

**BATH & NORTH EAST SOMERSET COUNCIL**

**Sexual Entertainment Venues Policy 2012**

**Introduction**

1. The Local Government (Miscellaneous Provisions) Act 1982 introduced a regime for the control of sex establishments. These powers were adopted within Bath & North East Somerset, enabling the Council to control and regulate establishments such as sex shops and sex cinemas.
2. The Policing and Crime Act 2009 amended Schedule 3 to the 1982 Act by introducing a new category of sex establishment: sexual entertainment venues. This allows local authorities to regulate lap dancing clubs and similar venues in the same way as sex shops and sex cinemas. These provisions were adopted by Bath & North East Somerset Council on [date of adoption].
3. Under the new regime, any person wishing to operate a sexual entertainment venue must obtain a licence from the Council.
4. The Act sets out grounds on which the Council must refuse a licence, for example if an individual applicant is under the age of 18 years. It also provides discretionary grounds on which the Council may refuse a licence if it is deemed appropriate to do so.
5. The overarching objectives of this policy are to:
  - (a) Promote the visions and values of Bath & North East Somerset Council
  - (b) Protect the rights, health and safety of the general public, businesses, employees, minority and vulnerable groups
  - (c) Ensure consistent and transparent decision making
6. This policy will promote these objectives by providing guidance to:
  - (a) The Council when determining applications made in connection with sexual entertainment venues
  - (b) Operators making applications
  - (c) Persons making objections in respect of an application
7. The legislation may be viewed here:

<http://www.legislation.gov.uk/ukpga/1982/30>  
Local Government (Miscellaneous Provisions) Act 1982 Chapter 30

<http://www.legislation.gov.uk/ukpga/2009/26/section/27>  
Policing and Crime Act 2009 Part 2 Section 27 - Regulation of lap dancing and other sexual entertainment venues etc.

## **Scope of the Policy**

8. This policy applies to sexual entertainment venues as defined in the Act. Reference should be made to the legislation itself for the full definition and details of exemptions. In summary a sexual entertainment venue is:
9. A premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer, unless an exemption applies.
  - (a) 'Premises' includes traditional premises as well as vehicles, vessels and stalls but not private dwellings to which the public are not admitted
  - (b) 'Relevant entertainment' means a live performance or display of nudity of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of sexually stimulating any member of the audience whether by verbal or other means
  - (c) 'Provided' means provided or permitted to be provided by or on behalf of the organiser
  - (d) 'Live audience' includes an audience of one person
  - (e) 'Financial gain' can be direct or indirect
10. Under Schedule 3, the following premises are not to be considered as sexual entertainment venues:
  - (a) Sex shops and/or sex cinemas
  - (b) Premises that provide entertainment, that lasts no more than 24 hours, on no more than 11 occasions within a 12 month period. There must be at least one month between each provision of entertainment
11. Licensing of sex cinemas and sex shops is outside the scope of this policy, which is directed at the new aspect of the regime under which sexual entertainment venues are regulated.
12. This policy is intended to be strictly applied however the Council will determine each application on its own merits after taking into account all relevant factors.

## **Decision making responsibility**

13. Functions under Schedule 3 are the responsibility of the full Council. Under Section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or sub-committee.
14. The Council has delegated the function of determining sexual entertainment venue applications to the Licensing Committee or one of its sub-committees.

### **Relationship with Licensing Act 2003**

15. Live or recorded music which is integral to the provision of relevant entertainment is specifically excluded from the definition of regulated entertainment under the Licensing Act 2003. Therefore, a sexual entertainment venue will not require a premises licence or club premises certificate for these purposes. A premises licence or club premises certificate will however be required should the venue wish to sell or supply alcohol, provide late night refreshment or regulated entertainment.
16. When attaching conditions to a sexual entertainment venue licence for which a premises licence or club premises certificate is already in force, the Council will seek to avoid:
  - (a) The duplication of existing conditions or legislation
  - (b) The imposition of obligations which contradict existing conditions or legislation

### **Applications**

17. Applications must be made in writing and must contain the particulars specified in Schedule 3 to the 1982 Act (see hyperlink above) and any such additional information the Council may require. Applicants are advised to use the Council's application form to ensure that all required details are provided in the first instance.
18. An application must be accompanied by:
  - (a) A scaled plan showing the layout of the premises, including –
  - (b) The whole building, including non licensed areas
  - (c) Any external or internal walls which comprise the premises, or in which the premises are comprised
  - (d) The parts of the premises to which the public have access
  - (e) The parts of the premises in which relevant entertainment will take place
  - (f) All means of entry and exit
  - (g) If different from the above, the location of the escape routes from the premises
  - (h) Fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) that may impact on the ability of customers to use exits or escape routes without impediment
  - (i) In a case where premises include a stage or raised area, the location and height of each stage or area relative to the floor
  - (j) The application fee as prescribed by the Council

19. Notice of the application must be set out in the format specified by the Council and:
  - (a) published in a local newspaper within seven days after the date of the application, and
  - (b) prominently displayed at or near the premises and in a place where it can conveniently be read by the public for 21 days beginning the day of the application
20. In the case of a premises covering an area of more than 50 metres square, a further notice in the same form must be displayed every 50 metres along any part of the external perimeter that abuts the highway.

### **Waivers**

21. Applications can be made to waive the requirement for a sex establishment licence.
22. The Council does not consider it would be appropriate to permit waivers from the requirements to hold a sexual entertainment venue licence, particularly as the legislation allows relevant entertainment on an infrequent basis as outlined in paragraph 10(b) above.

### **Objections**

23. Any person may make an objection to the grant, renewal or transfer of a licence. Objections must be made in writing no later than 28 days beginning the day after the application was made. Objectors are advised to use the Council's approved form. There is no specific criteria as to the content of an objection however less weight will be given to objections that are considered to be vexatious, malicious or frivolous.
24. The Council will not reveal the name or address of any objector without first obtaining his/her permission to do so.
25. If one or more objections are received against an application, the Council will give notice of the objection(s) to the applicant. The matter will then proceed to a hearing to be determined by the Licensing Committee or Licensing Sub-Committee.

### **Determining an application**

26. All new applications for a licence will be determined at a hearing of the Council's Licensing Committee, or appropriate Licensing Sub-Committee.
27. If no objections are received to the renewal of a licence then officers will be authorised to grant the licence.
28. Where objections have been received against the renewal of a licence, the matter will be determined at a hearing of the Council's Licensing Committee or appropriate Licensing Sub-Committee.

29. The Council will permit objectors to address the Committee or Sub-Committee in respect of the matters raised in their written objection (but no other matter).
30. The Committee will determine the matter and give reasons for their decision.
31. In the event that the Committee refuses an application, the applicant may appeal the decision in the magistrates' court, unless the application was refused on the grounds set out in paragraph 35(c) or (d), in which case the applicant can only challenge the refusal by way of judicial review.
32. Any other interested party can challenge a decision of the Committee by way of judicial review.

### **Conditions**

33. Every Sexual Entertainment Venue Licence granted, renewed or transferred by the Council shall be presumed to have been so granted, renewed or transferred subject to the Council's standard conditions (attached) unless they have been expressly excluded or varied by the Council.

### **Mandatory grounds for refusal**

34. A licence will not be granted to:
  - (a) A person under the age of 18
  - (b) A person who is for the time being disqualified by virtue of revocation in the previous year
  - (c) An individual applicant who has not been resident in the UK for the previous six months
  - (d) A body corporate which is not incorporated in an EEA state
  - (e) A person who has, within a period of 12 months immediately preceding the date of application, been refused the grant or renewal of a licence for the premises in respect of which the application is made unless the refusal was reversed on appeal
35. Where any of these grounds apply, the Council must refuse the application.

### **Discretionary grounds for refusal**

36. A licence may be refused on one or more of the following grounds:
  - (a) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or 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 of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality (nil may be an appropriate number for these purposes)
  - (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
    - (iii) The layout, character or condition of the premises in respect of which the application is made
37. Where the Council finds that any of these grounds apply, it may refuse the application.

**Factors for consideration – discretionary grounds (a) and (b)**

38. In considering the suitability of those persons referred to in (a) and (b), the Council will take into account all relevant factors including:
- (a) Relevant experience
  - (b) Relevant criminal convictions
  - (c) Relevant observations or findings by public authorities, including licensing authorities, in connection with the conduct of the person or their ability to manage and control premises
  - (d) Relevant findings by courts and tribunals in connection with the treatment of protected groups (within the meaning of the Equalities Act 2010)
  - (e) Information germane to the person's ability to, among other things:
    - (i) Ensure the safety and wellbeing of performers
    - (ii) Ensure the proper protection of the public
    - (iii) Ensure the suitability of employees, performers and others using the venue
    - (iv) Prevent performance by or for those who may thereby be harmed, including minors
    - (v) Understand and adhere to conditions imposed on any licence granted and ensure they are observed by others on the premises
    - (vi) Engage constructively with the Council and other relevant regulators

### **Factors for consideration – discretionary ground (c)**

39. The Council has the power to determine an appropriate maximum number of sex establishments, including sexual entertainment venues, in the relevant locality at the time the application is determined.
40. The Council will not seek to predetermine the localities that comprise Bath & North East Somerset or predetermine the appropriate number for each such locality. Instead, the issue will be considered on a case by case basis and the relevant locality will be determined as a matter of fact in each particular application.
41. Having established the relevant locality, in considering the issue in ground (c) the Council will take into account all relevant factors including:
  - (a) The character of the locality, e.g. residential, leisure
  - (b) Other uses in the locality, e.g. places of worship, educational establishments
  - (c) Impact on regeneration
  - (d) Impact on tourism
  - (e) Impact on retail attraction
  - (f) Risk of public nuisance
  - (g) Whether the locality is subject of stress caused by a cumulative impact of premises authorised to provide licensable activities under the Licensing Act 2003
  - (h) Existing levels of recorded crime
  - (i) Impact on crime and disorder
  - (j) Levels of anti-social behaviour
  - (k) Existence of social problems in the locality and impact on any initiatives to tackle them
42. A dedicated appendix will be maintained with this policy to record all decisions made to control the number of sex establishments under this provision.

### **Factors for consideration – discretionary ground (d)**

43. Having regard to the character of the locality (see ground (c) above) the Council will consider whether the particular application is appropriate. The Council will take into account all relevant factors including:
  - (a) The size and appearance of the premises
  - (b) Their proximity to places where the public congregate for purposes other than use of the premises, such as bus stops and taxi ranks

- (c) The nature and style of the relevant entertainment that is proposed
- (d) The nature of the clientele it is likely to attract and their number
- (e) The manner in which the relevant entertainment is likely to be managed
- (f) The risk of public nuisance
- (g) The proposed hours of operation
- (h) The proposed hours for provision of relevant entertainment

**Factors specific to discretionary ground (d)(ii)**

44. Whether premises in the vicinity are put to any of the following uses:

- (a) Residential, in particular homes occupied by families
- (b) Leisure
- (c) Educational establishments
- (d) Places of worship
- (e) Family friendly facilities
- (f) Other sex-oriented/adult premises
- (g) Youth clubs
- (h) Women's refuges
- (i) Community centres
- (j) Parks and other open spaces
- (k) Public transport

**Factors specific to discretionary ground (d)(iii)**

45. In considering these factors the Council will take into account information concerning:

- (a) Whether the premises are fit for the purpose proposed
- (b) Their planning status
- (c) The general appearance to others using the locality
- (d) Whether premises are self contained
- (e) Means of access and egress, whether shared with other building users (if any)

- (f) Accessibility
- (g) 'Hidden' areas and other places where effective monitoring may be hampered
- (h) Standard of decoration and 'fit-out'
- (i) Visibility/audibility from the street
- (j) Facilities for smokers
- (k) Facilities for performers (e.g. changing and bathroom facilities, smoking areas etc) and whether they are adequately separated from those provided for customers

### **Transitional provisions**

46. There are three appointed days under the transitional provisions. These are called the first appointed day, the second appointed day and the third appointed day.
- (a) The first appointed day in Bath & North East Somerset is [date]
  - (b) The second appointed day is [date – six months after first appointed day]
  - (c) The third appointed day is [date – six months after second appointed day]
47. There are some 'grandfather rights' that apply to the following:
- (a) Those with a licence for relevant entertainment under the Licensing Act 2003 who are using the premises as a sexual entertainment venue under that licence
  - (b) Those with a licence for relevant entertainment under the Licensing Act 2003 who are undertaking preparatory work to use the premises as a sexual entertainment venue under that licence
48. Both category of operator may continue to use their premises as a sexual entertainment venue until at least the third appointed day, or, if they have made an application before third appointed day, until the determination of that application or the conclusion of any appeal against a refusal of it. In other words, these two groups can continue to trade for at least one year following the first appointed day even if no licence or waiver has been granted to them.
49. There are three rounds of applications in the transitional order.
- (a) Round 1 – [first appointed day] until [second appointed day]
    - (i) All Round 1 applications must be considered before any of them can be determined. In practice, therefore, the first time the Council is permitted to determine applications will be [six months plus one day from the first appointed day]

- (ii) Applications will be considered on their individual merit and not on a first come first served basis
  - (iii) When they are determined, any licences granted to applicants with “grandfather rights” will not take effect until the third appointed day. Any others that are granted will take effect straightaway
- (b) Round 2 – [second appointed day] until [third appointed day]
- (i) It is important to note that none of these applications may be determined until all of the Round 1 applications have been determined. As with the Round 1 applications, licences granted to applicants with “grandfather rights” whose applications are granted before the third appointed day will not take effect until the third appointed day; any others that are granted will take effect straightaway
- (c) Round 3 – [third appointed day] onwards
- (i) Any applications made after the third appointed day may not be determined until such time as all of the Round 1 applications (if any) have been dealt with.

## **Sexual Entertainment Venues**

### **Standard Conditions**

In these conditions:

- (a) "Customer" means any person visiting the premises other than employees or performers, whether or not they have paid for or intend to pay for services provided.
- (b) "Employee" means any person working at the venue whether under a contract of employment or some other contract.
- (c) "Nudity" means when breasts and/or genitals and/or anus are fully or partially uncovered.
- (d) "Other contact of a sexual nature" means contact which must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating the customer.
- (e) "Relevant offence" means:
  - (i) An offence under Local Government (Miscellaneous Provisions) Act 1982 Schedule 3
  - (ii) A sexual offence, being an offence listed in Part 2 of Schedule 15 to the Criminal Justice Act 2003, other than the offence mentioned in paragraph 95 (an offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts))

### General Conditions

1. Only relevant entertainment is authorised under this licence.
2. No person under the age of 18 shall be admitted to the premises and a notice to this effect shall be displayed on the outside of the premises.
3. The premises shall operate a Challenge 21 Policy and persons appearing to be under the age of 21 shall be required to provide proof of age.
4. A copy of the licence and attached conditions shall be prominently displayed in the premises.
5. The availability of relevant entertainment shall not be marketed or advertised in any of the following ways:
  - (a) By means of personal solicitation in the locality of the licensed premises
  - (b) By means of leafleting in the locality

### Management of the Premises

6. The Council shall be notified within seven days of any changes in respect of:
  - (a) The name of the person who will be primarily responsible for the management of the premises when relevant entertainment is taking place (the manager)
  - (b) The name of any persons who will be responsible for the day to day management of the premises when relevant entertainment is taking place in the absence of the manager (deputy manager(s))
7. At least one of the individuals specified on the licence (i.e. a licensee, manager or deputy manager) shall be present on the premises at all times whilst the relevant entertainment is taking place.
8. No person shall be employed or shall perform at the premises who has unspent convictions for any relevant offence.
9. The Council shall be provided with a code of conduct for performers and a code of conduct for members of the audience.
10. The Performers' Code of Conduct shall be brought to the attention of all performers and reasonable measures shall be taken to ensure that it is complied with.
11. Performers shall be required to sign a register confirming that they have read and understand the Performers' Code of Conduct. The register shall be retained on the premises and made available for inspection by any police officer or authorised officer of the Council.
12. The Customers' Code of Conduct shall be brought to the attention of all members of the audience and reasonable measures shall be taken to ensure that it is complied with.
13. The licence holder must maintain an log of any person(s) refused entry to the premises and any person(s) ejected from the premises together with the reasons for the refusal/ejection. This log must be kept on the premises at all times and made available for inspection by any police officer or authorised officer of the Council.

### The premises

14. Relevant entertainment may only take place on those parts of the premises as are identified on the plan annexed to the licence.
15. Relevant entertainment shall not occur in private rooms, cubicles or other enclosed areas. For these purposes a room, cubicle or other area is private unless it is completely open on one side so that activities within may be supervised from the exterior.
16. There shall be no display outside of the licensed premises of images which indicate or suggest that relevant entertainment is provided upon the premises, with the exception of any registered trade mark, trading name or trading symbol that has been notified to and agreed by the Council.

17. No relevant entertainment provided shall be visible from the street or from any other external area to which the public have access.
18. The premises shall be fitted with an inner entrance door or screen so that no part of the interior of the premises or any of the contents of the premises shall be visible when persons are entering or leaving the premises.
19. The licence holder shall ensure that no staff or other persons engaged on their behalf remain in any area of the premises which can be viewed from outside the premises, or from any other area outside the premises, for the purpose of encouraging potential customers into the premises.
20. Colour CCTV will be installed and maintained in good working order on the premises. The positioning of such cameras will be agreed with the licensing authority and the police.
21. CCTV recorded material should be kept secure for a period of 31 days and disclosed to any police officer or authorised officer of the Council upon request.
22. Except in accordance with the requirements for CCTV as described in conditions 20 and 21, no photographs, films or video recordings shall be taken of the performances. Nor shall electronic transmissions of a performance be shown outside of the premises (except for the purpose of remote management of the premises and in those circumstances, the licensee shall ensure that only those involved in management shall view any photograph, film or recording).
23. Notices shall be displayed informing customers of the presence of CCTV.

#### The provision of relevant entertainment

24. During any performance of relevant entertainment there must be no physical contact between the performer and any member of the viewing public, except for the placing of money/tokens into an item of clothing worn by a performer or into the performer's hand before or at the end of the performance. A brief handshake before or at the end of a performance is permitted.
25. There shall be no penetration of a performer's genitals or anus by any means.
26. Performers shall not engage in masturbation and/or oral sex.
27. At no time except during the performance may there be a display of nudity.
28. No performer or employee may at any time (and whether or not performing):
  - (a) Sit or lie on the lap or any other part of any customer
  - (b) Kiss, stroke, fondle, caress or embrace any customer
  - (c) Engage in any other contact of a sexual nature with any customer

### Protection of those engaged in the provision of relevant entertainment

29. Literature and contact details of organisations that provide advice and counselling on matters relating to:
  - (a) Sexual problems
  - (b) Family planning
  - (c) Sexually transmitted diseases
  - (d) Rape and sexual assaultshall be made available to performers free of charge.
30. No telephone number, residential address, email address or other information that may facilitate further contact between performers and customers is passed from customer to performer, or vice versa.
31. No relevant entertainment shall be provided by any performer unless sufficient checks have been made of documents evidencing the performer's age, identity and right to work in the United Kingdom.
32. Copies of all documents referred to in condition 31 shall be retained for not less than 12 months after the last provision of relevant entertainment by the said performer and shall be produced to any police officer or authorised officer of the Council.
33. A 'signing-in' register shall be kept at the premises that records the date, start time and finish time of all person(s) involved in the relevant entertainment at the premises. This shall be retained for a period of 12 months and made available for immediate inspection by any police officer or authorised officer of the Council.
34. An appropriate room shall be available as a change and rest area for performers. Access to this room shall be restricted to performers and employees only whilst the performers are on the premises.
35. Performers shall not be permitted to share bathroom facilities and/or any smoking area with members of the audience and suitable separate provision must be made.