



**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
(as amended by the POLICING and CRIME ACT 2009)**

**SEX ESTABLISHMENTS LICENSING POLICY
DRAFT LICENSING POLICY FOR CONSULTATION**

VERSION HISTORY		
Version No	Effective from	Review Date
1	December 2011	November 2017
2	TBC 2018	2022

1 INTRODUCTION

- 1.1 In October 1982, the Council (in its role as the Licensing Authority) resolved to adopt the new powers which had been made available by the Local Government (Miscellaneous Provisions) Act 1982 to control sex establishments, which were defined as sex shops and sex cinemas.
- 1.2 Premises which operated as lap-dancing clubs and similar did not come within the definition of sex establishments and therefore any necessary controls could only be put in place by reference to existing legislation namely the Licensing Act 2003.
- 1.3 The Government deemed the controls insufficient and introduced legislation which has amended the Local Government (Miscellaneous Provisions) Act 1982 to extend the definition of sex establishments to include sexual entertainment venues. In general terms these included premises which have lap dancing, pole dancing, table dancing, strip shows and live sex shows.
- 1.4 On 15th December 2011 the Council resolved to adopt the new powers under schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) ('the Act') to control sex establishments, namely sex shops, sex cinemas and sexual entertainment venues. The resolution came into force on 1st April 2012.

2 STATEMENT OF LICENSING POLICY

- 2.1 The Licensing Authority is not legally required to publish a Statement of Licensing Policy but is doing so as a matter of good practice. This policy contains the principles it will apply when exercising its functions under the Act.
- 2.2 The Licensing Authority does not take a moral stand in adopting this policy, or in relation to the principals set out in it. It recognises that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industry. The Council will, as a licensing authority, administer the licensing regime in accordance with the law.
- 2.3 This Policy Statement comes into force on *[date tbc 2018]*. It will be subject to regular review involving further consultation as required.

3 CONSULTATION

- 3.1 There are a number of groups who have a stake in the leisure industry, including providers, customers, residents and enforcers, all of whom have views and concerns which require consideration as part of the licensing function.
- 3.2 In developing this Policy Statement, the Licensing Authority consulted widely. Along with the Police and other authorities, the views of representatives of existing licence holders, businesses, voluntary and support groups and residents were also taken into account. Due consideration was given to the views of all those who responded to that consultation process.

4 APPROVAL OF POLICY

- 4.1 This policy was approved at a meeting of the full Council on *[date]* and was published via its website on *[date]*. Copies are available on request.

5 EXCHANGE OF INFORMATION

- 5.1 The Licensing Authority is under a duty to protect the public funds it administers and to this end may use the information provided by applicants for the prevention and detection of fraud. It may also share this information for these purposes with other bodies responsible for auditing or administering public funds for the same purposes.

6 PUBLIC REGISTER

- 6.1 The Licensing Authority keeps a public register which may be inspected at the offices of the Licensing Authority on Mondays to Fridays (except bank and public holidays) between 10.00 and 16.00.

7 OTHER RELEVANT LEGISLATION

- 7.1 Apart from the legal requirements of the Act, the Council will take into account its duties under other legislation.
- 7.2 In accordance with section 17 of the Crime and Disorder Act 1998, the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in the Borough.
- 7.3 The Regulators' Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) requires the Council not to impede economic progress by its regulations, and, particularly to consider their impact on small businesses.
- 7.4 The Provision of Services Regulations 2009 requires the Council to ensure that its exercising of powers are –
- non-discriminatory;
 - justified by an overriding reason relating to the public interest;
 - proportionate to the public interest objective;
 - clear and unambiguous;
 - objective;
 - made public in advance;
 - transparent and accessible.
- 7.5 The Human Rights Act 1998 - The European Convention on Human Rights makes it unlawful for a public authority to act in a way that is incompatible with a convention right. The Council will take particular notice of the following relevant provisions of the European Convention on Human Rights; –
- Article 6 – that in determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;
 - Article 8 – that everyone has the right to respect for his home and private life;
 - Article 1 of the First Protocol – that every person is entitled to the peaceful enjoyment of his or her possessions, including, for example, a licence under this Act.
- 7.6 The Equality Act 2010 brought together over 116 separate pieces of legislation into one single Act. Combined, they make up an act that provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. In particular, the Council is mindful of its obligations under section 149, the public sector equality duty, which requires that public bodies have to consider all individuals when carrying out their day-to-day work in shaping policy, and in relation to their decisions on applications under this licensing regime.

The duty also requires that public bodies have due regard to the need to:

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations between different people when carrying out their activities.

8 DEFINITIONS UNDER THE ACT

8.1 Sex establishment premises fall into one of three categories:

- sexual entertainment venues;
- sex shops; or
- sex cinemas.

8.2 A sexual entertainment venue is defined in Paragraph 2A of Schedule 3 as *'any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer'*. *'Relevant entertainment'* is defined as *'any live performance or 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 an audience (whether by verbal or other means)'*.

8.3 The category 'sexual entertainment venues' includes the following forms of entertainment as they are commonly understood:

- lap dancing;
- pole dancing;
- table dancing;
- strip shows;
- peep shows; and
- live sex shows;

This entertainment is defined as 'relevant entertainment'. This list is not exhaustive, and the Licensing Authority will consider the content of the entertainment to be provided at any premises when deciding whether a licence is required.

8.4 Premises which provide relevant entertainment on an infrequent basis are not required to be licensed as a sexual entertainment venue by the Licensing Authority. These exempted premises are defined as premises where –

- no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
- no such occasion has begun within a period of one month beginning with the end of the previous occasion; and
- no such occasion has lasted longer than 24 hours;

Such premises will continue to be regulated under the Licensing Act 2003, in so far as they are providing regulated entertainment under that

Act. The Licensing Authority will carefully monitor the use of the exemptions.

- 8.5 Licences for sex shops are required where the business consists to a significant degree of selling, displaying etc sex articles. 'Sex articles' are defined in the 1982 Act and include the sale of BBFC classified R18 films. The phrase 'a significant degree' is not defined, but in determining whether a business needs a licence, the Licensing Authority will consider the ratio of sex articles to other aspects of the business, the absolute quantity of sales, the character of the remainder of the business, the nature of the displays, turnover, and any other factors it considers material.
- 8.6 Licences for sex cinemas are required where the business consists to a significant degree for the exhibition of moving pictures, which are concerned primarily with the portrayal of or intended to stimulate or encourage sexual activity or acts of force or restraint which are associated with sexual activity or are concerned primarily with the portrayal of or relate to, genital organs or urinary or excretory functions.

9 GENERAL PRINCIPLES

- 9.1 This policy does not undermine the rights of any person to apply under the Act and to have their application considered on its individual merits, nor does it override the right of any person to object to any application.
- 9.2 The Licensing Authority has certain expectations in respect of applicants and the information they produce about the operation of the premises. It is for applicants to decide on the extent of the measures they believe to be appropriate but when assessing the application the Licensing Authority may add additional conditions as set out in this section.
- 9.3 Applicants are advised to consider providing evidence that suitable and sufficient control measures will be implemented and maintained relevant to the nature and mode of operation of their premises.
- 9.4 Duplication with other regulatory regimes should be avoided. In particular, applicants should have regard to the fact that the Council's licensing function will be discharged separately from its other functions such as any planning requirements. Normally, applications should be from businesses with appropriate planning consent for the property concerned.
- 9.5 Where valid objections are made the licensing committee will make objective judgments as to whether conditions need to be attached to a licence. Any such conditions will primarily focus on the direct impact of the activities taking place at the premises and members of the public living, working or otherwise engaged in normal activity in the area

concerned and will cover matters which are within the control of individual licensees.

- 9.6 Conditions which seek to control the range or nature of activities within the premises may be necessary. Such conditions may also seek to directly impact upon the behaviour of customers on, or within the immediate vicinity of, the premises.
- 9.7 When considering applications the Licensing Authority will have regard to the Act, this policy, statutory guidance, all supporting regulations and relevant legislation.
- 9.8 The Council has standard conditions for sex shops and sexual entertainment venues, and these are set out in **Appendix 1**.

10 POLICY GUIDELINES

10.1 LIMITING THE NUMBER OF SEX ESTABLISHMENTS IN PRE-DEFINED LOCALITIES

10.1.1 The Council has decided to use its powers under Paragraph 12(3)(c) of Schedule 3 to define 'relevant localities', and to establish how many sex establishments, or sex establishments of a particular kind, it considers appropriate in each such relevant locality. The Licensing Authority will determine each application in the context of the limit that it has set.

10.1.2 The Council has determined that the whole borough is considered as the relevant locality for the purposes of this section. However in the event that an applicant successfully evidences to the licensing committee that their application should not be subject to the limitations outlined below, then the Licensing Authority will apply the parameters set out in section 10.2 when considering the character of the locality.

10.1.3 There are currently 2 licensed sex shops in the relevant locality.

10.1.4 There are currently 4 licensed sex entertainment venues in the relevant locality.

10.1.5 There are currently no licensed sex cinemas in the relevant locality.

10.1.6 Without prejudice to section 10.3.1 of this policy, The Council does not consider any area within the Borough to be an appropriate location for any sex shops, sex entertainment venues, or sex cinemas and sets the following limits which will automatically drop downwards to zero in the event that a licence is surrendered, revoked or not renewed:

- 2 licensed sex shops
- 4 licensed sex entertainment venues
- 0 licensed sex cinemas

10.2 THE CHARACTER OF THE LOCALITY OF THE APPLICANT SITE

10.2.1 The Licensing Authority acknowledges that the character of a locality is not something that remains static, but which can alter at any time or over a period of time. Its decision on an application will be based on its assessment of the character of a locality at the time an application is determined. The Licensing Authority's general view when determining an individual application, is that 'locality' is where the premises that is the subject of the application is situated, including, but not necessarily exclusively, its immediate vicinity.

10.2.2 As a general rule, a locality whose character falls predominantly into one or more of the following categories will generally be considered inappropriate for the grant or renewal of a sex establishment licence:

- family and child oriented leisure or shopping areas; and
- predominantly family residential areas, with or without retail, fast food etc outlets serving the local population.

10.2.3 In considering applications for the grant of a new licence, the Licensing Authority will also take account of the potential impact of the licensed activity on crime and disorder, and where there is already one or more sex establishment premises in the locality, the cumulative impact of an additional licensed sex establishment premises.

10.2.4 It is expected that an applicant should demonstrate within their application that the operation will not have an adverse effect on the locale. The Licensing Authority recommend the applicant carries out a local area risk assessment to achieve this and the authority has produced a local area profile to assist in that regard. (available on www.southend.gov.uk).

10.3 THE USE OF PREMISES IN THE VICINITY

10.3.1 The Licensing Authority will generally consider it inappropriate to renew a sex establishment licence if there has been a material change in the area since the grant of the licence where the proposed sex establishment is near to –

- community facilities or public buildings, including but not limited to, leisure centres, public parks and play areas, youth centres, children's centres, sheltered housing;
- schools, nurseries and similar premises; and access routes to and from the same;
- family shopping areas;
- places of worship;
- family residential areas;

As may be relevant in any particular application, the Licensing Authority will have regard to the licensee's or proposed licensee's operating hours or other operational requirements.

10.4 LAYOUT, CHARACTER AND CONDITION

- 10.4.1 With regard to an application for the grant or renewal of a licence, the Licensing Authority will also take into account the layout, character or condition of the premises, vehicle, vessel or store in respect of which the application is made.
- 10.4.2 The Licensing Authority will, in considering applications for renewal, take into account past demonstrable adverse impact from the activity and whether appropriate measures which have been agreed are properly implemented by the applicant to mitigate any adverse impacts. Such consideration may include any enforcement action taken by the Licensing Authority.

11 ADVICE AND GUIDANCE

- 11.1 Pre-application discussions are encouraged to assist applicants to develop their proposals. Officers of the Licensing Authority, together with those of other relevant authorities, will endeavour to provide guidance at that stage, as resources permit.
- 11.2 Where appropriate to do so, officers of the Licensing Authority will assist applicants to work with others who may make representations with a view to resolve areas of concern.
- 11.3 Once an application has been lodged there are statutory timescales imposed on the application and determination process which restrict the opportunity for such discussions, liaison and mediation.

12. APPLICATION

- 12.1 The forms which the applicant must use for the application and public notice are obtainable from the Council's website. If other forms are submitted they will be rejected.
- 12.2 The Licensing Authority aims to determine your application within 28 days of the end of consultation period. If it fails to do it will inform the parties accordingly.
- 12.3 Tacit authorisation (as set out in the Provision of Services Regulations 2009) does not apply because different arrangements are in place.

13 OBJECTIONS

- 13.1 Any person can object to an application but the objection must be relevant to the grounds for refusing an application set out in paragraph 12 of Schedule 3 of the Act and repeated within this policy.
- 13.2 Objections shall not be based on moral grounds or values.

- 13.3 Objectors must give notice of their objection in writing within the specified period. They should give as full an explanation as possible of their reasons for making an objection.
- 13.4 The Licensing Authority shall not reveal an objector's name or address to the applicant without the consent of the person making the objection.
- 13.5 If there are no objections the application will be dealt with by the Licensing Authority's licensing officers under the scheme of delegation. All relevant standard conditions outlined in the appendices to this policy will be attached to licences issued. If there are objections, the application will be considered by the licensing sub-committee at a public hearing.
- 13.6 Mandatory Conditions are imposed by the Act whether or not the application is opposed.

14 LICENSING COMMITTEE

- 14.1 The full Licensing Committee is composed of 15 Councillors. A contested application will be heard by sub-committee 'C'.
- 14.2 When considering applications the sub-committee will have regard to this policy, statutory guidance, the Act together with The Human Rights Act 1998 and other legislation as appropriate.
- 14.3 Each application is considered on its individual merits.
- 14.4 Should the sub-committee decide to approve the application, the Mandatory Conditions must be applied. In addition, the sub-committee will determine whether other conditions need to be attached to the licence.

15 CONDITIONS/CONTROL MEASURES

- 15.1 The Licensing Authority expects that unless there is a specific reason not to do so the licence conditions which are currently in force for sex establishments will be included in any conditions to be imposed on a licence. These are attached at **Appendix 1**.
- 15.2 In addition, the Licensing Committee may wish to include other control measures. This may include but shall not be limited to:-
- Consideration as to if the location of the premises is appropriate or inappropriate; and
 - Consideration as to if the premises are appropriate for a particular locality

16 GROUNDS OF REFUSAL

16.1 Mandatory Grounds of Refusal

- (1) The applicant is under 18 years of age;
- (2) The applicant has been disqualified for a period of 12 months following the revocation of a licence for a sex establishment in the same area;
- (3) The applicant (other than a body corporate) is not resident in the United Kingdom or a European Economic Area State or was not so resident throughout the period of 6 months immediately preceding the date when the application was made;
- (4) The applicant company is not incorporated in United Kingdom or a European Economic Area State; or
- (5) There has been a refusal within the previous 12 months of the grant or renewal of a sex establishment licence to the applicant in respect of the premises for which the application is made.

16.2 Discretionary Grounds of Refusal

- (1) Unsuitability of the applicant;
- (2) The business would be managed by or carried on for the benefit of a 3rd party who would themselves be refused a licence;
- (3) The number of sex establishments in a specific locality (or of sex establishments of a particular kind) in a specific locality equals or exceeds the number considered appropriate for that locality; or
- (4) That the grant or renewal of the licence would be inappropriate having regard to-
 - the character of the locality;
 - the use to which other premises in the vicinity are put; or
 - the lay-out, character, or condition the premises in respect of which the application is made.

17 FEES

- 17.1 Fees are regularly reviewed and are advertised on the Council's website

18 APPEALS

- 18.1 If an application for the grant, renewal or transfer of a sex establishment licence is refused the applicant may have the right of appeal to the Magistrates' Court but there are a number of exceptions to this. In certain circumstances the applicant can only challenge the refusal by way of judicial review.

19 RENEWAL

- 19.1 Licences expire annually and must be renewed every year. Renewal is not an automatic grant. **Applications for renewal which are not received at least 28 days prior to the expiry of the existing licence may be treated as applications for a new licence. As such they will be subject to the appropriate fee structure and to the appropriate sections of this policy in regard to new applications, including section 10.1.5 (limiting the number of sex establishments in pre-defined localities).**

20 COMPLIANCE and ENFORCEMENT

- 20.1 In exercising its functions with regard to the inspection of premises and to the institution of criminal proceedings for offences committed under the Act, the Licensing Authority will follow best practice which requires that actions should be-

- Proportionate - intervention will only take place when necessary. Remedies should be appropriate to the risk posed and costs identified and minimised.
- Accountable - the Licensing Authority must be able to justify its decisions and be subject to public scrutiny
- Consistent - rules and standards must be joined up and implemented fairly.
- Transparent - enforcement should be open and regulations kept simple and user friendly.
- Targeted - enforcement should be focused on the problems and minimise side effects.

- 20.2 The Licensing Authority will endeavour to avoid duplication with other regulatory regimes, so far as is possible, and will adopt a risk based inspection programme.

- 20.3 The Licensing Authority will keep itself informed of developments as regards the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities.

- 20.4 The Licensing Authority's enforcement/compliance protocols are available on request.