

11. Duration of Licences

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

12. Waivers

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



APPLICATION FOR THE GRANT OR RENEWAL OF SEXUAL ENTERTAINMENT VENUE LICENCE

PLEASE READ GUIDANCE NOTES SUPPLIED BEFORE COMPLETING FORMS

A. PERSONAL DETAILS

Full Name

Home Address

.....

.....

Post Code

Tel. No Mobile.....

Email

Date of Birth Age.....

Place of Birth

B. BUSINESS DETAILS

Full Name of Business

Address of Registered
or Principal Officer

.....

.....

Post Code

Tel. No

Email

Nature of Business Firm/Partnership ☐ Limited Company ☐ Organisation ☐

Full details of all Directors or Partners of the business (continue on a separate sheet if required)

Full Name

Home Address

.....

.....

Post Code

Tel. No Mobile.....

Email

Date of Birth Age.....

Place of Birth

Full Name

Home Address

.....

.....

Post Code

Tel. No Mobile.....

Email

Date of Birth Age.....

Place of Birth

Full Name

Home Address

.....

.....

Post Code

Tel. No Mobile.....

Email

Date of Birth Age.....

Place of Birth

Full details of the employee responsible for the day to day management of the business

Full Name

Home Address

.....

.....

Post Code

Tel. No Mobile.....

Email

Date of Birth Age.....

Place of Birth

C. LICENCE DETAILS

Tick one box only Grant ☐ Renewal ☐

If Renewal – Current Licence Number

If not a Renewal:

Have you previously held a Sexual Entertainment
Venue Licence in this area or any other area in the UK? YES / NO

If Yes Area

Dates and duration of licence

Reason no longer licensed

If not a Renewal

Have you previously been refused a Sexual Entertainment
Venue Licence in this area or any other area of the UK? YES / NO

If Yes Area

Reason for refusal(s)

Date(s) of Refusal

D. PREMISES DETAILS

Address of Premises for
which licence is required

.....

.....

.....

Description of Premises

.....

.....

.....

Description of activities to be
carried on the premises

.....

.....

.....

.....

.....

E. DURATION OF LICENCE

5. Is alcohol to be sold on & off the premises YES/NO* - if the answer is YES please apply for the relevant liquor licence.

Times for which the Sexual Entertainment Licence is required; (please note the licensable activity is only permitted at these times if granted)

<i>Day</i>	<i>Licensing Times</i>	
	<i>Opening time</i>	<i>Terminal hour</i>
<i>Monday</i>		
<i>Tuesday</i>		
<i>Wednesday</i>		
<i>Thursday</i>		

Friday		
Saturday		
Sunday		

Will any incoming calls be diverted from these premises to a mobile telephone or other electronic communications device outside these premises? YES / NO

If Yes details

Have you considered if planning consent is required? YES / NO

If Yes, please give the reference and date granted

If No, please search "Do I need planning permission?" at www.moray.gov.uk

Have you considered if a building warrant is required? YES / NO

If Yes, please give the reference and date granted

If No, please search "Do I need a building warrant?" at www.moray.gov.uk

F. CRIMINAL CONVICTIONS

Have you or anyone named in this application **ever** been convicted of **any** crime or offence Including driving endorsements or penalties? YES / NO

You must provide details below of all relevant convictions (including road traffic offences) recorded against you.

If you are declaring that you have **no** such convictions please write "None"

If yes, details

.....

.....

See guidance Notes for reference to "spent convictions"

G. RESIDENCE OUTSIDE THE UK

Since being born have you or anyone named in this application lived outside the UK for a continuous period of 12 months or more? YES / NO

If you have answered YES please provide details of all the countries in which you have lived. Please continue on a separate sheet if required.

Country of Residence.....FromTo.....

Country of Residence.....FromTo.....
Country of Residence.....FromTo.....
Country of Residence.....FromTo.....

For each country you have lived, in the last 10 years, you are required to provide a Criminal Record Check. Please refer to the guidance for further details of the documentation you are required to provide.

I/we declare that I/we shall, for a period of 21 days commencing with the date hereof, display at or near the premises so that it can be conveniently read by the public, a notice complying with the requirements of Paragraph 2(3) of Schedule 1 of the Civic Government (Scotland) Act 1982.

OR

I/we declare that I am/we are unable to display a notice of this application at or near the premises because I/we have no rights of access or other rights enabling me/us to do so, but that I/we have taken the following steps to acquire the necessary rights, namely: (here specify steps taken)

.....
.....
.....

but have been unable to acquire those rights.

Delete (A) or (B) as appropriate. Where declaration (A) is made a certificate or compliance in accordance with Paragraph 2(2) of Schedule 1 to the Civic Government (Scotland) Act 1982 must be produced in due course

Declaration

I declare that the particulars given by me on this form are true and I hereby make application to Moray Council for the grant or renewal of the licence applied for.

Signature of applicantDate

Or

Signature of Agent onDate
behalf of applicant

Agents Address
.....

NB. It is an offence for any person to make any statement which he knows to be false in this application or in connection with the making of this application

Data Protection - The Moray Council / Licensing Board is the data controller for this process. Information about you on this form will be used to process your licensing application. In processing your application, the information may be shared between Council departments, other agencies and the public where necessary and/or in accordance with statute. The Council / Board has a duty to process your information fairly. Information we hold must be accurate, up to

date, is kept only for as long as is necessary and is otherwise shared only where we are legally obliged to do so. You have a legal right to obtain details of the information that we hold about you. For full terms please visit [Licensing Privacy Statement](#). For full Data Protection policy, information and rights please see www.moray.gov.uk/dataprotection .



SEXUAL ENTERTAINMENT VENUE LICENCE GUIDANCE NOTES FOR APPLICANTS

Disclaimer

These notes have been prepared as an outline of the licensing provisions in connection with sexual entertainment venue introduced by the Civic Government (Scotland) Act 1982. While every effort has been made to ensure accuracy these notes are for general guidance only and do not constitute legal advice. It is the responsibility of applicants and licence holders to ensure that they comply with the provisions of the Act, any statutory instruments and thereunder, the conditions outlined in the schedule attached to your licence and any policy / guidance notes issued by the Council.

The application is split into 5 different parts

- A Personal Details**
- B Business Details**
- C Licence Details**
- D Premises Details**
- E Duration of Licence**
- F Criminal Convictions**
- G Residence Outside the UK**

A Personal Details

It is essential that your full details are supplied on the application form so that necessary Police checks can be undertaken swiftly and so your application can be processed as quickly as possible.

B Business Details

You are required to complete this section if the premises/operation is run by a company or partnership rather than an individual person.

C Licence Details

Grant of a Licence – If you have never held a Sexual Entertainment licence before or you do not currently have such a licence you need to apply for the **grant** of a licence.

Renewal of a Licence – If you currently hold a Sexual entertainment Venue licence which has not expired but is due to expire then you need to apply for a **renewal** of the licence.

A licence is generally granted for a period of 1 year although the licensing authority has the discretion to grant it for a shorter period.

D Premises Details

Whether it is a Grant or Renewal you should complete all the details requested for the premises you wish to be licensed.

E Duration of Licence

A Sexual Entertainment Licence is granted for 1 year.

F Criminal Convictions

This section asks whether you have ever been convicted of any crime or offence. **Please note that this includes any driving fixed penalties. Failure to disclose convictions is a criminal offence and any applicant failing to disclose a conviction will be reported to the Procurator Fiscal with a view to prosecution**

G Residence outside the UK

If you are making an application you, or anyone named in the application must provide evidence of your criminal history:

- **If you were born in the UK** but have lived in any other country within the ten years prior to your application for a continuous period of twelve months or more you must provide a Criminal Record Check for all those countries for the relevant period(s)
- **If you were born outwith the UK** you must provide a Criminal Record Check from your country of origin for the time of residence there IF it was in the last ten years, unless you left that country without reaching the criminal age of responsibility. You must also provide a Criminal Record Check from any other country in which you have resided for a continuous period of six months or more in the ten years prior to application.

In all cases, the Criminal Record Checks provided must

- have been obtained within the six months immediately prior to submitting your application; and
- be translated into English; and
- be verified by the relevant UK-based Embassy or High Commission

Process for obtaining Criminal Record Checks -

<https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

Note: The certificate must be produced before the licence can be granted. Whilst it is desirable for the applicant to produce the certificate with the application, it is not a strict requirement. This is so any applicant having difficulties will not be disadvantaged by delays to processing the application. At the applicants choosing, the application can be accepted as valid without the convictions evidence but the evidence should be provided as soon as possible. In this way the convictions evidence will be a check rather than a validation. Applicant should still note, however, that the licence cannot be granted without the evidence having being produced. Therefore if the application is approaching the 9 month time limit without the evidence being produced, the application may be refused for failure to comply with administrative provisions.

If you are experiencing difficulties in obtaining a certificate then please contact the licensing team to discuss your options. It may be possible to accept alternative evidence, for example: evidence of checks having been carried out by another government body; affidavits; or character references.

In cases where it is not possible to provide any satisfactory evidence, the application will be referred to the Licensing Committee for a decision. Therefore the application may be delayed pending the outcome of a hearing.

General Information

- Change of Details – If at some point during the 1 year that the licence lasts you need to change the details of the licence e.g. change in name, change in address or if you acquire a criminal conviction etc. – you must submit a yellow form (if you are an individual) or a peach form (if you are a company or a Firm/Partnership). There is no fee for a change of details.
- Declaration – You require to sign and date the declaration at the bottom of the application form. This is a very important part of the form and you should note that it is criminal offence to make a false declaration for which you can be prosecuted and fined.

Once you have completed the application form, you should submit it to:

Head of Legal and Democratic Services
Moray Council
High Street
Elgin
IV30 1BX

along with the appropriate fee.

Your application will be copied to Police Scotland, the Scottish Fire and Rescue Service and the Chief Planning Officer for their observations. If no objection or observation is made on your application within 21 days, the Council will proceed to issue your licence. If an observation or objection is received, your application will be referred to the Licensing Committee of the Council where elected Members will consider the matter. You will be given an opportunity to attend this meeting and put your case in support of your application.

Fees

Please refer to the Moray Council website for the list of current fees.

Display Notice and Certificate of Display

As well as fully completing the application form you must also complete and display the “Display Notice” at or near the premises in such a position that it can be conveniently read by members of the public. Once you have displayed this notice for 21 days, you should then complete the “Certificate of Display” and send it to the above address.

It is very important that the Display procedure is carried out correctly. You should note that failure to carry out these requirements will delay your application if the Display procedures have to be repeated.

On the day you lodge your application for the licence you must:-

Complete the form headed “DISPLAY NOTICE”

Display it at or near the premises so that it can be conveniently read by the public

It must remain there for 21 days

You should check throughout the 21 days that it has not been removed, obscured or defaced. If it has been, you should ensure that it is protected or a replacement is displayed immediately.

At the end of the 21 days you must:-

Remove the notice

Complete and return the form headed "CERTIFICATE OF DISPLAY"

If you have any queries please e-mail licensing@moray.gov.uk or contact us on 01343 563027.

N.B. It is an offence for any person to make any statement which he knows to be false in this application or in connection with the making of this application



DISPLAY NOTICE

APPLICATION FOR THE GRANT/RENEWAL OF A BOOKING OFFICE LICENCE

Notice is hereby given that

..... (Applicants full name & address, business or individual)
..... (Names & addresses of Directors/Partners if applicant is a Business)
..... (Name & address of Responsible Employee if applicant is a Business)

has made an application to the Moray Council for the grant/renewal of a Sexual Entertainment Venue Licence to operate at the following premises:

..... (Address of premises)

Any Objection or Representaion relating to the application should be made to the Legal and Democratic Services Manager, Moray Council, Council Office, High Street, Elgin, IV30 1BX (where a copy of the Application may be inspected) and requires to be lodged by

..... * (date)

Such a representation shall be considered to have been made within the period referred to if it is delivered by hand within that period or posted (by Registered or Recorded Delivery Post) so that in the normal course of the post it might be expected to be delivered within that period.

Where an objection or representation is made to the Council after the date referred to but before the final decision is taken on the application it is competent for the Council to entertain such an objection if it is satisfied that there is sufficient reason why it was not made within the period of time stated.

ANY OBJECTION OR REPRESENTATION IN RESPECT OF THE FOREGOING APPLICATION MUST BE MADE IN WRITING AND MUST SPECIFY THE GROUNDS OF THE OBJECTION OR THE NATURE OF THE REPRESENTATION. In addition the name and address of the person making the objection or representation must be specified and must be signed by or on behalf of the said person.

Date.....Signature of Applicant.....
or
Signature of Agent on behalf of applicant.....

*The date stated should be the 28th day after the date the application was made to the Council.

THIS DISPLAY NOTICE MUST BE DISPLAYED FOR THE WHOLE OF THE PERIOD OF 21 DAYS AT OR NEAR THE PREMISES SO THAT IT CAN BE CONVENIENTLY READ BY THE PUBLIC



CERTIFICATE OF DISPLAY

GRANT / RENEWAL OF A SEXUAL ENTERTAINMENT VENUE LICENCE

I/WE.....

.....

Applicant for a Grant/Renewal *¹ of a Sexual Entertainment Venue Licence Herby Certify that a Notice in the form prescribed by The Moray Council has been posted at or near the premises at

.....

.....

from.....(date) to(date)

Where the said Notice was removed, obscured or defaced during the above mentioned period. I/we certify that this was without any fault or intention on my/our part and I/we took reasonable steps for its protection and replacement as follows*²:-

.....

.....

.....

.....

Date

Signature

*¹ Delete as appropriate

*² Delete this paragraph if not applicable otherwise specify periods when notice removed, obscured or defaced, relevant circumstances, and steps taken for protection and replacement.



REPORT TO: LICENSING COMMITTEE 2 DECEMBER 2020

**SUBJECT: CIVIC GOVERNMENT (SCOTLAND) ACT 1982-ANNUAL
FUNCTIONS REPORT**

**BY: DEPUTE CHIEF EXECUTIVE (EDUCATION, COMMUNITIES AND
ORGANISATIONAL DEVELOPMENT)**

1. REASON FOR REPORT

- 1.1 This report is to seek approval to publish the draft functions report which incorporates a report from the Licensing Standards Officer.
- 1.2 This report is submitted to the Committee in terms of Section III (H) (1) of the Council's Scheme of Administration relating to the exercise of the function of the Council as licensing authority for The Moray Council area.

2. RECOMMENDATION

2.1 It is recommended that the Committee:-

- (i) notes the draft annual functions report at Appendix 1;**
- (ii) amend the same if the Committee considers appropriate; and**
- (iii) agree the final report.**

3. BACKGROUND

- 3.1 It is mandatory that the Licensing Board produces an annual functions report. It was therefore thought appropriate, for transparency and information, that an Annual functions report also be produced for the Licensing Committee. A draft has therefore been produced so as to include the following;

- A statement as to how the Committee has had regard to the licensing legislative requirements in exercising functions under the Act; and
- A summary of the decisions made.

- 3.1 The draft report is produced at **Appendix 1**.

- 3.2 The normal deadline for publication of the Licensing Board's report is the end of June each year and it is intended that the report to the Licensing Committee will, as far as possible, follow the same schedule.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan in relation to healthier citizens, a growing and diverse economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

(b) Policy and Legal

Policy and Legal implications have been explained above.

(c) Financial implications

None identified.

(d) Risk Implications

None identified. It is a legal requirement to publish the report. There is no stated action for failure to do so therefore any failure would be open to challenge by judicial review.

(e) Staffing Implications

Preparation of statistics involves considerable staff time and they are required annually but statistics are also useful for other purposes e.g. the annual return to the Scottish Government. No additional resources are required.

(f) Property

None.

(g) Equalities/Socio Economic Impact

In considering individual decisions the Committee should have regard to issues of equality and the subject's (licence holders) rights under the European Convention on Human Rights (and the Human Rights Act 1998). It is not considered necessary to undertake an equalities and human rights impact assessment in connection with this report.

(h) Consultations

None.

5. CONCLUSION

5.1 It is proposed that the Committee note the contents of this report and agree to publish the report.

Author of Report: Sean Hoath, Senior Solicitor
Background Papers:
Ref: SH

Moray Licensing Committee

Annual Functions Report

1 April 2019 - 31 March 2020

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About Moray

With a population of around 95,500, Moray nestles between the rugged and spectacular Highlands and the flat, fertile farmlands of the north-east and although it belongs to neither, it shares the best elements of both – from the snow-capped peaks of the Cairngorms to the unspoiled coastline of the Moray Firth.

Local industry is as diverse as the landscape in which it is located and makes a major contribution to the area's buoyant economy. Moray is the heartland of the Scotch whisky industry and is home to more than 45 distilleries whose brands are savoured in just about every corner of the world. Whatever country you're in, you'll find a bottle of Speyside Malt for sale.

In the spirit of celebration, music plays a vital role in the Moray community. There are major music festivals every year, including the traditional Speyfest and the Spirit of Speyside, the latter linked to the whisky industry. Venues for the performing arts thrive in the area, and each town sustains a lively artistic culture. Two thriving arts and performance centres exist in Findhorn alone.

Traditional industries - farming, fishing and forestry - play an important part in the area's culture whilst underpinning the economy. In addition, two internationally renowned food producers, Baxters of Speyside and Walkers of Aberlour, have put Moray firmly on the international map.

The area's biggest town and administrative capital is Elgin, which is also Moray's principal shopping centre. Many leading national retailers are represented alongside long-established local outlets. Other main towns include Forres, well known for its successes in national floral competitions; Buckie, with its fishing and commercial harbour; and Keith, built on a once-thriving textiles industry.

Introduction

Moray Licensing Committee ("the Committee") is the licensing authority for the purposes of all civic licensing excluding alcohol and gambling which is dealt with by the Moray Licensing Board.

These members form part of a Committee which are responsible for considering applications and objections in relation to regulating Civic licensing in accordance with the Civic Licensing (Scotland) Act 1982 as amended.

Under the ("the Act"), the Licensing Committee are responsible for considering applications for:-

1. Taxis
2. Second hand dealers
3. Knife dealers
4. Metal dealers
5. Boat hire licences
6. Street traders' licences

7. Market operators' licences
8. Public entertainment licences
9. Indoor sports entertainment licences
10. Late hours catering licences
11. Window cleaners' licences
12. Public processions
13. Houses in Multiple Occupation (HMOs)
14. Various animal related licences e.g pet shops, animal boarding, animal breeding etc
15. Landlord registration

In addition to the above, the licencing of Sexual Entertainment Venues is underway with Short term lets, Travelling Funfairs, Animal welfare and the regulation of fireworks on their way.

In exercising its functions under the Act, the Committee is required to have regard to consultees responses as well as neighbouring or community objections if there are any.

Annual Functions Report

From 1 April 2010 to 31 March 2020, the Committee met on an approximate eight week cycle on the following dates:

- (a) 17 April 2019
- (b) 12 June 2019
- (c) 11 September 2019
- (d) 6 November 2019
- (e) 22 January 2020
- (f) 18 March 2020

Information and assistance is always available to persons wishing to apply for a licence or respond to an application. The committee has published guidance documents and licensing staff are on hand to answer queries.

Committee meetings are as information as possible whilst maintain a fair process. The majority of applicants before the Licensing Committee are willing and able to represent themselves.

Decisions of the Committee

Each application, received by the Licensing Committee is considered on its individual merits. All licence applications that are received must be weighed-up in accordance with the Civic Government (Scotland) Act 1982 and in consultation with the consultees.

During the course of the year, the Committee also received applications for 391 licences. It should be noted that not all licences are due to be considered each year as most licences under the Civic Government (S) Act 1982 have a three year cycle. Therefore the overall number of licence is much higher than the number considered each year.

In addition the majority of licence applications are processed under delegated powers where there are no problems with the application and there are no objections or representations. In cases where an objection or representation does arise the matter is referred to the Licensing Committee. During the period in question the Committee considered and granted 5 taxi driver applications and refused 1 taxi driver application. The Committee also reviewed taxi fares and charges.

In considering the applications, the Committee considered a number of different sources of information to enable them to reach decisions. These sources include applicants themselves, council services (including planning, building standards and environmental health), reports from Community Councils, Local Residents, the Local Licensing Forum, the Licensing Standards Officer, Police Scotland and the NHS.

Tourism and Industry continue to play an important role in parts of Moray. Moray Council has set out a number of community planning priorities including healthier citizens, a growing and diverse economy and safer communities. Licensing plays an important role in all of these and decisions of the Licensing Committee also have regard to these community planning priorities.

Sexual Entertainment Venues

A Resolution in terms of Section 45B of the Civic Government (Scotland) Act 1982, was passed by the Moray Council as Licensing Authority on 6 November 2019, whereby as from 6 November 2019 all places and activities of Sexual Entertainment in Moray shall require to be licensed in accordance with the provisions of the 1982 Act, shall be regulated by those provisions including Schedule 2 of the Civic Government (Scotland) Act 1982 which shall apply as modified for the purposes of Section 45B and a Sexual Entertainment Licence shall be required. The draft Policy Statement has to have been consulted upon, redrafted to include any pertinent comments, and submitted for approval by the Licensing Committee so that the Policy could be put in place by 6 November 2020. However due to the Coronavirus pandemic this has been delayed.

Licensing Standards

There are two full time Licensing Standards Officers (LSOs). One LSO is responsible for all aspects relating to civic and taxi licensing, while the second LSO is responsible for liquor licensing, gambling and adult entertainment. The LSOs will offer guidance and advice to licence holders and communities to supervise the compliance of the requirements of the Act by the licence holders. The LSOs will act as an intermediary between licence holders and the general public helping to avoid and resolve any disputes or agreements. LSOs also attend meetings with the trade and the public which allows them to build a rapport with the local trade and members of the public as a consistent point of contact. This will ensure that there is a cohesive working partnership between all persons interested in the operation of the Act.

Licensing Standards Officer Report

The Civic Licensing Standards Officer is responsible for numerous licence types. The aim of the role is to provide guidance and information to interested parties; ensure compliance by licence holders; and provide a mediation service for the purpose of avoiding or resolving disputes

Below is a brief list of some of the activities carried out by the Civic LSO between April 2019 and March 2020

- Supported creation of a new taxi operator in Keith (ex - employee of Davidsons Taxi)
- Supported Davidsons Taxis in remaining open through the death of operator John Davidson
- Worked with Trading Standards team to licence 6 unlicensed Second hand dealers
- Worked with Forres Live to develop a new Music Event in Forres
- Worked with Elgin Highland Games organisers to restart the Event within licensing parameters
- Worked with C&R taxis to transfer the business to new owner
- Working to bring all Public Charitable Collections accounts up to date to deter fraudulent collection activity
- Worked with Street Traders after complaints and reports, to ensure compliance with licence conditions around litter and distances from schools and traders, mediated between traders over location disputes
- Worked in partnership with Environmental Health with Late Hours Catering establishments after complaints and reports of anti-social, noise and litter issues
- Investigated and licensed unlicensed window cleaners advertising on Facebook
- Investigated and stopped unlicensed taxi operating through Facebook
- Worked with Partners on ensuring public safety for the proposed AUOB march in Elgin which was scheduled for July 4th 2020
- Worked with partners and applicant to licence the new Forres Live concert event in Grant Park Forres
- Issued information and gathered views amongst licence holders on equality issues e.g HIV Equality in Skin Piercing / Access to taxis for Deaf and Blind
- Supported Village and Community Halls in obtaining relevant licences after they took on leases of the facilities in preparation for Community Asset Transfers
- Worked with Market Operators to ensure they had the correct licence types in place for Highland Games, Plainstones Markets and other anticipated Farmers Markets
- Worked with Police Scotland in partnership to alert Taxi drivers and operators to the following issues -
 - Taxi Journeys to A Banks and Financial Institutions to avoid scams on elderly
 - Vehicle Idling - Police Scotland Message
 - A request to all taxi drivers who may have witnessed a incident in the Moray area while on shift Worked with Moray Council Transport Team

to distribute online questionnaire to seek Taxi Operators views on Electric Vehicles.

- The tail end of this Financial Year also included the start of Covid restrictions where the LSO worked with all civic licence holders to ensure they were aware of how any restrictions would impact on them and keep them informed of changes in council processes during the initial lockdown period.

List of Application Numbers 2019-2020

Appendix 1

Civic Government Licences	
Licences in Force on 31 March 2020	391
HMO Licence	16
Animal Boarding	32
Cinema	2
Dog Breeding	4
Dangerous wild animals	1
Late hours catering	9
Metal Licence Dealer	1
Market Operator Full	4
Public Charitable Collections	27
Pet Shops	4
Private Hire Driver	4
Private Hire Operator	13
Riding Establishments	2
Second Hand Dealers	30
Skin Piercing and tattooing	18
Street Trader	22
Taxi Driver	105
Taxi Operator	53
Venison Dealer	2
Window Cleaners	15
Public Entertainment	32

