

Sex Establishment Licensing Policy

July 2022

Statement of Licensing Policy for Sex Establishments (including Sex Shops, Sexual Entertainment Venues and Sex Cinemas)

This policy sets out the Council's approach to regulating sex establishments and the procedures it will adopt in relation to applications for sex establishment licences.

The policy is intended as a guide to applicants, licence holders, objectors and members of the licensing committee and provides information on what the Council expects to see in relation to an application. The advice and guidance contained in the appendices attached to the policy are intended only to assist applicants and other parties and should not be interpreted as legal advice. All parties are advised to seek their own legal advice if they are unsure of any of the requirements of the legislation in so far as they relate to the licensing of sexual entertainment venues. It should be noted that the Council, as licensing authority, is required to implement the licensing regime in accordance with the law and not in accordance with any moral codes.

Any comments on this policy should be sent to:-

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Contents

1. Adoption of legislation	4
2. Definition of 'Sex Establishment'	4
3. Existing Premises.....	4
4. Location of Licensed Premises	4
5. Impact.....	5
6. Suitability of the Applicant.....	5
7. Applications	6
8. Fees.....	6
9. Advice and Guidance	7
10. Grant, renewal, variation or transfer of licences.....	7
11. Objections.....	7
12. Determining applications.....	8
13. Conditions.....	9
14. Refusal of Licences.....	9
15. Appeals	9
16. Revocation of Licences	10
17. Cancellation of Licences	10
18. Complaints.....	10
19. Enforcement.....	10
20. Human Rights	11
21. Updates to this policy document.....	11
Appendix A	12
Definitions.....	12
Appendix B	16
Requirements for applying for grant, renewal, variation or transfer of a sex establishment licence	16
Appendix C.....	19
Refusals and revocations of licences.....	19
Appendix D.....	20
Standard Conditions applicable to Licences for Sex Establishments.....	20

1. Adoption of legislation

- 1.1 Colchester City Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 14 October 1982. This provided the Council with the ability to license sex establishments. The Policing and Crime Act 2009 amended the Miscellaneous Provisions Act, in so far as it related to the licensing of sex establishments, by adding the new category of “sexual entertainment venue”.
- 1.2 On 13 October 2010 the Council resolved to re-adopt Schedule 3 of the Miscellaneous Provisions Act, as amended by the Policing and Crime Act 2009, thereby requiring all premises operating as sex establishments in the Council’s area to be licensed. The definition of sex establishments now includes sexual entertainment venues. Adoption of Schedule 3 also allows the Council to set terms, conditions and fees for the grant, renewal, transfer and variation of such licences and the number of licences that may be issued in the area. The provisions of the Act came into effect, after advertisement, in the Colchester City area on 31 January 2011.

2. Definition of ‘Sex Establishment’

- 2.1 A ‘sex establishment’ is defined under the Act as a ‘sex shop’, a ‘sex cinema’ or a ‘sexual entertainment venue’. Full definitions of those terms can be found in Appendix A to this policy.

3. Existing Premises

- 3.1 To date the Council has not imposed a restriction on the number of sex establishment licences that can be issued.
- 3.3 The Council recognises that there are existing businesses in the City providing such services and it is the Council’s policy to allow these licences to be maintained. However, in the event that these existing premises cease to trade there will be no presumption that a licence will be granted to a new applicant wishing to trade in the same location.

4. Location of Licensed Premises

- 4.1 The Council has a discretion to refuse to grant or renew licences for sex establishments on the grounds that the licence would be inappropriate having regard to the character of the locality or the use of premises in the vicinity. Without prejudice to other elements of the policy, and whilst treating each new application on its own merits, the Council’s policy is ordinarily to refuse licences on these grounds for premises that are in close proximity to;
 - (a) residential accommodation;
 - (b) schools, nurseries and other premises used by children and vulnerable persons;

- (c) parks or other recreational areas used by children and other vulnerable persons;
- (d) religious centres and places of religious worship;
- (e) youth, community and leisure centres;
- (f) access routes to and from premises listed above;
- (g) historic buildings or visitor attractions;
- (h) an area designated either as an area under regeneration, or due to be regenerated.

5. Impact

5.1 The Council, in considering whether the discretionary grounds for refusal apply and whether the licence should be refused on such grounds, will take into account the following, where it is relevant to do so:

- (a) the type of activity, the duration of the licence and the proposed hours of operation;
- (b) the layout and condition of the premises;
- (c) any cumulative and adverse impact of existing sexually related licensable activities in the same locality as the proposed premises;
- (c) crime and disorder issues;
- (d) any evidence relating to actual or likely noise or disturbance caused by the premises;
- (e) the character of the locality;
- (f) the use of other premises in the vicinity.
- (g) the impact on the area as a result of the external appearance of the premises (including signage, lighting, advertising, images and upkeep);
- (h) the impact on the area as a result of exterior activities (including smoking, queuing, dispersal, use of the exterior by performers including to smoke, touting, leafleting, use of advertising vehicles etc).

6. Suitability of the Applicant

6.1 The Council, in considering whether the applicant or applicants are fit and proper to hold a licence will take into account the following, where it is relevant to do so:

- (a) the operation of existing or previous licences held by the applicant, including their track record of compliance;
- (b) their experience and knowledge of the type of sex establishment they are applying to run;
- (c) their ability to comply with the licensing requirements and minimise the impact of the business on local residents and businesses;
- (d) any reports concerning the applicant received from the Police or any other source;
- (e) the honesty of the applicant(s);
- (f) whether the applicant(s) intend to operate the premises or employ other people to do so;

- (g) whether the management proposed will deliver compliance with operating conditions through managerial competence; presence; a credible management structure including individuals experienced in running premises of this nature; enforcement of rules internally through training, monitoring and the publication of rates for performers and customers; a viable business plan;
- (h) whether management can be relied upon to act in the best interests of the performers;
- (i) whether there is a written welfare policy for performers and how this is to be enforced;
- (j) what system is in place to ensure that performers are adults and entitled to live and work in the UK;
- (k) whether management can be relied upon to protect the public by, for example, transparent charging and freedom from solicitation.

7. Applications

- 7.1 An application for the grant, renewal, transfer or variation of a licence must be made in writing to the Council in accordance with the requirements shown in Appendix B of this policy document.
- 7.2 An application can be served on the Council as follows:-
 - (c) by e-mail to EPS.Support@colchester.gov.uk;
 - (d) on-line
- 7.3 The Council encourages applicants to serve their applications and other notices on it electronically. In line with the Provision of Service Regulations 2009, where an application for the grant, renewal, variation or transfer of a licence is submitted electronically, the Council will send a copy of the application to the Chief Constable of Essex Police not later than 7 days after the date that the application is received. In all other cases, it will still be the responsibility of the applicant to serve a copy on the Chief Constable of Essex Police within 7 days of submitting an application to the Council.
- 7.4 The Council expects that any premises for which a licence is required should have either planning consent or lawful use under planning legislation for the intended use and hours of operation. The Council will not treat licensing applications as a re-run of a planning application however, and it will not seek to impose licensing conditions which duplicate conditions that have been imposed on a planning consent.
- 7.5 The Council will notify relevant Ward Councillors of an application in their area.

8. Fees

- 8.1 The licence fees for all sex establishments including sexual entertainment venues are set at a level that is reasonable and proportionate to the effective cost of administering the application and licensing process including monitoring compliance.
- 8.2 The application process involves paying a non-returnable application fee. The fees will be reviewed annually by the Council having regard to the costs associated with each application in the previous year. Any profit from the payment of a licence fee will be considered in setting the following year's fee. Fees are set annually by the relevant Portfolio Holder and are published on the Council's website.

9. Advice and Guidance

- 9.1 The Council will seek to liaise with applicants and, wherever possible and necessary, mediate between applicants and objectors in order to achieve a satisfactory outcome for all stakeholders. Applicants are advised to discuss their proposals with the Council and any interested parties prior to an application being made.

10. Grant, renewal, variation or transfer of licences

- 10.1 The Council may grant to any applicant and renew a licence for the use of any premises as a 'sex establishment' on such of the terms and conditions specified by the Council which are shown in Appendix D of this document and/or any special conditions imposed on the merits of the individual case.
- 10.2 A licence once granted will usually remain in force for 12 months, but can be issued for a shorter period if deemed appropriate. In order to continue operating as a sex establishment the licence holder must make a renewal application to the Council prior to the expiry of the existing licence.
- 10.3 An application to transfer a licence to any other person may be made.
- 10.4 Where an application for renewal or transfer of a licence is made before the expiry of the existing licence, the licence shall remain in force until such time as the application has been determined.
- 10.5 The holder of a licence may apply to the Council to vary the terms, conditions or restrictions on, or subject to which, the licence is held.

11. Objections

- 11.1 Anyone wishing to object to an application must do so in writing within 28 days of the application being made to the Council. Representations can be made -
- by e-mail to EPS.Support@colchester.gov.uk

- via website using the licensing register
<https://publicprotection.colchester.gov.uk/Northgate/ES/Presentation/Public/OnlineLicence>

The objection must state the grounds on which it is made.

- 11.2 A person making a representation must state their full name and address and their grounds for objecting to the application. The Council will not consider objections that are frivolous, vexatious or relate to moral grounds.
- 11.3 The Council has the discretion to consider representations made after the 28 day consultation period. The Council's acceptance of late representations will be assessed on a case by case basis having regard to the length of delay, the mitigating reason or circumstances that caused the delay and the amount of time before the hearing date that the applicant has to consider the representation.
- 11.4 Where objections are made the Council will provide copies to the applicant. However, the Council will not divulge the identity of the objector/s to the applicant without their permission to do so.
- 11.5 Where objections are made and are not withdrawn, a hearing before members of the Licensing Committee will normally be held within 20 working days of the end of the objection period, unless all parties agree in writing beforehand that a hearing is no longer necessary. The Council may under certain circumstances need to hold a hearing later than 20 working days after the end of the objection period and may do so at its discretion.
- 11.6 There is no explicit provision in the legislation for objectors to be heard at a hearing. However it is likely that in most cases the Council will use its discretion to allow objectors or their representative to put their case at a hearing. The Council must be notified in writing by the objector, prior to the hearing, if they wish someone else to speak on their behalf.

12. Determining applications

- 12.1 The Council will consider each application in its own right and on its own merit.
- 12.2 When considering applications, the Council will have regard to:
 - (a) the Local Government (Miscellaneous Provisions) Act 1982
 - (b) the Human Rights Act
 - (c) the Provision of Services Regulations
 - (d) Section 19 of the Crime and Disorder Act 1998
 - (e) the Equality Act
 - (f) any supporting or accompanying regulations;

(g) this Statement of Licensing Policy.

- 12.3 When determining applications, the Council will take account of any written objections, comments or observations made by the Chief Constable of Essex Police and any objections made by other interested parties.

13. Conditions

- 13.1 No condition will be imposed by the Council that cannot be shown to be appropriate, reasonable and proportionate to the application that has been submitted.
- 13.2 In the event that conditions are attached to the grant of a licence they will be adapted to the operating circumstances and requirements of the individual premises and may also take into account any objections, comments or observations received, particularly where they have been received from the Chief Constable of Essex Police.
- 13.3 The Council may attach any of those conditions shown in Appendix D which are relevant to the activities granted to the sex establishment licence applied for. These conditions are not exhaustive however and further conditions may be applied to the licence on the advice of the Chief Constable of Essex Police or may be attached by the Council following a hearing by Members of the Committee that the Council has had to convene to consider relevant objections to an application submitted for a sex establishment licence

14. Refusal of Licences

- 14.1 Except where the Council is prohibited from granting, renewing, varying or transferring a licence, it will not refuse a licence without first;
- giving the applicant or holder of the licence the opportunity of appearing and making representations before a hearing of the Committee:
 - notifying the applicant or holder of the licence in writing of the reasons.
- 14.2 The circumstances in which the Council must or may refuse a licence are shown in Appendix C of this document.

15. Appeals

- 15.1 In all cases for the grant, renewal, variation or transfer of a sex establishment licence, applicants that are aggrieved by a decision of the Council relating to a refusal on mandatory issues are entitled to appeal to the Magistrates' Court. Appeals against refusals on discretionary grounds are not permissible unless they relate to the suitability of persons involved in the business. In the case of

refusals under Schedule 3 paragraph 12(3)(c) or (d) of the Local Government (Miscellaneous Provisions) Act 1982 an applicant or objector can challenge a refusal of an application by way of seeking a judicial review of the Council's decision.

16. Revocation of Licences

16.1 The Council may revoke a sex establishment licence;

- on any of the mandatory grounds specified in paragraph 1 of Appendix F of this policy document;
- on either of the discretionary grounds specified in paragraph 2(a) and (b) of Appendix F of this policy document.

16.2 The Council will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before a hearing of the Committee.

17. Cancellation of Licences

17.1 The licence-holder may surrender the licence at any time and may request the Council in writing to cancel the licence.

17.2 In the event of the death of a licence holder, the licence will be deemed to have been granted to their personal representative(s) and will remain in force for 3 months from the date of death, unless previously revoked.

17.3 Where the Council is satisfied that it is necessary for the purpose of winding up the estate of the deceased licence-holder, it may extend or further extend the period for which the licence remains in force.

18. Complaints

18.1 Wherever possible and appropriate the Council will give early warning to licence holders of any concerns which have been identified at premises and of the need for any improvements to the way that the premises is operated. It is hoped and expected that licence holders will actively participate in such dialogue.

19. Enforcement

19.1 The Council is responsible for the administration and enforcement of the licensing regime and will carry out its regulatory functions in a fair, open and consistent manner.

19.2 Specifically, the Council is committed to:

- (a) be proportionate – to only intervene when necessary and when remedies will be appropriate to the risk posed;
 - (b) be accountable – to justify decisions, be subject to public scrutiny and allow opportunities to resolve differences before enforcement action is taken, unless immediate action is needed;
 - (c) be consistent – to implement rules and standards fairly;
 - (d) be transparent – to be open and to provide clear explanations of what is needed, by when and the rights of appeal.
 - (e) target its regulatory action at cases in which action is needed.
- 19.3 The Council recognises and acknowledges the interests of residents, visitors and businesses and will actively work closely with its partners to assist licence holders to comply with the law and the conditions attached to their licence.
- 19.4 Appropriate, reasonable and proportionate enforcement action will be taken by the Council against those who commit serious offences or consistently break the law or breach the conditions of their licence.
- 19.5 The Council has set clear standards of service and performance that the public and businesses can expect. In particular, an enforcement policy has been adopted that explains how the Council will undertake its role and how the principles of effective enforcement will be achieved.
- 19.6 This policy is freely available from the Council, as are details of its corporate complaints procedures, both of which can also be viewed on the Council's website.

20. Human Rights

- 20.1 When considering transitional applications or new applications, the Council will take into account rights that the applicant has under Article 1, Protocol 1 of the European Convention of Human Rights (peaceful enjoyment of possessions) and Article 10 (freedom of expression). The Council also acknowledges that 'freedom of expression' extends to the right to use particular premises as a sexual entertainment venue in line with the judgment in *Belfast City Council v Miss Behavin' Ltd* in 2007.

21. Updates to this policy document

- 21.1 The Council may update this policy document with any changes that have been made by legislation or accompanying guidance, or to the Council's own terms and conditions. The policy will be reviewed as and when the Council considers it appropriate. If the Council considers that the changes are of significant importance to applicants or to other interested parties the Council will put those changes out to public consultation. Minor amendments to this policy document and associated procedures will be made at the Council's discretion and will not be subject to any public consultation or comment.

Definitions

- The Act – refers to the Local Government (Miscellaneous Provisions) Act 1982
- Authorised Officer - any Officer of the Council authorised under the Council's Scheme of Delegation as detailed within the Council's Constitution
- The Council - refers to Colchester City Council
- Licence Holder - a person or persons who holds a sex establishment licence under the Act
- This Policy - refers to Colchester City Council's sex establishment policy
- Premises - a building or part of a building and any forecourt, yard or place of storage used in connection with a building or part of a building which is the subject of a sex establishment licence granted under the Act. It includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted.
- Sex Establishment - as defined in section 2 of Schedule 3 of the Act
- A Sex Establishment means a sexual entertainment venue, a sex shop or a sex cinema as defined below in extracts from the Act.
- Sexual Entertainment Venue - as defined by Paragraph 2A of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as inserted by Section 27 of the Policing & Crime Act 2009.
- Relevant National Authority – in relation to England means the Secretary of State.

- (1) In this Schedule “sexual entertainment venue” means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer. (An audience can consist of just one person).

The organiser means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. While in most instances this is likely to refer to the manager of the premises, it could also mean a person who is responsible for organising the entertainment on behalf of persons responsible for the management of the premises. This will therefore mean that the organiser must be a person who is in a position of responsibility over the provision of the relevant entertainment and will not be interpreted as meaning a member of staff employed to work during the provision of relevant entertainment).

- (2) In this paragraph “relevant 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 verbally or other means).

- Paragraph 2A(14) of Schedule 3 defines a “display of nudity” as being in the case of a woman, it means the exposure of her nipples, pubic area, genitals or anus and in the case of a man; it means exposure of his pubic area, genitals or anus.

However, a display of nudity included in for example a part of a theatre or drama performance, will not require a sex establishment licence unless it is being provided solely or principally for the purpose of sexually stimulating any member of the audience (whether verbally or other means).

- (3) The following are not sexual entertainment venues for the purposes of this Schedule-

- (a) sex cinemas and sex shops;

(b) premises which the provision of relevant entertainment as mentioned in sub-paragraph (1) is such that, at the time in question and including any relevant entertainment which is being provided at that time-

- (i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;

(ii) no such occasion has lasted for more than 24 hours; and

(iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period mentioned in sub-paragraph (i));

(c) premises specified or described in an order made by the relevant national authority.

- Spontaneous entertainment - Where activities take place at a premises that would ordinarily be considered as relevant entertainment but are not provided for financial gain of the organiser or entertainer such as a spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered as a sexual entertainment venue by virtue of those circumstances alone.

- Sex Cinema as defined in Section 3 of Schedule 3 of the Act-

(1) In this Schedule, "sex cinema" means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which-

(a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage-

(i) sexual activity; or

(ii) acts of force or restraint which are associated with sexual activity; or

(b) 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.

(2) No premises shall be treated as a sex cinema by reason only-

(a) if they may be used for an exhibition of a 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; or

(b) of their use for an exhibition to which section 6 of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of the Cinemas Act 1985.

- Sex Shop as defined in Section 4 of Schedule 3 of the Act

(1) In this Schedule “sex shop” means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating-

(a) sex articles; or

(b) other things intended for use in connection with, or for the purpose of stimulating or encouraging-

(i) sexual activity; or

(ii) acts of force or restraint which are associated with sexual activity.

(2) 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) In this Schedule “sex article” means-

(a) anything made for use in connection with, or for the purpose of stimulating or encouraging-

(i) sexual activity; or

(ii) acts of force or restraint which are associated with sexual activity; and

(b) anything to which sub-paragraph (4) below applies.

(4) This sub-paragraph applies-

(a) 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

(b) to any recording of vision or sound, which-

(i) 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

(ii) is concerned primarily with the portrayal of, or primarily deals with or relates to: genital organs, or urinary or excretory functions.

Requirements for applying for grant, renewal, variation or transfer of a sex establishment licence

Grant of a licence

- 1) To apply for the grant of a sex establishment licence an applicant must: -
 - a) send the Council: -
 - i) a completed application form;
 - ii) a plan to the scale of 1:100 of the premises to which the application relates;
 - iii) an application fee;
 - b) display a notice on or near the premises;
 - c) advertise the application in a newspaper or similar publication circulating in the local area
 - d) send a copy of the application and plan to the Chief Constable of Essex Police, Essex Police, 10 Southway, Colchester, CO3 3BU within 7 days of making the application to the Council.

Plan requirements

- 2) The plan shall show:
 - a) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
 - b) the location of points of access to and egress from the premises;
 - c) the location of escape routes from the premises;
 - d) in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;
 - e) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
 - f) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
 - g) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
 - h) in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
 - i) the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
 - j) the location of a kitchen, if any, on the premises.
- 3) The plan may include a legend through which the matters mentioned or referred to above are sufficiently illustrated by the use of symbols on the plan.

Public notices

- 4) A notice must be displayed at or on the premises to which the application relates for a period of not less than 21 consecutive days starting from the date of the application to the Council. It must be placed in a position where it can be conveniently read from the exterior of the premises.
- 5) Where the premises frontage extends for more than 50 metres, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.
- 6) The notice must be on pale blue paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16.
- 7) The notice must state: -
 - a) details of the application and activities that it is proposed will be carried on or from the premises,
 - b) the full name of the applicant,
 - c) the postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,
 - d) the date, being 28 days after that on which the application is given to the council, by which representations may be made to the Council and that representations should be made in writing,
 - e) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine (£5000) for which a person is liable on summary conviction for the offence.
- 8) A similar notice must be published in a local newspaper or similar publication within 7 days of giving the application to the Council.

Variation of a licence

- 9) The holder of a licence may apply at any time for any variation of the terms, conditions or restrictions on, or subject to which, the licence is held.
- 10) The process of applying for a variation is the same as that for applying for an initial grant except that a plan of the premises is not required unless the application involves structural alterations to the premises.

Renewal of a licence

- 11) The holder of a licence may apply for renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application together with the appropriate fee must be submitted before the current licence expires.
- 12) If all the details remain the same on renewal of the licence Application Form B can be submitted. If any matters have changed on renewal then Application Form A should be submitted. The process of applying for renewal of a licence is the

same as that for applying for an initial grant except that a plan of the premises is not required.

Transfer of a licence

13) A person may apply for transfer of a licence at any time.

14) The process of applying for transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

For details on how the Council intends to process applications, including those to which objections are made, please see Section 7 of this policy document entitled 'Applications'.

Refusals and revocations of licences

Mandatory Grounds

1. The council must refuse to grant or transfer a licence if the applicant: -

- (a) is a person under the age of 18;
- (b) is for the time being disqualified from holding a sex establishment licence;
- (c) not a body corporate and has not been resident in the United Kingdom or was not so resident for 6 months immediately preceding the date of the application;
- (d) is a body corporate which is not incorporated in the United Kingdom;
- (e) has, in the period of 12 months immediately 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.

Discretionary Grounds

1. The Council may refuse-

- (a) an application for grant or renewal of a licence on one or more of the grounds shown in paragraph 2 below;
- (b) an application for transfer of a licence on either or both of the grounds shown in paragraph 2 (a) and (b) below.

2. The grounds for refusal are-

- (a) That the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- (b) That 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 made the application himself;
- (c) That the number of sex establishments or sex establishments of a particular kind in the relevant locality at the time that the application is made is equal to or exceeds the number which the Council considers is appropriate for that locality;
- (d) That the grant or renewal of the licence would be inappropriate having regard to:-

- i. The character of the relevant locality;
- ii. The use to which any premises in the vicinity are put; or
- iii. The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

3. Nil may be an appropriate number for the purposes of paragraph (2)(c) above.

Standard Conditions applicable to Licences for Sex Establishments

Notes

The Council may attach any of the conditions which are relevant to the sex establishment applied for

- (i) Except where the context demands otherwise the singular includes the plural and the masculine includes the feminine.
- (ii) Nothing in these conditions shall be construed as interfering with (i) the discretion of the licensee or his representative regarding the admission of any person or (ii) the need to strictly comply with all relevant statutory requirements.
- (iii) These conditions are divided as follows-
 - Part 1 General
 - Part 2 Conditions which apply to all premises
 - Part 3 Conditions which apply to sex shops
 - Part 4 Conditions which apply to sex cinemas
 - Part 5 Conditions which apply to sexual entertainment venues
- (iv) In these rules all references to the British Standard (BS) shall be deemed to refer to the current standard.
- (v) A premises licence may also be required for the operation of a sex cinema.

Part 1 General

- 1. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
- 2. The grant of a licence for a sex establishment shall not be deemed to convey any approval or consent which may be required under any enactment, by law, order or regulation other than the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.

Part 2 Conditions which apply to all premises

Exhibition of Licence

- 1. The copy of the licence and these Regulations which are required to be exhibited in accordance with paragraph 14(1) of Schedule 3 of the Local

Government (Miscellaneous Provisions) Act 1982 shall be reproductions to the same scale as those issued by the Council. The copy of the licence required to be displayed as aforesaid shall be suitably framed and exhibited in a position that it can easily be seen by all persons using the premises. The copy of these Regulations shall be retained in a clean and legible condition.

Responsibility of Licensee

2. The licensee shall take all reasonable precautions for the safety of the public and employees and, except with the consent of the Council, shall retain control over all portions of the premises.
3. The premises shall not be used for regulated entertainment, exhibition or display of any kind unless the Council's consent has been first obtained and any necessary licence granted.

Conduct and Management of the Premises

4. The licensee, or a responsible person over 18 years of age and nominated by him in writing for the purpose of managing the sex establishment in his absence, shall be in charge of and upon the premises during the whole time it is open to the public. Such written nomination shall be continuously available for inspection by an officer authorised in writing by the Council. The person in charge shall not be engaged on any duties which will prevent him from exercising general supervision and he shall be assisted as necessary by suitable adult persons to ensure adequate supervision. The person in charge shall be conversant with these rules, a copy of which shall be held on the premises.
5. The licensee, or the responsible person approved under Regulation 4, shall maintain a daily register to be kept on the premises in which he shall record the name and address of any person who is to be responsible for managing the sex establishment in his absence and the names and addresses of those employed in the sex establishment. The register to be completed each day within 30 minutes of the sex establishment opening for business and is to be available for inspection by the Police and by authorised officers of the Council.
6. The Licensee shall ensure that, during the hours the sex establishment is open for business, every employee wears a badge of a type to be approved by the Council bearing a photograph of the employee and indicating his name and that he is an employee.
7. A notice showing the name of the person responsible for the management of a sex establishment shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.
8. Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the

management of the body is to notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager are to be furnished within 14 days of a request in writing from the Council.

9. The licensee shall ensure that no part of the premises is used by prostitutes (male or female) for the purposes of soliciting or any other immoral purpose.
10. The licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.
11. Neither the licensee nor any employee or other person shall seek to obtain custom by means of personal solicitation outside or in the vicinity of the premises.
12. No person under the age of 18 shall be admitted to the premises or employed in the business of the sex establishment.

External Appearance

13. No display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing or any other matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises except;
 - (i) any notice of a size and in a form approved by the Council which is required to be displayed so as to be visible from outside the premises by law, or by any condition of a licence granted by the Council.
 - (ii) Such display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing, or any matter or thing as shall have been approved by the Council.
14. The entrances, windows and openings to the premises shall be of a material or covered with a material which will render the interior of the premises invisible to passers by.

State, Condition and layout of the premises

15. The premises shall be maintained in good repair and condition.
16. The number, size and position of the doors or openings provided for the purposes of the ingress and egress of the public shall be to the satisfaction of the Council and shall comply with the following requirements :-
 - (i) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "exit".

(ii) Doors and opening other than exits which lead to parts of the premises to which the public are not permitted to have access shall have notices placed over them marked "private".

(iii) No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency

17. The external doors to the premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order. The external door shall only be opened at such times as person(s) require access and egress to the interior of the premises.
18. The licensee shall make provision in the means of access both to and within the premises for the needs of members of the public visiting the premises who are disabled.
19. Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the premises shall not be made except with the prior approval of the Council.
20. All parts of the premises shall be kept in a clean and wholesome condition to the satisfaction of the Council.

Maintenance of the means of Escape

21. The means of escape provided for all persons on the premises shall be maintained unobstructed, immediately available and clearly identifiable in accordance with the approved arrangements.
22. All fire resisting and smoke stop doors shall be maintained self closing and shall not be secured open.

Fire Appliances

23. The premises shall be provided with fire appliances suitable to the fire risks on the premises, and such fire appliances shall be maintained in proper working order and shall be available for instant use.
24. The licensee shall comply with any fire precautions and safety measures that may be required of him by the Fire Authority.
25. Portable fire appliances shall be examined at least once a year and periodically tested in accordance with the current British Standard by a competent person and the date of such test shall be clearly marked on the appropriate extinguishers or on stout tabs securely attached to them. Extinguishers which incorporate an anti-freeze agent shall be examined and recharged in compliance with the manufacturer's instructions.

Lighting

26. The licensee or any other person concerned in the conduct or management of the licensed sex establishment shall, in the absence of adequate daylight, ensure that adequate lighting is maintained to the satisfaction of the Council in all parts of the premises to which the public and staff have access and is in operation continuously during the whole time the premises are open to the public.
27. The normal lighting levels and the lighting to 'EXIT' notices shall be maintained at all times and shall not in any circumstances be extinguished or dimmed while the public are on the premises provided that, so long as there is sufficient daylight in any part of the premises, artificial light need not be used in any part.

Electrical Installations

28. The electrical installation for the premises shall be maintained in a safe working condition, as prescribed in the current edition of the Regulations for electrical installations issued by the Institute of Electrical Engineers.
29. Unless the Council decides otherwise an inspection certificate, as prescribed in the current edition of the Regulations for electrical installations issued by the Institute of Electrical Engineers, for the electrical installation associated with the premises shall be submitted to the Council at least once every five years or such other time specified on the certificate. The certificate shall be signed by a qualified engineer.

Change of Use

30. 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 and the Police has been obtained.
31. The Licensing Authority and Essex Police must be informed should the licensee seek to change the use of the establishment to another form of sex establishment.

Sale of goods

32. Neither sex articles nor 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 shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema or a sexual entertainment venue.

Admission of Authorised Officers

33. Officers of the Council, Police, and other authorised agencies who are furnished with authorities which they will produce on request, shall be

admitted immediately at all reasonable times and at any time the premises are open for business to all parts of the premises.

Part 3 Conditions which apply to Sex Shops

1. It is permitted to play music or words either via national or local radio stations or any pre-recorded means, but no material whatsoever of an adult theme or nature can be played or broadcast, whether by means of sound or moving picture.

Goods available in Sex Establishments

2. All sex articles and other things displayed for sale, hire, exchange or loan within a sex shop shall be clearly marked to show persons who are inside the sex shop the respective prices being charged.
3. All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase, hire, exchange or loan and a notice to this effect is to be prominently displayed within the sex establishment.
4. No film or video film shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Censors, and bears a certificate to that effect, or approved by the Council and is a reproduction authorised by the owner of the copyright of the film or video film so certified.

Part 4 Conditions which apply to Sex Cinemas

Film Categories

1. The categories U, PG, 12, 15, 18 and RESTRICTED 18 have the following effect:

U	Universal – Suitable for all
PG	Parental Guidance. Some scenes may be unsuitable for young children.
12	Passed only for persons of 12 years and over.
15	Passed only for persons of 15 years and over.
18	Passed only for persons of 18 years or over
RESTRICTED (18)	Passed only for persons of 18 or over in specially licensed cinemas.

Exhibition of Films

2. 'Film exhibition' means film exhibitions as defined in the Cinemas Act 1985, i.e. any exhibition of moving pictures which is produced otherwise than by the simultaneous reception and exhibition of (a) television programmes, broadcast by the British Broadcasting Corporation or the Independent Broadcasting Authority or (b) programmes included in a cable programme

service which is or does not require to be licensed under Section 4 of the Cable and Broadcasting Act 1984.

3. No film shall be exhibited at the premises unless:
 - (a) it is a current news reel; or
 - (b) it has been passed by the British Board of Film Classification as a U, PG, 12, 15, 18, or RESTRICTED (18) film
 - (c) it has been passed by the Council as a U, PG, 12, 15, 18, or RESTRICTED (18) film.

Restricted (18) films

4. Films in the RESTRICTED (18) category may be shown at the premises only with the Council's prior written consent and in accordance with the terms of any such consent.
5. Not less than twenty-eight days notice in writing shall be given to the Council of any proposal to exhibit any other film which has not been classified as specified above. Such a film may only be exhibited if the Council's written consent has been obtained and in accordance with the terms of any such consent.

"Persons under 18" Notice

6. No person appearing to be under the age of 18 shall be admitted to any part of the programme and the licensee shall display in a conspicuous position at the entrance to the premises a notice in clear letters in the following terms:

PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA FOR
ANY PART OF THE PROGRAMME

Category Notices

7. A representation or written statement of the terms of any certificates given by the British Board of Film Censors or the British Board of Film Classification shall be shown on the screen immediately before the showing of any film to which it relates and the representation or statement shall be shown for long enough and in a form large enough for it to be read from any seat in the auditorium.

Timetable of Films

8. The licensee shall display in a conspicuous position, to the satisfaction of the Council, at each entrance to the premises, during the whole time the public are being admitted to the premises and so as to be easily seen and read by the public, a timetable of the films on exhibition.

Advertisements

9. No advertisement displayed at the premises of a film to be exhibited at the premises shall depict as a scene or incident in the film any scene or incident which is not included in the film as certified by the British Board of Film Censors or the British Board of Film Classification or approved for exhibition by the licensing authority, as the case may be.
10. Where the licensing authority has given notice in writing to the licensee of the premises objecting to an advertisement on the ground that, if displayed, it would offend against good taste or decency or be likely to encourage or incite crime or lead to disorder or be offensive to public feeling, that advertisement shall not be displayed at the premises without the prior consent in writing of the licensing authority.

Objection to exhibition of film

11. Where the licensing authority has given notice in writing to the licensee of the premises prohibiting the exhibition of a film on the ground that it contains material which, if exhibited, would offend against good taste or decency or would be likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling, that film shall not be exhibited in the premises except with the prior consent in writing of the licensing authority.

Sale of Sex Article

12. Neither sex articles nor 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 shall be displayed, sold, hired, exchanged, loaned or demonstrated in a 'sex cinema'.

Part 5 Conditions which apply to Sexual Entertainment Venues

Performances of Relevant Entertainment

1. The performance of relevant entertainment within the premises shall not be visible from any area outside of the premises at any time.

Age Restrictions

2. A prominent clear notice shall be displayed at each entrance to the premises advising customers that no person under 18 will be admitted and they may be asked to produce evidence of their age.
3. Members of staff at the premises shall seek "credible photographic proof of evidence" from any person who appears to be under the age of 25 years and who is seeking access to the premises. Such credible evidence, which shall

include a photograph of the customer, will either be a passport, photographic driving licence, or Proof of Age card carrying a "PASS" logo.

Club Rules

4. The premises must provide a copy of its Club Rules to the Council and to Essex Police for consideration and approval.
5. All performers and staff shall be aware of the Club Rules.
6. All dancers, staff and door supervisors shall read a copy of the rules relating to operating relevant entertainment. They shall sign and date a copy which shall be retained by the premises as part of their due diligence.

Performers

7. Proof of Identity must be kept on record showing that a performer is aged 18 or over..
8. All performers shall be aware of the management operation manual.
9. A log book shall be maintained on the premises detailing the names and start and finish times of individual performers involved in all forms of adult entertainment.
10. At all times during the performance, performers shall have direct access to a dressing room without passing through, or in close proximity to, the audience.
11. On leaving the premises performers, who wish to be, shall be escorted by staff member to their vehicle or other safe location.

Performances

12. Whilst dancers are performing in any public area there shall be a minimum distance of one metre maintained between the dancer and the seated customers. Prominent, clear notices shall be displayed at each table stating this requirement.
13. There shall be no physical contact between customers and the dancers except for the placing of money or tokens in a garter or into the hands of the dancer at the beginning or conclusion of a performance. A touch and go policy will operate i.e. any person/customer touching dancers will be ejected from the premises and barred from those premises.
14. No performances shall include any sex act with any other performer, persons in the audience or with the use of any object.
15. No audience participation shall be permitted.

16. Signs displaying the rules on the performance of relevant entertainment will be displayed throughout the premises and be clearly visible to patrons. This will include any private individual booth area.
17. In the event of the relevant entertainment being performed for private viewing, the patron shall be informed of the duration and price of the relevant entertainment, and the details shall be specified in a clearly visible notice in each area designated for private relevant entertainment. Each such area shall be capable of being continually monitored by a member of staff.
18. No performer or member of staff shall sit on, straddle, stroke, fondle or make any form of sexual contact with a customer at any time.

Door Supervisors

19. One SIA registered door supervisor per 75 customers shall be on duty on the premises whilst relevant entertainment takes place.
20. The door supervisors shall be on duty at the premises at all times when the premises provide relevant entertainment.
21. The premises shall be a member of the Pub/Townlink Radio scheme.

Closed Circuit Television (CCTV)

22. A high quality CCTV system shall be installed to cover all entrances and exits to the premises and areas where relevant entertainment will take place, with the exception of the performers' changing area. This system must be installed and fully operational before the premises opens for the licensable activity applied for. All cameras shall continually record whilst the premises are open to the public and video recording shall be kept available for a minimum of 31 consecutive days with date and time stamping.
23. At the time of installation or upgrading of any CCTV system it shall comply with the current and relevant Police guidelines for Standard Minimum closed circuit television requirements. To obtain a clear head and shoulders image of every person entering the premises on the CCTV System, persons entering the premises should be asked to remove headwear, unless worn as part of religious observance.
24. A member of staff who is fully trained in the use of the system shall be on duty at all times when the premises are open until the premises are clear of customers, cleared of staff and closed.
25. Within 24 hours of a request made by Essex Police or the Licensing Authority, the premises will provide the CCTV footage requested.

Crime Survey

26. Upon completion of a crime survey by Essex Police, the licence holder shall act accordingly with all recommendations of the survey in so far as they relate to licensable activities,

Layout of premises

27. The approved activities shall take place only in the areas designated by the Licensing Authority.
28. All dance booths are to be equipped with a panic alarm for safety.
29. Arrangements shall be put in place to restrict access to the dressing room at all times when the relevant entertainment is taking place, and until such time as all performers have vacated it. The performers' dressing rooms will be off-limits to all non-employees.
30. The layout within the areas used by customers shall not undergo substantial change without the prior written consent of the Licensing Authority.

Sale of goods

31. Neither sex articles nor 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 shall be displayed, sold, hired, exchanged, loaned or demonstrated in a 'Sexual Entertainment Venue'.

Door Policy

32. No entry to be permitted to any customer who is considered by the management or door staff to be incapable of controlled or acceptable behaviour, especially those who may be showing sign of having been intoxicated through alcohol or drugs.
33. All customers will be explained the rules for the venue before entry is permitted.
34. Door staff will carry two-way radios at all times.
35. Dress code will be smart at all times; no sports wear will be permitted.

Operation of the Venue

36. A copy of the house customer rules will be on display at the entrance to the venue and in the bar area.
37. Waitresses/Waiters and bar staff must remain fully clothed at all times.

Supervision of Performers

- 38. Proof of citizenship or working permits must be provided.
- 39. No working auditions will be permitted; a cooling off period of three days is enforced at all times.
- 40. All performers and staff must complete an emergency contact form before working within the venue.
- 41. Performers must sign a 'contract' before working stating that they have read, understood and will abide by the performer rules and rules of the house while working in the venue.
- 42. A member of staff will be in the private dance area at all times whilst private dances are taking place.
- 43. No dances will be permitted without supervision from a member of staff.
- 44. Performers must be provided with a full briefing on the Club rules.

Customer and Performer Conduct

There should be published rules on customer conduct and performer conduct and the rules should contain as a minimum the following requirements, and the licensee shall ensure that the rules are enforced.

- 45. Any customer who is offensive either by language or action towards the performer will be ejected from the venue. They will also be barred from entry on any future occasion.
- 46. Strictly no photographing or videoing of performances or performers before, during or after the performance will be allowed. All customers' mobile phones will be switched off whilst on the premises. Anyone found breaching this condition will be ejected from the venue and barred from entry on any future occasion.
- 47. Any customer found in possession of drugs, attempting to consume drugs or selling drugs will be detained by the security staff and the Police will be called. They will also be barred from entry on any future occasion.
- 48. Throwing of money at performers will not be permitted before, during or after the performance, nor will the giving of any other gift. Anyone breaching this condition will be ejected from the venue and barred from entry on any future occasion.
- 49. Customers will not be allowed to pass on personal details such as business cards or telephone numbers to performers before, during or after a performance.

50. Payment must be made to the performer only and strictly in advance of the performance taking place.

Performer Conduct

51. No performer will be allowed to carry or use any sex toy, sex aid or other paraphernalia.
52. No performer will be allowed to wear bondage or sadomasochist clothing or paraphernalia. No accessories such as sex toys or aids are to be carried or used by the performers.
53. No handing out of cards, telephone numbers or personal contact information to customers or any other persons by performers.
54. Performers must not encourage customers to touch them in any way before, during or after a performance.
55. Performers found in possession, using or attempting to sell drugs or even under the influence of drugs before, during or after a performance will be immediately dismissed and the Police notified.
56. Performers will instruct all customers to keep their hands by their sides at all times during a private dance.
57. Any approach by a customer to make personal contact with a performer must be immediately reported to the management or security.
58. Performers will not be permitted to enter any part of the venue other than the private dance area and dressing room areas while fully nude.