

ORKNEY ISLANDS COUNCIL
CIVIC GOVERNMENT (SCOTLAND) ACT 1982
SEX SHOP LICENSING
NOTES FOR GUIDANCE

The following notes are a brief outline of the requirements for Sex Shop Licences under the above Act. They should be treated as **guidelines only and not an authoritative statement of law**. They do not purport to be more than a guide to the main provisions of the Act in order that would be applicants may consider if they need to apply for a Licence. Applicants are recommended to study the relevant provisions of the Act and obtain any further advice from their Solicitor.

1 INTRODUCTION

In accordance with the Civic Government (Scotland) Act 1982 (“the 1982 Act”) and following a Resolution by Orkney Islands Council (“the Council”) as licensing authority, a licence is required from the Council to use any premises, vehicle, vessel or stall as a sex shop.

2 DEFINITIONS

“**Sex shop**” means any premises, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles. R18 rated video recordings can only be sold at licensed sex shops.

“**Sex articles**” means anything intended for use in connection with, or for the purpose of stimulating or encouraging:

- (a) sexual activity;
- (b) acts of force or restraint which are associated with sexual activity;
- (c) any reading/visual or audio material which is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
- (d) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

The definition does not include any articles which are manufactured for use primarily for the purposes of birth control of which primarily relate to birth control.

3 ELIGIBILITY TO APPLY FOR A LICENCE

Anyone can apply for a sex shop licence. However, by statute the Council is not allowed to grant a licence to a person:

- (a) under the age of 18;
- (b) who is for the time being disqualified due to revocation of a sex shop licence by the Council or by order of a court;
- (c) other than a natural person if any director of it or partner in it or any other person responsible for its management is disqualified;
- (d) who has been convicted of certain criminal offence offences detailed in paragraphs 19 to 21 of Schedule 2 to the 1982 Act;
- (e) who is not resident in a member state of the European Union or was not so resident throughout the period of 6 months immediately preceding the date when the application was made;
- (f) a body corporate which is not incorporated in a member state of the European Union;
- (g) who has, within the period of 12 months immediately preceding the date when the application was made, been refused by the same licensing authority the grant or renewal of a sex shop licence 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) 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 Council the grant or renewal of such a licence, unless the refusal has been reversed on appeal.

4 CONDITIONS

The Council may attach reasonable conditions to the licence as it sees fit, with each application being dealt with on its own merits. The licence holder will be required to comply with the standard conditions which will form part of the licence when granted. These will usually accompany this document, but can be obtained from the Head of Legal Services, as undernoted, or from www.orkney.gov.uk.

5 DURATION OF LICENCE

A sex shop licence shall remain in force, unless previously suspended or revoked, for a period of one year from the date from when it comes into force or such shorter period as the Council may determine. The licence is not transferrable.

6 LICENCE TO BE RETAINED

The licence must not be altered, erased or defaced in any way, must be kept clean and legible and must not be lent to or used by any other person. Should the licence be lost or become defaced or illegible the licence holder shall obtain a replacement from the Council on payment of the appropriate fee. The licence holder shall produce his/her licence within five days of being requested to do so by a Police Officer or an authorised Officer of the Council or the Fire Authority.

7 RETURN OF LICENCE

A sex shop operator shall deliver his/her licence to the licensing authority within 7 days of:-

- (a) ceasing to act or trade as a sex shop;
- (b) receiving notice of the coming into effect of a decision of the licensing authority to revoke or vary the terms of the licence or the decision of a Court to revoke it.

8 NOTIFICATION OF MATERIAL CHANGE OF CIRCUMSTANCES

The licence holder shall notify the Council as soon as is reasonably practicable of any convictions or other material change in circumstances affecting him/her or the premises to which the licence relates, including any particulars referred to in the application for grant or latest application for renewal of the licence e.g. change of his/her details and/or address. If in any doubt, notify the Council of any changes.

9 NOTIFICATION OF MATERIAL ALTERATIONS

The licence holder shall not make or permit to be made any material change to the premises without the prior written consent of the Council unless in accordance with a requirement imposed by or in pursuance of any enactment other than Part 3 or Schedule 2 of the 1982 Act. If in doubt as to whether consent is required, contact the Council.

10 APPLICATION FORM AND FEES

Application forms are available online at www.orkney.gov.uk or from –

Head of Legal Services, Council Offices, School Place, Kirkwall, KW15 1NY;
Email: licensing@orkney.gov.uk;
Telephone 01856 873535, extensions 2229 or 2232.

Applications must be lodged with the Head of Legal Services, Corporate Services, Orkney Islands Council at the address above no later than 6 weeks before the first day of the commencement of the activity.

Application forms must be completed legibly in block capital letters in black ink or typed. All questions must be answered.

Completed application forms must be returned to the address above along with –

- the appropriate fee – refer to current fees on our website; and
- a plan, no larger than A3, showing all fixtures and fittings in the premises. Plans are not required for renewals of existing licences unless alterations are proposed.

You should take care in completing the application form to list, subject to the terms of the Rehabilitation of Offenders Act 1974, all convictions against you. If you are in doubt as to whether or not to list a conviction you should seek independent advice on this matter.

Incomplete applications shall be returned to the applicant.

Applicants **MUST** give notice of the application as follows –

- (i) a notice shall in all cases be given by publishing an advertisement in a newspaper specified by the Council, being a newspaper circulating in their area; the applicant shall supply a copy of that advertisement to the Council;
- (ii) the above publication shall be not later than 7 days after the date of the application;
- (iii) where the application is in respect of premises, a site notice must also be displayed for a continuous period of 21 days on or near the premises in a place where the notice can conveniently be read by the public;
- (iv) every notice which relates to premises shall identify the premises and be in such form as the licensing authority may prescribe;
- (v) every notice which relates to a vehicle, vessel or stall shall further specify where it is to be used as a sex shop;

- (vi) an applicant for a licence which is to relate to premises shall, as soon as possible after the expiry of the period of 21 days referred to in (iii) above submit to the Council a certificate stating that he/she has complied with (iii) and (iv) above;
- (vii) an applicant shall not be treated as having failed to comply with the above if the notice was, without any fault or intention of his/hers, removed, obscured or defaced before the 21 days referred to have elapsed, so long as he/she has taken reasonable steps for its protection and if need be, replacement. The required certificate in (vi) above shall state the relevant circumstances.

Assistance with preparation of a newspaper advertisement can be obtained by contacting the Council as above.

A Site Notice and a Compliance Notice may be obtained online at www.orkney.gov.uk or from the address below and must be returned to that address after 21 days to certify that the display requirement has been complied with. If the Site Notice is not displayed or the Compliance Notice is not returned, the Council may require that a Site Notice be re-displayed to allow representations and objections to be made. Obviously, if this is required, any decision on the application shall be delayed.

The Compliance Notice should be returned to the Head of Legal Services, Council Offices, School Place, Kirkwall, KW15 1NY at least 21 days after submission of the application, but no later than 25 days from that date.

Processing the Application

Your application will be referred to Police Scotland, the Scottish Fire & Rescue Service and any relevant department of the Council for comment.

Your application must be considered within 3 months of its being lodged and the Council must reach a decision on it within 6 months.

If your application is granted, you will be notified accordingly and issued with your licence. The licence should be displayed at all times. You should also show this licence to a police officer, an officer from the Council or to any member of the public on demand.

If your application is refused, or granted conditionally, you are entitled to ask the Council within 21 days to give reasons for such refusal, or the imposition of such conditions, and thereafter you are entitled to appeal to the Sheriff against the decision on various grounds. You should seek the advice of a solicitor if matters should get to that stage.

11 PRIOR REFUSAL

Please note that if you have applied for and been refused an application for a sex shop licence, unless your circumstances have altered, you will be unlikely to be granted a licence.

If refused, you cannot apply for the same kind of licence in respect of the same activity or for the same premises, vehicle, vessel or stall within one year of that refusal unless there has been a material change in circumstances.

12 OBJECTIONS

If, during the processing of your application, the Licensing Authority receives any objections to your application, you will be sent a copy of the letter(s) of objection(s). Your application, the letter(s) of objection(s) and your response will then be referred to a meeting of the Licensing Sub-committee. You will be invited to attend the meeting and given the opportunity to address the Sub-committee.

A further appeal lies to the Sheriff Court.

13 OFFENCES

The following are criminal offences liable, on conviction, to a fine:-

- (a) use of any premises, vehicle, vessel or stall as a sex shop without the appropriate licence or waiver under the 1982 Act, including knowingly permitting such use;
- (b) employment by a licence holder of a person known to him/her to be a person to whom a licence could not be granted;
- (c) contravention of, or permitting the contravention of, a term or condition of licence;
- (d) permitting any person under the age of 18 to enter the sex shop;
- (e) making a false statement when filling in the Application Form;
- (f) failing to display the licence
- (g) failing to surrender the licence within 7 days of (1) ceasing to act or trade as a sex shop or (2) receiving notice of the coming into effect of a decision of the licensing authority to suspend or vary the terms of the licence, or the decision of a Court to revoke it;
- (h) failing to notify the licensing authority of any material change of circumstances.

The above list is not exhaustive and reference should be made to the Civic Government (Scotland) Act 1982 for all offences under the Act.