



**CARDIFF COUNCIL**

**LOCAL GOVERNMENT (MISCELLANEOUS  
PROVISIONS) ACT 1982**

**STATEMENT OF SEX ESTABLISHMENT  
LICENSING POLICY**

**8 July 2010**



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## **STATEMENT OF SEX ESTABLISHMENT LICENSING POLICY**

### **1. INTRODUCTION**

The Council considers all applications and determines them on their individual merits. However in the interests of consistency, openness and fairness the Public Protection Committee has over the years adopted a number of general policies and principles to guide it in its consideration of applications. The details of the policies and principles applicable to the control of Sex Establishments are laid out in this document. The policy applies to applications for grant, renewal, variation and transfer of sex establishment licences in respect of premises operating within the City and County of Cardiff.

The Local Government (Miscellaneous Provisions Act 1982 (“the Act”) introduced a licensing scheme to control sex establishments, that is to say, sex shops and sex cinemas. The Act has been amended by the Policing and Crime Act 2009 to include premises which provide lap dancing type entertainments. The scheme is only enforceable if the Act is adopted by a local authority. The Council has adopted the 1982 Act, as amended, which imposes a duty on a local authority to refuse a licence by reference to, amongst other things, the criminal convictions of applicants. It also empowers a local authority to refuse to grant or renew a licence by reference to the number of sex establishments which the local authority considers appropriate for the locality of the premises the subject of the application and the character of the locality.

This statement outlines the Council policy which will guide the licensing authority when considering applications for licences, bearing in mind the spirit and intent of the 1982 Act and case law decided since it was passed. The Council shall not follow this policy inflexibly but shall take all relevant factors into consideration in determining an application. Each case shall be decided on its merits.

### **2. THE LAW.**

Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 introduced a licensing regime to control sex establishments. No sex establishment can operate unless it has obtained a licence from the Council. Any such licence may contain conditions that will restrict how that premises may trade. The 1982 was amended by Section 27 of the Policing and Crime Act which added a Sexual Entertainment Venue as a premises which requires a licence.

#### **Definitions**

In this document the following expressions shall have the meanings:-

“The 1982 Act” - means the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009.

“The Council” – Cardiff Council

“The licensed premises” - means any premises, vehicle, vessel or stall licensed under the 1982 Act.

“Licence holder” - means a person who is the holder of a Sex Establishment licence.

“Permitted hours” - means the hours during which the licensed premises are permitted under Regulations 2 and 3 hereof to be open to the public.

“Sex Establishment licence”- means a licence granted pursuant to Schedule 3 of the 1982 Act.

The following expressions “Sex Establishment”, “Sex Shop”, “Sex Cinema”, “Sex Article” and “Vessel” shall have the meanings respectively assigned to them by Schedule 3 of the 1982 Act. Included below:

“Sex Establishment” means a “Sex Cinema” or a “Sex Shop”

“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.

“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.

“Sex Article” means – 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

(a) anything to which the sub-paragraph below applies.

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.

“Sexual Entertainment Venue” means a premise which provides entertainment to an audience, more frequently than once a month, live performances or displays of nudity intended to be sexually stimulating

### **3. THE APPLICATION PROCESS**

Applications may be made for the grant of a new licence, renewal, variation or transfer of an existing licence. The application form must be completed and submitted with any relevant supporting documentation and returned to the licensing authority with the appropriate fee as set in the Council’s fees and charges.

The authority has agreed standard conditions (Appendix A) of licence which all applicants will be expected to comply with.

A notice of the application will need to be advertised both on or near the premises and in a newspaper circulating within the area of the premises. The notice must clearly identify the premises to which it relates. The notice on or near the premises shall be displayed for 21 days beginning with the date of the application and in a place where it can be conveniently read by the public. The notice in the newspaper shall be published no later than 7 days after the date of the application. The notice will provide details of the applicant and purpose of the application, proposed hours of operation and advise any person wishing to make representations how to do so and within what period.

The licensing authority will consult with South Wales Police, South Wales Fire and Rescue Service, the planning authority, the education authority, local business representatives and local ward councillors. Applicants may wish to discuss the application with local representatives or local residents groups prior to submitting an application.

#### **4. CONSIDERING AN APPLICATION**

The Council will consider every application on its individual merits.

##### Considering Representations.

Representations about an application for a licence must state the terms of the objection and be made to the authority in writing, to be received no later than 28 days after the date of receipt of the application.

Applications for the grant, transfer or variation of a licence, or for renewal where representations are received, will be referred to the Public Protection Committee for determination by members. Applications for renewal will, where no objections are received, be granted under delegated authority by officers.

Where representations are received by the authority will provide details of the number of representations and their general nature to the applicant.

##### Grounds for Refusal

An application for a licence will generally be refused on the following grounds, which are contained within the Local Government (Miscellaneous Provisions) Act 1982:

- a) the applicant is under 18 years of age
- b) the applicant has had a licence revoked in the last year
- c) the applicant has not been resident in the UK for the previous six months
- d) the applicant is a company, which is not incorporated in the UK
- e) the applicant has had an application for the premises refused in the previous twelve months.

A licence may also be refused if the Council considers:

- a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason
- b) the business would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the licence if he made the application himself.
- c) the number of sex establishments in the relevant locality is equal to or exceeds the number, which the Committee considers is appropriate for the locality.

- d) the grant of the licence would be inappropriate, having regard to the: -
- (i) character of the relevant locality; or
  - (ii) use to which any premises in the vicinity are put; or
  - (iii) layout, character, or condition of the premises.

#### Factors for Consideration.

In considering applications for the grant of new licences or variation of conditions, the Council will assess the likelihood of a grant causing adverse impacts, particularly on local residents. The Council will take the following general matters into account: -

- type of activity proposed;
- duration of proposed licence;
- proposed hours of operation.
- layout and condition of the premises
- the use to which premises in the vicinity are put
- the character of the locality in which the premises are situated

In considering all applications for licences or applications for variation of conditions the Council will take into account the potential impacts of the licensed activity on:-

- crime and disorder;
- cumulative impact of licensed premises in the area, including hours of operation.
- the character of the locality in which the premises is situated
- whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.

Licences will only be granted in areas which are suitable for such use depending upon the individual circumstances. The Council is mindful of its power to determine that no sex establishment should be located in a particular locality but will decide a locality as a matter of fact to be determined by the particular circumstances of each case and not by drawing boundaries on a map.

For new applications the Council will apply hours of operation between 09.00 and 23.00 hours on any day other than Sundays, Christmas Day and Good Friday when the premises should not be open. In considering the location of new applications, the Council will take into account: -

- proximity to residential areas;
- proximity to places of worship and schools;
- proximity to areas with the highest levels of recorded crime; and
- the cumulative effect of existing related licensed activities in the vicinity.

Where an application is made to renew or vary a licence the Council shall take into account: -

- levels of recorded crime and disorder in the vicinity;
- evidence of demonstrable adverse impacts from the activity on the safety and amenity of local residents;
- whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.

#### Fitness of Applicant

An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence or a transfer the Council will in most cases take into account:-

- previous knowledge and experience of the applicant;
- any evidence of the operation of any existing or previous licence held by the applicant, including any licence held in any other borough;
- and any report about the applicant and management of the premises received from statutory objectors.

#### Conduct and Management

The Council requires all licensees to ensure that they and their employees comply with all relevant licence conditions and health and safety regulations.

In terms of management of licensed premises, the Council strongly encourages where possible and appropriate that the licence holder: -

- work with statutory agencies such as the Police, and the Council in order to create and maintain a safe environment, both within licensed premises and in the environs around them;
- particularly those whose premises are located in areas with the highest levels of recorded crime, develop crime prevention strategies in consultation with the Police and the Council.
- develop strategies and procedures to increase access for disabled people to the premises;
- train all relevant staff in areas such as health and safety, first aid, and fire precautions.

Licences are generally issued for one year but may be issued for a shorter period if appropriate.

### **5. DETERMINING AN APPLICATION**

Other than for an unopposed renewal an application will be determined by members of the council's Public Protection Committee. The applicant will be provided with a copy of the report to the Committee, containing a summary of the application, representations

and any other relevant information, in advance of the meeting. The applicant and any objectors or supporters who have made representations within the statutory period, will be advised of the date, time and venue of hearing at which the matter is to be considered and invited to attend.

The Public Protection Committee will consider the application at a hearing. The proceedings will be conducted as a hearing of the applicants' case and not as an adversarial contest between the opposing parties. In considering the application the following procedure will generally be adopted:

- 5.1 the applicant will be permitted to hear and note what the objector says;
- 5.2 only those objectors, or their representative, who submitted written objections during the statutory consultation period will be permitted to address the committee;
- 5.3 the objectors, if present may, if they wish, speak to the meeting. The objector must restrict the presentation to the written submission and how it relates to the statutory grounds for refusal.
- 5.4 the applicant will then have the opportunity to address the committee on the application and provide information in support of the application.
- 5.5 the objector may be present to listen to the case put by the applicant but may not speak.
- 5.6 the Committee to ask the objector, the applicant, and the public to leave the room while the members consider their decision.
- 5.7 the objector, the applicant, and the public be invited to return to hear the Committee announce the decision.
- 5.8 The licensing authority will confirm the decision in writing to all parties within 7 days commencing from the day after the hearing.

All licences issued will be subject to the standard regulations and conditions of licence shown in Appendix A.

## **6. ENFORCEMENT AND PREMISES INSPECTION**

Where required the Licensing Authority will work closely with other agencies to address relevant issues. Where enforcement action is taken it will be in accordance with the principles outlined in the authority's Licensing Enforcement Policy. Inspections regimes will be based on a risk assessment of the individual premises.

## APPENDIX A - Regulations and Standard Conditions of Licence.

### **CARDIFF COUNTY COUNCIL REGULATIONS FOR SEX ESTABLISHMENTS**

Cardiff County Council, in exercise of the powers conferred upon them by paragraph 13 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act, 1982 and of all other powers enabling them in that behalf make the following Regulations.

#### **Definitions**

1. (a) In these Regulations the following expressions that is to say "Sex Establishment", "Sex Shop", "Sex Cinema", "Sexual Entertainment Venue", "Sex Article", and "Vessel" shall have the meanings respectively assigned to them by Schedule 3 of the Act.

- (b) In these Regulations the following expressions shall have the meanings hereby respectively assigned to them namely: -

"the Act" - means the Local Government (Miscellaneous Provisions) Act, 1982.

"the Council" - means Cardiff County Council.

"the licensed premises" - means any premises, vehicle, vessel or stall licensed under the Act.

"Licence holder" - means any person who is the holder of a sex establishment licence.

"Sex establishment licence" - means a licence granted pursuant to Schedule 3 of the Act.

"Approval of the Council" - means the approval of the Council in writing under the hand of the Head of Regulatory Services or his nominated representative.

"Consent of the Council" - means the consent of the Council in writing.

"Approved" - means by the Council in writing.

#### **General**

2. In the event of a conflict between these Regulations and any special conditions contained in a licence relating to a Sex Establishment the special conditions shall prevail.
3. The Council reserves the right to amend, delete or add conditions at any time if deemed appropriate.
4. 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 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Whilst utilising the Licence the Licence holder shall take into account any legislation that impinges on the activities proposed.
5. The holder of a Sex Establishment Licence shall observe such regulations and conditions as may be approved by the Council from time to time.

#### **Times of operation**

6. Except with the previous consent of the Council a Sex Establishment shall not be open to the public before 09.00 hours and shall not be kept open after 23.00 hours.

**Standard  
Conditions**

7. Except with the previous consent of the Council a Sex Establishment shall not be open on Sundays, Good Friday and Christmas Day.
8. The Licensed premises shall not be used for any purpose other than the business of a Sex Establishment.
9. Where the Licensee is a body corporate or an unincorporated body any change of Director/Company Secretary or any other person responsible for the management of the body is to be notified 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.
10. The Licensee or some responsible person nominated by him in writing for the purpose of managing the Sex Establishment in his / her absence and of whom details (including photographs) have been supplied to and approved in writing by the Council shall be in charge of and upon the Premises during the whole time they are open to the public.
11. The name of the person responsible for the management of a Sex Establishment shall be prominently displayed within the Sex Establishment.
12. No person previously convicted of:
  - an offence connected to a Sex Establishment either licensed or unlicensed
  - a sexual offence
  - an offence relating to the sale of restricted 18 videosmay be employed at the premises or be involved in supplying entertainment or goods at the premises.
13. The Licensee or the responsible person shall maintain a daily register to be kept on the premises in which he / she shall record the name and address of any person who is to be responsible for managing the Sex Establishment in his / her absence and the names and addresses of those employed in the Sex Establishment. The register is to be completed each day within thirty 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.

**Premises**

14. Copies of the licence and the conditions attached to the licence shall be clearly displayed so that every person entering the premises can see a copy of both the licence and the conditions.
15. The Licensee shall retain control over all portions of the Premises and shall not let, licence or part with possession of any part of the premises.
16. Any charge for entering the premises shall be clearly and legibly displayed outside the premises so that all persons can read it before entering the premises.
17. No display, advertisement, word, letter, model, sign, placard, board,

notice, device, representation, drawing, writing or similar matter shall be displayed outside the premises without the written permission of Cardiff County Council, except for those signs or notices that are required to be displayed by these licence conditions.

18. The entrance to the premises shall be so designed and constructed as to prevent persons outside the premises having a view of the interior.
19. All windows must be dressed or designed so as to prevent persons outside the premises having a view of the interior.
20. No window shall contain any sign, advertising material, goods or display likely to cause an offence to persons passing the window.
21. Lighting in all parts of the premises must be in operation continuously during the whole time the premises are open as a sex establishment.
22. The premises shall be maintained in good repair and condition.
23. All parts of the Premises shall be kept in a clean and hygienic condition to the satisfaction of the Council.
24. Doors and openings which lead to parts of the premises which are not open to the public shall be clearly marked "staff only" or by some other sign that deters the public from using such doors or openings.
25. The external doors to the Sex Establishment shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
26. The Licensee shall make provision in the means of access both to and within the Sex Establishment for the needs of members of the public visiting the establishment who are disabled.
27. All exhibits, displays, demonstrations and like activities must be open and available to all customers at no charge other than any initial entrance fee to the establishment and there shall be no individual cubicles or rooms designed to accommodate individual persons or groups of persons where exclusive demonstrations, displays, exhibits or similar activities may take place, unless authorisation/consent is first granted by the Council.
28. Warning signs as specified in the Indecent Displays (Control) Act 1981 must be clearly exhibited at the entrance to the premises.
29. No change of use of any portion of the Premises from that approved by the Council shall be made until the consent of the Council has been obtained thereto.
30. No change from use as Sex Cinema to a Sex Shop or from a Sex Shop to a Sex Cinema shall be effected without the consent of the Council.
31. The Licensee shall take all reasonable precautions for the safety of the public and employees.

**Safety**

- Conduct & Management**
32. The Licensee shall comply with any fire prevention and safety measures that may be required by South Wales Fire Service and shall maintain and keep available for use all specified fire fighting equipment and extinguishers.
  33. The licensee shall maintain good order on the premises at all times.
  34. No person under 18 years of age shall be admitted on the premises.
  35. No tickets shall be sold and no admission money taken in a place to which members of the public, other than permitted customers of the Sex Establishment, have access.
  36. The licensee shall ensure that the premises are not used by prostitutes (male or female) for soliciting or any immoral purpose.
  37. Neither the licensee nor any other person shall seek to obtain custom for the sex establishment by means of personal solicitation outside or in the vicinity of the establishment.
  38. No leaflet, card, paper, advertising sheet or similar matter promoting the establishment or any goods or service offered by the establishment shall be distributed in the vicinity of the establishment, unless authorisation/consent is first granted in writing by Cardiff County Council.
  39. 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.
  40. The licensee shall make staff available to ensure good order and free passage for customers on access and egress routes and car parks belonging to the licensee.
  41. The licensee shall prevent the sale, display for sale or offer for sale of any article, goods or service on access or egress routes and car parks belonging to the licensee.
  42. No dancing or other entertainment of a like kind shall be provided or permitted unless authorised by the Council.
- Goods available in Sex Establishments**
43. Only merchandise which is legally available in Great Britain from retail outlets, mail order companies or party planners may be sold, hired, loaned or supplied, displayed, advertised or demonstrated at the establishment.
  44. No film or video shall be exhibited, sold, hired, loaned or supplied unless it has been (a) passed by the British Board of Film Censors and bears a certificate to that effect or (b) approved by the Council and complies with the Video Recordings Act 1984 and it is a reproduction authorised by the owner of the copyright.
  45. All sex articles and other things displayed for sale, hire, exchange or

loan shall be clearly marked to show the price being charged.

46. The licensee shall without charge, display and make freely available literature and contact names and telephone numbers of organisations and associations that give advice and counselling on matters relating to sexual problems, family planning and sexually transmitted diseases.
47. 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.

APPENDIX B - Condition Relating to Sexual Entertainment Venues.

**CONDITIONS OF LICENCE RELATING TO A SEXUAL ENTERTAINMENT VENUE PROVIDING ENTERTAINMENTS INVOLVING THE PROVISION OF LAP DANCING, TABLE SIDE DANCING AND ANY OTHER ENTERTAINMENT INVOLVING STRIPTEASE AND/OR NUDITY.**

1. Total nudity (the exposing of genitals) shall only be permitted on stage and at no other place in the premises.
2. No sex act shall take place.
3. The area proposed for striptease (involving complete nudity) shall:-
  - a) be in a position where the performance cannot be seen from the street.
  - b) be in a designated area of the premises with segregation from the audience.
  - c) be in a position where the performers will have direct access to the dressing room without passing through or in close proximity to the audience.
4. The area proposed for lap dancing, table side dancing (involving partial nudity) shall be in a position where the performance cannot be seen from the street.
5. There shall be no physical contact between persons appearing on stage and the audience. The entertainment shall be given only by performers/entertainers and the audience shall not be permitted to participate.
6. Persons appearing on stage should have direct access to the dressing room without passing through or in close proximity to the audience.
7. Lap dancers/table side dancers must immediately dress at the conclusion of each performance.
8. The licensee, performer and any person concerned in the organisation or management of the entertainment shall not encourage, or permit encouragement of the audience to throw money at or otherwise give gratuities to the performers (except as permitted by condition 10 below)
9. Entertainment provided by topless dancers to customers seated at tables may only take part in those parts of the premises approved by the Council. No audience participation shall be permitted.
10. There shall be no physical contact between customers and the dancers except for the placing of money or tokens into the hands of the dancer at the beginning or conclusion of the performance. Whilst the dancers are performing there shall be a minimum distance of one metre between the dancer and the seated customers. Notices to this effect shall clearly be displayed at each table and at the entrance to the premises.
11. Should a customer attempt to touch a dancer, the dancer must withdraw and report the matter to her / his manager/supervisor.
12. There shall be no physical contact between dancers whilst performing.

13. The topless dancers shall at all times wear a G-string or similar piece of clothing that covers the appropriate part of the body.
14. The Licensee will immediately deal with any report of contact, misconduct or provocation by a customer or dancer.
15. No telephone number, address or information leading to any further meeting may be passed from customer to dancer or vice versa.
16. No dancer may perform if they are intoxicated.
17. No member of the public shall be admitted or allowed to remain in the dance area if they appear to be intoxicated.
18. All members of the public shall remain seated in the dance area other than when they arrive, depart, visit the toilet or go to the bar.
19. Members of the public should not be permitted to congregate in the bar area.
20. Signs must be displayed at the entrance to the dance area stating:-  
  
"Any customer attempting to make physical contact with a dancer will be asked to leave"  
  
Signs must be sufficient in size, legible and positioned so as to be read by all customers entering the dance area.
21. No dancer shall perform any sexually explicit or lewd act.
22. Whilst dancing takes place not less than ....(insert agreed number)...of Door Supervisors registered under the Council's Licensed Premises Supervisors Registration and Training Scheme shall be employed in the part of the premises used for dancing unless alternative arrangements are approved by the Council.
23.
  - a) CCTV shall be installed to cover all areas where dancing will take place. All cameras shall continually record whilst the premises are open to the public and the video recordings shall be kept available for a minimum of 28 days with time and date stamping.
  - b) Tape recordings shall be made available to an authorised officer of the Council or a Police Officer together with facilities for viewing.
  - c) The recordings for the preceding two days shall be made available immediately on request. Recordings outside this period shall be made available on 24 hours notice.