



Sex Establishment Licensing Policy

1. Introduction

- 1.1. Southampton City Council as Licensing Authority has a statutory duty to administer the licensing regime in accordance with the law, not in accordance with any moral standpoint and therefore will not take into account any unrelated considerations that would call into question the validity or vires of any subsequent decision(s) made. All decisions will be based on the facts of an individual case and having regard to any policy in force. Southampton City Council recognises that Parliament has made it a lawful activity to operate a licensed sex establishment and such businesses are a legitimate part of the retail and leisure industries.
- 1.2. This policy document relates to the administration of applications for licences for sex establishments. Sex establishments will fall into one of the following categories:
 - Sex shops
 - Sex cinemas
 - Sexual entertainment venues

2. Background Information

- 2.1. The licensing authority recognises that the entertainment industry in Southampton is a major contributor to the local economy. It attracts tourists and visitors, makes for vibrant communities and is a major employer. Commercial occupiers of premises have legitimate expectations for an environment that is attractive and sustainable for their businesses.
- 2.2. The city also has a substantial residential population, whose amenity the licensing authority has a duty to protect. In some areas local residents are affected by an increase in the concentration of entertainment uses and longer hours of operation.
- 2.3. Southampton is the south coast's regional capital with a population of over 236,600 in an area of 50 square km. The dynamic and vibrant city is forward-looking, balancing steady growth as a prosperous commercial centre with a high quality of life for its citizens. Southampton has been voted one of the most pleasant places to work in the UK, and is the gateway to a wide range of world-class features from the Solent with its maritime opportunities to the new national park in the New Forest.
- 2.4. Southampton boasts the south's largest concentration of major companies and is home to some of the UK's biggest brands, from Ordnance Survey, Carnival, Skandia Life to HSBC. Commercially, Southampton's success is also notable. The West Quay shopping centre opened in 2000 and in the years since, Southampton is 15th nationally in the table of shopping destinations. IKEA opened its first UK city centre store in 2009. Additionally, it is home to two universities, the University of Southampton and Southampton Solent University and has a student population exceeding 35,000.
- 2.5. Southampton is the largest city in southeast England outside London, and is seeing expansion in important emerging sectors, including media and creative industries, business and financial services, marine engineering, tourism and defence applications. Southampton has a rich heritage, with a famous seafaring history as an important Roman

and then Saxon port. The Old Town is surrounded by some of the best-preserved medieval walls in the country. Monuments commemorating links with Henry V, the Pilgrim Fathers and RMS Titanic can be found around the city.

- 2.6. 2.4 million people live within an hour's drive, with over half a million within the "travel-to-work" area. Southampton's position in the centre of the south coast offers a wealth of advantages. Southampton is the region's cultural heart with a nationally renowned art gallery and first class venues for opera, theatre, music and cinema. Southampton is the south's principal media centre: the BBC and radio and regional newspapers are all based in the city region. There are plans for significant new performance, exhibition and studio space in the city's "Cultural Quarter" which has been awarded an Arts Council grant of £7.5 million. The Council is also moving forward with long-standing plans for a multi-use entertainment, conference and leisure venue in the city and significant improvements to the waterfront adjacent to Royal Pier and Mayflower Park.
- 2.7. The city and Port of Southampton is at the heart of the country's international cruise industry and enjoys a growing market with over 1.5 million cruise ship passengers passing through the port annually.
- 2.8. Southampton lies at the very centre of the south coast's communications network, providing excellent links to national and international destinations through Southampton International Airport and the Port of Southampton. The city maintains a strong international profile and has forged close commercial and cultural ties with European and Far Eastern centres.
- 2.9. At the time of drafting this policy, four licensed sex shops are operating in the city.

3. Definitions

- 3.1. For the purposes of this policy, the following definitions will apply:
- 3.2. **Sex Shop** (*paragraphs 4(1) &(2), Schedule 3 of the 1982 Act*)
 - 3.2.1. Any premises, vessel, vehicle or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:
 - Sex articles; or
 - Other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.
- 3.3. No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.
- 3.4. **Sex Article** (*paragraphs 4(3) & (4), Schedule 3 of the 1982 Act*)
 - 3.4.1. Anything made for use in connection with, or for the purpose of stimulating or encouraging:
 - Sexual activity; or
 - Acts of force or restraint which are associated with sexual activity; and anything to which the sub-paragraph below applies.
 - This sub-paragraph applies:
 - To any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
 - To any recording of vision or sound, 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 is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

3.5. **Sex Cinema** (*paragraphs 3(1) & (2), Schedule 3 of the 1982*)

3.5.1. Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which:

- Are concerned primarily with the portrayal of, or primarily deal with or relate to, or are 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 primarily deal with or relate to, genital organs or urinary or excretory functions,
- But does not include a dwelling-house to which the public is not admitted.

3.5.2. No premises shall be treated as a sex cinema by reason only –

- If they may be used for an exhibition of film (within the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (within the meaning of section 136 of that Act), of their use in accordance with that authorisation.
- By their use for an exhibition to which section 6 of the Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of the former Cinemas Act 1985.

3.6. **Sexual Entertainment Venue** (*paragraphs 2A(1) &(2), Schedule 3 of the 1982 Act as amended by section 27 of the 2009 Act*)

3.6.1. Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer.

3.6.2. 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).

3.6.3. In terms of considering what constitutes “relevant entertainment” each case shall be judged on its merits but guidance produced by the Home Office suggests that the definition of relevant entertainment would apply to the following forms of entertainment as they are most commonly understood:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows.

3.6.4. However, the above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should merely be used as an indicator for certain types of entertainment as ultimately decisions to licence premises as sexual entertainment

venues shall depend on the content of the entertainment provided and not the name it is given.

3.6.5. The following are not sexual entertainment venues for the purposes of this policy:

- Sex cinemas and sex shops;
- Premises which provide entertainment on an infrequent basis. These 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 occasions; and
 - No such occasion has lasted longer than 24 hours.
- Other premises or types of performances or displays exempted by an order of the Secretary of State;
- Private dwellings with no public admittance.

4. Mandatory Grounds for Refusal of an Application *(paragraph 12(1), Schedule 3 of the 1982 Act)*

4.1. The 1982 Act sets out 5 mandatory grounds for refusing a sex establishment licence which are set out below:

4.1.1. That the applicant:

- Is under the age of 18;
- Is for the time being disqualified from holding a sex establishment licence;
- Is not a body corporate, and is not resident or has not been resident in an EEA state for six months preceding the date of the application;
- Is a body corporate which is not incorporated in an EEA state;
- Has, in the period of 12 months preceding the date of the application, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

5. Discretionary Grounds for Refusal of an Application *(paragraph 12(3), Schedule 3 of the 1982 Act)*

5.1. The 1982 Act also sets out four discretionary grounds for refusing a sex establishment licence. An application for transfer of a licence may be refused on either or both grounds i. and ii. set out below.

- i. The applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- ii. If the licence were to be granted, 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 of such a licence if he made the application himself;
- iii. The number of sex establishments, or sex establishments 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;
- iv. The grant or renewal would be inappropriate, having regard –
 - To the character of the relevant locality;

- To the use to which any premises in the vicinity are put;
- To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

5.2. Suitability of applicant

5.2.1. When considering the suitability or otherwise of an applicant, the Licensing Authority will have due regard not only to whether or not an applicant has been convicted of an offence but any other grounds which would call into question his/her suitability.

5.2.2. The Licensing Authority will wish to be satisfied that:

- The applicant is sufficiently trustworthy to operate the sex establishment in accordance with the terms and conditions imposed on any licence granted, as well as the law;
- The welfare of the performers at the licensed premises will be protected;
- That the safety of the public attending the premises will be provided for; and
- The needs and rights of persons/businesses living or working in the area, and indeed the area itself, are recognised and respected.

5.2.3. In those cases where an applicant has been convicted of an offence, the Licensing Authority will consider, on individual merit, the nature and seriousness of the offence and the time which has elapsed since the date of conviction.

5.2.4. Applicants should be aware that certain offences will give rise to particular concerns and in particular will include:

- Sexual offences;
- Offences involving prostitution, drugs, dishonesty or violence; and
- Licensing offences.

5.2.5. In considering the overall suitability of an applicant to hold a licence, the following factors will be taken into account by the Licensing Authority:

- Honesty and integrity of the applicant;
- Relevant experience of running similar sex establishments;
- Understanding of the terms and conditions relating to sex establishments;
- Reliability to run the premises in accordance with the licence;
- Track record of compliance in relation to other premises and/or licensing regimes;
- Intention to manage the premises himself or to employ others in that role;
- Existence or otherwise of a credible management structure to demonstrate the ability to comply with operating conditions incorporating such matters as:
 - Managerial competence
 - Presence
 - Employment of individuals who have sufficient experience in running such premises
 - Internal enforcement of rules (including training, monitoring, publication of rates for performers and customers)
 - Viable business plan
 - Demonstrate ability to act in the best interests of performers

- Preparation and enforcement of a written welfare policy for performers
- Procedures in place to ensure performers are adults and entitled to live and work in UK
- Demonstrate measures to protect the public (such as transparent rate of charges and prevention of solicitation)

5.2.6. In all cases, the Licensing Authority will give serious consideration to the observations of the Chief Officer of Police in relation to concerns expressed about the suitability of an individual applicant, body corporate or an individual officer of a company.

5.3. Suitability of the manager of the business or other beneficiary

5.3.1. The Licensing Authority will need to be satisfied that the proposed premises and activities are not a device to facilitate illegal activity and that those persons in ultimate control of the sex establishment can demonstrate that they will operate the premises in such a manner so as to promote the objectives of the legislation.

5.4. Number of sex establishments

5.4.1. Southampton City Council recognises that the Act allows discretion by the Licensing Authority to impose a numerical control on the number of sex establishments in a particular locality (including the provision that nil may be an appropriate number) and that this control can apply to both the overall number of sex establishments and also the number of each kind.

5.5. Character of the relevant locality

5.5.1. Applicants should be aware that the Licensing Authority may refuse a licence on this ground regardless of what may or may not be an appropriate number of sex establishment licences within the locality.

5.5.2. In considering whether it is appropriate to grant a licence having regard to the character of the relevant locality, the Licensing Authority will take account of the following factors, together with such other factors as may be considered relevant in the individual circumstances of the case:

- The general character of the area (e.g. family residential, family leisure or educational area);
- The impact of the premises on the character of the area;
- The current use for night-time leisure activities including existing sufficient representation of sex-orientated uses;
- Gender equality issues, including whether the proposed use, particularly at night, would deter women from using the area comfortably or at all;
- Raising the fear of crime in the locality should further sex-orientated uses be authorised;
- Effects upon regeneration and tourism in the area;
- Level of genuine demand (including the risk that excess supply would drive down standards and lead to problems associated with compliance with conditions.

5.6. Use of premises in the vicinity

5.6.1. Applications for sex establishment licences may be refused where the Licensing Authority considers that the grant of a licence would be inappropriate having regard to the use of other premises in the vicinity. Whilst the term “vicinity” is not defined in the 1982 Act, the Licensing Authority considers that “vicinity” will be a smaller area than “locality” as referred to in paragraph 5.4 above.

- 5.6.2. Applicants should be aware that the Licensing Authority may refuse a licence on this ground regardless of the character of a locality or indeed what may or may not be an appropriate number of sex establishment licences within it.
- 5.6.3. When considering the type of uses which may be deemed to be inappropriate, due regard will be given to the suitability of the proposed location of the premises and will take into account relevant factors including, but not limited to, the presence of what may be regarded as sensitive issues (e.g. dwellings, places of worship, schools, youth clubs, community centres, women's refuges, libraries, parks or swimming pools).
- 5.6.4. Applicants are advised to consider the impact of their proposed application prior to considering whether or not they wish to operate a sex establishment business in an area and state in their application how they believe any potential impacts could be mitigated. The Licensing Authority reserves the right to take into account other issues or considerations that may arise at the application and consultation stage as well as during the licence period.

5.7. Layout, character or condition

- 5.7.1. When considering the issue of a licence in terms of its layout, character or condition, the Licensing Authority will give consideration to general factors such as:
- Provision of proper access for disabled people;
 - Safe in terms of its structure and overall standards of maintenance for the building;
 - Sufficient provision for surveillance and overall supervision;
 - Standard of fit out of the premises;
- 5.7.2. While the Licensing Authority will not refuse a licence merely because the premises do not have planning permission for use as a sex establishment, the authority will take into account the absence of planning permission to the extent relevant to the statutory grounds for renewal.

6. Application Process

- 6.1. Application forms are available from the Council's website at:
www.southampton.gov.uk/business/licensing/sexest/
- 6.2. Upon receipt of an application for the grant, renewal, transfer or variation of a licence, the Licensing Authority will consult, at minimum, with the following bodies/individuals and will have regard to any observations received from them:
- Hampshire Constabulary
 - Hampshire Fire and Rescue Service
 - Southampton Safeguarding Children Board
 - Southampton City Council's Planning and Development Manager
- 6.3. An application for the grant, renewal, transfer or variation of a licence must be formally advertised in two specific ways:
- Within 7 days after the date of application, the applicant must arrange for a public notice to be published in a local newspaper;
 - Where the application is in respect of premises, the applicant must also display a notice of the application on or near the premises in question. The notice must be placed in such a position so that it can be conveniently read by the public. The notice must be displayed for twenty-one days starting with the date of the

application.

- 6.4. The notice must include information relating to:
 - Details of the premises to which the application relates;
 - Details of the applicant;
 - Type of sex establishment licence being applied for;
 - Whether the application is for the grant, renewal, transfer or variation of a licence;
 - Details of how persons may object; and
 - Closing date for representations.
- 6.5. The applicant must also send a copy of the application to the Chief Officer of Police for the local authority area no later than seven days after the date of application, unless the application is submitted electronically and in which case the Licensing Authority will serve notice on the Police.

7. Consideration of an Application

- 7.1. The Licensing Authority will have regard to all information provided by an applicant in support of an application.
- 7.2. Any person wishing to object to an application must give notice of their objection in writing, stating the general terms of the objection no later than twenty-eight days after the date of the application. Any person may object to an application. However objections must be relevant to the grounds set out in paragraph 12, Schedule 3 of the 1982 Act. Those grounds are set out in sections 4 and 5 of this policy. Objections based solely on moral grounds/values will not be considered.
- 7.3. The Licensing Authority will notify the applicant, in writing, of the general terms of any objection received within the twenty-eight day period allowed for objections.
- 7.4. The 1982 Act protects the rights of objectors to remain anonymous. The Licensing Authority will not reveal names or addresses of any objector to the applicant without their consent. However, general information such as the objector lives within a certain distance of the premises in question will be released in order to give the applicant an opportunity to rebut any concerns so far as geographical vicinity or locality is concerned.

8. Determining an Application

- 8.1. All applications where objections have been received or where consultees have raised concerns will be referred to the Licensing Sub-Committee for determination at a hearing and all parties will be given the opportunity to put forward their case at the hearing.
- 8.2. The Licensing Authority will consider each application on its individual merits.
- 8.3. The Licensing Sub-Committee will retire at the end of the hearing to make its decision on the facts of the case in private.
- 8.4. In most cases the Licensing Sub-Committee will deliver its decision and reasons at the end of the hearing. However, where it is considered proportionate and necessary to do so, the Licensing Sub-Committee may delay making a decision so as to allow for consideration of the respective cases put before it and so as to permit further time for a reasoned decision to be formulated. Any decision and reasons will be communicated, in writing, to the applicant and all other parties within 10 working days of the hearing.

9. Hearings

- 9.1. Hearings will be arranged as soon as reasonably practicable following the end of the consultation period. Applicants and other interested parties will be given at least ten days' notice of the proposed date for hearing and more where possible to do so.
- 9.2. All applicants will be given the opportunity to appear before and be heard by the Licensing Sub-Committee responsible for determining the application. Applicants will be entitled to be represented by a legal advisor or similar agent. Witnesses may be called with permission from the Chair of the Sub-Committee.
- 9.3. Persons objecting to applications will also be given the opportunity to appear at the hearing to discuss their objections.
- 9.4. The hearing will take place in public except where the public interest requires otherwise, although members of the public being disruptive will be required to leave the meeting.
- 9.5. All parties will be allowed an equal maximum period of time for the presentation of their case but it is expected that all parties keep points pertinent and the discussion moving in the interests of cost and efficiency.

10. Appeals

- 10.1. A right of appeal exists for applicants in respect of the refusal of applications for the grant, renewal, transfer or variation of a sex establishment licence. A right of appeal is also available in relation to the imposition of conditions and revocation of licences.
- 10.2. However, appeals against mandatory refusals (see section 4 of this policy document) can only be lodged on the basis that the mandatory ground does not apply to the appellant.
- 10.3. Additionally, no appeal provisions exist in respect of refusals to grant or renew licences on the discretionary grounds of:
 - The number of sex establishments in the relevant locality;
 - The character of the relevant locality;
 - The use to which any premises in the vicinity are put;
 - The layout, character or condition of the premises.
- 10.4. The time limit for lodging an appeal to the Magistrates' Court is twenty-one days beginning with the date of notification of the decision. The commencement time for the purposes of this section will be from when the applicant receives formal written notification of the decision and reasons.
- 10.5. The 1982 Act also provides for further appeal to the Crown Court.

11. Duration of Licences

- 11.1. Licences for sex establishments may be granted for a maximum period of one year but the Licensing Authority may grant a shorter period of time if it thinks fit.

12. Licence Conditions

- 12.1. The Licensing Authority will impose standard conditions that are relevant to all licensed sex establishments. These may include, but are not limited to:
 - Opening and closing hours
 - Displays and advertisements on or in sex establishments

- Visibility of the interior of a sex establishment to passers-by
 - Any change of use from one kind of sex establishment to another.
- 12.2. The Licensing Authority has made Regulations as to standard conditions which are set out at Appendix A to this policy. Such conditions will be imposed unless they are varied in an individual case. Any applicant for such variation must set out the variation requested in the application, together with reasons why the variation is sought and how it intends to achieve the objectives of the standard conditions if a variation is permitted.
- 12.3. The Licensing Authority may also specify other conditions specific to individual premises dependant on the type of activity undertaken and the type of premises. These may include, but are not limited to:
- Specifying minimum distances between the audience and performers
 - Control of access to changing room facilities
 - Control of private viewings
 - Additional conditions may be imposed where appropriate and necessary.

13. *Waiving of the need for a Sex Establishment Licence* (paragraph 7, Schedule 3 of the 1982 Act.)

- 13.1. In certain circumstances the Licensing Authority may waive the need for a sex establishment licence. However, applicants should be aware that it is considered that the waiver system is not a substitute for the licensing regime but may be useful in certain borderline cases or where events are minor or temporary. Equally it may be an appropriate alternative solution where clarity or regularisation is considered necessary.
- 13.2. An application for a waiver can either be made as part of an application for a licence or on a separate basis. The Licensing Authority may grant a waiver if it considers that to require a licence would be unreasonable or inappropriate.
- 13.3. In those cases where a waiver is granted the Licensing Authority will confirm, in writing, to the applicant that such a waiver has been approved. The waiver can last for any such period that the Licensing Authority think fit but equally it can be terminated by the Authority at any time subject to a notice period of 28 days.
- 13.4. The Licensing Authority will consider such applications on an individual basis. However, the Licensing Authority considers that in normal cases, licences should be sought for licensable activities and waivers will be granted only in exceptional cases.

14. *Exchange of Information*

- 14.1. The Licensing Authority will process personal information in accordance with the Data Protection Act 1998. Personal details will be held on a database and where the law allows, may be shared with other departments within the Council to update details they hold about you. The Council may also be required to disclose personal information to third parties (such as Police, Department for Work and Pensions or Audit Commission for the National Fraud Initiative) for the purposes of preventing or detecting crime or apprehending or prosecuting offenders.
- 14.2. The Authority may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1988 to exchange data and information with the Police and other partners to fulfil its statutory objective of reducing crime in the area.

15. Enforcement and Compliance

- 15.1. There are serious penalties for breaching the law relating to the control and supervision of sex establishment premises. Historically, Southampton City Council has taken robust action to prosecute individuals and businesses operating outside of the law and will maintain this stance in order to ensure protection of the public and to enforce this policy.
- 15.2. As a consequence, the Licensing Authority will establish protocols with other statutory agencies on enforcement issues. This is to enable the more effective deployment of staff who are commonly engaged in enforcing licensing law and the inspection of licensed premises. The aims of the protocol are to target agreed problem and high risk premises which require greater attention while providing a lighter touch in respect of low risk premises which are well run.

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