

# Licensing Policy for Sex Establishments (Sexual Entertainment Venues, Sex Shops and Sex Cinemas)

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## 1. Introduction

1.1 This policy sets out the councils' approach to the licensing of venues which Schedule 3 of the [Local Government \(Miscellaneous Provisions\) Act 1982](#) defines as 'sex establishments'. This policy will assist in informing applicants and any persons involved in the licensing process for a sex establishment licence of the parameters within which the councils will make decisions and what the councils will have regard to in relation to any application.

1.2 There are three types of sex establishments stated in the Act. These are:

- Sexual entertainment venues
- Sex cinemas
- Sex shops

1.3 In relation to sexual entertainment venues, [section 27 of the Policing and Crime Act 2009](#) amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to introduce this category of sex establishment and to allow local authorities to control the number and location of these venues.

1.4 Vale of White Horse District Council adopted the new provisions contained within the Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 8 December 2010 and agreed that they would come into force on 1 April 2011. This allows for sexual entertainment venues to be regulated and licensed by the council.

1.5 South Oxfordshire District Council adopted the new provisions contained within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 9 December 2010 and agreed that they would come into force on 1 April 2011. This allows for sexual entertainment venues to be regulated and licensed by the council.

1.6 In the development and application of this policy, the councils shall have regard to its obligations under the following Acts and strategies. This list is not exhaustive:

- The [Crime and Disorder Act 1998](#) and the requirement of the councils to do everything reasonably possible to prevent crime and disorder (including anti-social behaviour) in their areas
- The [Equality Act 2010](#) including the Public Sector Equality Duty to have due regard to eliminate discrimination, advance equality and foster good relations between persons with protected characteristics
- The [Human Rights Act 1998](#)
- The [Provision of Services Regulations 2009](#)
- The councils' Accessibility, Equality and Diversity strategies
- Any local strategies relevant to the planning, development and regeneration of both council districts
- Any local strategies aimed at reducing crime, providing safer streets and providing safe access to the night time economy, and
- The Home Office guidance titled 'Sexual Entertainment Venues' dated March 2010<sup>1</sup>.

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<sup>1</sup> Available on request from the Licensing Team

## **Interaction with Planning**

1.7 All applicants should ensure the premises they propose to use as a sex establishment has the correct planning permission in place before applying for a licence. Failure to do so would likely see any application refused or hours and activities restricted in line with that planning consent.

## **Interaction with the Licensing Act 2003**

1.8 Sexual entertainment venues are generally to be found in premises that are licensed to sell alcohol and provide entertainment under a licence pursuant to the Licensing Act 2003. The Licensing Act 2003 contains four licensing objectives of the prevention of crime and disorder, prevention of public nuisance, protection of children from harm and public safety. All four of these objectives would be relevant to the operation of a sexual entertainment venue and applicants will need to address them and outline how they will be promoted within any application.

## **Appropriate number of sex establishments in the locality**

1.9 The Act and relevant case law gives the Licensing Authority wide powers and control over what is suitable in a relevant locality and to limit the number of sex establishments in a particular locality if it deems it appropriate to do so. The Act permits the number to be nil. The term 'locality' is not defined within the Act. The Act does state that the relevant locality is where the proposed premises are located. The Licensing Authority will take a pragmatic and sensible approach to defining the relevant locality. It may encompass a ward, numerous wards or indeed a small market town, depending on what is appropriate for each application and who may be impacted by it.

1.10 Both council areas are heavily rural and contain historic market towns which attract tourism and a mix of leisure and residential buildings in a close proximity. The councils also place a priority on public safety and that no person is deterred from visiting towns and rural areas within both districts due to anti-social behaviour, concerns over safety or the inappropriate location of licensed premises. Both councils have determined that the number of sex establishments appropriate for each locality, taking into account the character of each locality and the use of the premises currently in that locality to be nil. It is likely therefore that any applications received shall be refused unless there are any exceptional reasons for it to be granted.

## **General Considerations**

1.11 Any application will be considered on its own merits in line with the approach set out in this policy. The councils are committed to ensuring that, where appropriate, venues are correctly regulated. The licensing of such venues and working with them to promote high standards of operation is preferable to them operating 'underground' or unregulated. It is recognised that the activities that take place in sex establishments are legal, with an increasing number of venues catering for marginalised communities of self-regulating adults which can assist in promoting diversity and social inclusion by their increased visibility and regulation.

1.12 The councils are also cognisant of the concerns around the operation of sex establishments and the effect they may have on crime, anti-social behaviour and the

character of the locality. The councils also recognise that poorly run venues can have a negative effect on the locality, prevent or dissuade persons from visiting the historic market towns and villages in both districts and can have a negative impact on communities and the councils' ability to prevent crime, ensure a safe environment for all and ensure equality. It is these competing concerns that the councils will consider when determining any application and applicants will be expected to produce relevant risk assessments and policies to address these issues.

1.13 This document replaces the previous version of this policy and consolidates the councils' approach to all sex establishments in one document.

1.14 Any references to 'Licensing Authority' refer to the relevant council making a decision in respect of an application.

## **2. Equality Act 2010 and the Public Sector Equality Duty**

2.1 Under Section 149 of the Equality Act 2010, the council, as a public body, must have regard to its public sector equality duty. In summary, a public authority must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act,
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

2.2 The Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, biological sex and sexual orientation.

2.3 It is unlawful for any venue to discriminate against anyone based on race, sex, sexual orientation, age or any of the protected characteristics under the Equality Act 2010.

2.4 Any applicant for a sex establishment licence – particularly a sexual entertainment licence – will be required to familiarise themselves with their responsibilities under the Equality Act 2010 and produce policies to the Licensing Authority as part of the application process detailing their commitment to equality and inclusion. Some examples of such policies are below. This list is not exhaustive as the councils recognise that there is no 'one size fits all' approach in making a venue inclusive:

- Inclusive and transparent policies covering admittance to the venue which do not discriminate against persons with protected characteristics,
- Evidence of a robust complaints procedure that allows customers to make complaints if they feel they have been discriminated against, which should detail how such a complaint will be investigated in an open and transparent way,
- Evidence that policies have been put in place to make the premises welcoming for all,
- Details of the layout of the venue and how it promotes accessibility for all, and

- Written documentation of comprehensive training on equality and inclusion for all staff that is regularly refreshed.

2.5 The councils are committed to ensuring equality and inclusion across their districts. The councils, when exercising their functions under this legislation, will determine applications by having regard to the Public Sector Equality Duty. This includes having regard to this policy, giving sufficient weight on an equalities basis to any representations that state, for example, that sex establishments contributed to the objectification, victimisation and harassment of women, any relevant council strategies, as well as policies and procedures produced by an applicant which details their commitment to equality and inclusion. Any determination of an application will include within its written decision how equality and inclusion objectives have been weighed in the balance of any decision that is taken.

2.6 The above approach will also apply to any premises that applies for a waiver from obtaining a sex establishment licence. Whilst the councils believe that venues should be licensed to ensure high standards of operation and public safety, any applicant for a waiver will have to include as part of their request any relevant equality and inclusivity reasons why they believe their venue should not require a licence. Any determination on the issue of a waiver will include how the objective of equality and inclusion has been weighed, as well as the compatibility of the potential issuing of a waiver with the contents of the rest of this policy document.

2.7 The consideration of equality and inclusivity considerations are not the only matters that the councils must consider. Applicants for a sexual entertainment venue, sex cinema or sex shop should consult the relevant section of this policy so as to understand the approach of the councils in regards to each sex establishment.

2.8 As the only statutory consultee, the police will be consulted as to whether they have any general concerns about the impact of a proposed sex establishment licence on a local community or group. Information that may be sought could be in relation to any crime figures relating to certain groups or any local or national strategies in force to protect such groups.

2.9 You can view the [South Oxfordshire policy in respect of equality and inclusion](#) or the [Vale of White Horse District Council policy in respect of equality and inclusion](#) on the councils' websites.

### 3. Sexual entertainment venues

#### What is a sexual entertainment venue?

3.1 The Policing and Crime Act of 2009 amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to introduce a new category of sex establishment called a sexual entertainment venue'. Paragraph 2A of Schedule 3 of the 1982 Act defines a sexual entertainment venue as follows:

*“any premises at which **relevant entertainment** is provided before a live audience for the financial gain of the **organiser** or the entertainer”.*

3.2 The concept of 'relevant entertainment' has been defined as follows:

*“any live performance or 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 by verbal or other means).”*

The Home Office Guidance makes clear that an audience can consist of just one person, for example, where entertainment takes place in private booths.

3.3 Schedule 3 goes on to define a ‘display of nudity’. In the case of a woman, exposure of her nipples, pubic area, genitals or anus and in the case of a man, exposure of his pubic area, genitals or anus.

### **Relevant entertainment**

3.4 The relevant entertainment must be provided for the financial gain of the ‘organiser’ or ‘entertainer’. 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. In most circumstances, this will refer to the manager of the premises, but could also refer someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.

3.5 Where activities that would otherwise be considered to involve the provision of relevant entertainment take place, but are not provided for the 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 a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser may be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly. For example, if the premises has installed facilities such as poles and ropes.

3.6 The Home Office guidance titled ‘Sexual Entertainment Venues: Guidance for England and Wales’ dated March 2010, provided a list of what would commonly be regarded as ‘relevant entertainment’ that would likely require a sexual entertainment licence:

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

However, the guidance goes on to state:

*“The above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should normally only be treated as indicative. Ultimately, decisions to licence premises as sexual entertainment venues shall depend on the content of the entertainment provided and not the name it is given”.*

3.7 The councils are of the view that the definition of 'relevant entertainment' is sufficiently wide to potentially encompass more than the list contained in paragraph 3.6 of this policy. The below are examples of venues providing 'relevant entertainment' which may be considered as licensable:

- a) Swingers' clubs – venues that typically provide an environment where consenting adults explore their sexuality with like-minded consenting adults. These venues typically sell alcohol, provide sauna and steam rooms and play areas that encourage various degrees of nudity which may be visible to other patrons.
- b) Fetish venues – venues that allow patrons to dress up in fetish/BDSM clothing and which have 'dark rooms', 'dungeons' and other areas for sex on sex activity.
- c) Saunas – venues that provide steam rooms, saunas, hot tubs as well as rooms for consenting adults to meet each other and carry out sex on sex activity. Some saunas may be licensed to sell alcohol.

3.8 The councils take the view that it may be within the public interest for the establishments listed in paragraph 3.7 to be licensed for safeguarding and health and safety reasons. However, each case will be determined on its own merits taking into account the nature of the premises and the activities proposed to take place within it.

## **Waivers**

3.9 The Act contains provisions allowing the Licensing Authority to waive the need for a licence if it considers it appropriate to do so. The test that the Licensing Authority will apply to the determination of a waiver is, whether based on the information provided, the requirement for a licence is unreasonable or inappropriate. Any request for a waiver shall be judged on a case by case basis.

3.10 Some examples where a waiver may be considered appropriate are for nude scenes in a burlesque show, a one-off festival showing of erotic films at a mainstream cinema or other such events.

## **Request for a waiver**

3.11 Any person requesting a waiver shall submit the same information to the Licensing Authority as an applicant for a sexual entertainment venue licence, as per section 5 of this policy. Whilst waivers are unlikely to arise given the exemptions given to premises that are infrequently used for sexual entertainment, any request for a waiver will be judged on a case by case basis. In addition, any person requesting a waiver shall provide the following:

- A risk assessment for the proposed activities both within the premises and any impacts on the locality
- Details of how the event/premises will be controlled and supervised (e.g. use of door supervisors)
- A management and dispersal policy
- A health and safety policy in relation to any performers taking part in the event
- A list of conditions that will be operational throughout the duration of the event and throughout the duration of any waiver that may be issued
- Any relevant information about equality and inclusion as detailed in paragraph 2.4 of this policy.

The above list is not exhaustive and the Licensing Authority may ask for further information if necessary before determining whether a waiver should be issued.

3.12 The Licensing Authority may consult with other statutory bodies such as the police before making a determination on whether a waiver should be granted. It is noted that the Act contains no consultation period or determination period for the granting of a waiver. The Licensing Authority will endeavour to make a determination on a request for a waiver within 28 days. Such determinations will be made by the Director in consultation with the Chair of the relevant Licensing Committee.

3.13 If the Licensing Authority consider a waiver to be appropriate and reasonable, then a 'waiver notice' will be issued subject to any operational conditions that are agreed. The waiver notice may be issued for a specific period or an open ended period. If the latter, the notice can be brought to an end with 28 days' notice.

3.14 There is no appeal against the refusal of a waiver or any decision by the Licensing Authority to bring a waiver notice to an end. Any person who makes a request for a waiver, which is then refused, shall be given reasons for that refusal and will then be expected to apply for the appropriate sex establishment licence.

3.15 A waiver notice does not exempt a person from the requirement to obtain any other relevant permissions such as the correct planning permission and any licences under the Licensing Act 2003 if they wish to provide other activities such as the sale of alcohol.

### **Premises 'infrequently used' for sexual entertainment**

3.16 Premises providing sexual entertainment on not more than eleven occasions in a twelve month period, greater than one month apart and lasting for not more than 24 hours are exempt from the need to be licensed as sex establishments under the Local Government (Miscellaneous Provisions) Act 1982. These premises shall continue to be regulated under the Licensing Act 2003 where any entertainment provided falls within the definition of regulated entertainment.

3.17 Any premises that does not qualify as a sexual entertainment venue by virtue of the above set out in paragraph 3.16 will still be expected to conduct a risk assessment of any event containing sexual entertainment. This shall include, but is not limited to, details of the event, how the event will be managed, details of the event, a health and safety assessment for the public and any performers and a dispersal policy. Licence holders will also be expected to comply with any conditions and timings stated on any licence issued pursuant to the Licensing Act 2003.

## **4. Principles to be applied when considering applications for a sexual entertainment venue licence**

4.1 At the time of adopting the provisions of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, there were no sexual entertainment venues that were licensed by either council. That remains the case during the updating of this policy.

4.2 The Act and relevant case law gives the Licensing Authority wide powers and control over what is suitable in a relevant locality. Both council areas are heavily rural and contain historic market towns which attract tourism and a mix of leisure and residential buildings in a close proximity. The councils also place a priority on public safety and that no person is deterred from visiting towns and rural areas within both districts due to anti-social behaviour, concerns over safety or the inappropriate location of licensed premises. Both councils have determined that the number of sexual entertainment venues appropriate for each locality, taking into account the character of each locality and the use of the premises currently in that locality to be nil. It is likely therefore that any applications received shall be refused unless there are any exceptional reasons for it to be granted.

4.3 There are specific mandatory grounds for refusing an application laid out in the Act:

- a) that the applicant is aged under 18
- b) that the applicant is for the time being disqualified from holding a sex establishment licence
- c) that the applicant is not a body corporate, and is not resident or has not been resident in a European Economic Area state for six months immediately preceding the date of the application
- d) that the applicant is a body corporate which is not incorporated in a European Economic Area state, or
- e) that the applicant has in the period preceding the 12 months of 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.

In each of the above circumstances, the councils are required to refuse an application.

4.4 The Act also specifies discretionary grounds on which an application may be refused. These are:

- a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason,
- b) if the licence were to be granted, the business to which it relates would be managed by or carried on for the benefit of a person other than the applicant, who would be refused the grant of such a licence if he made the application himself,
- c) the number of sex establishments, or sex establishments of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality, or
- d) the grant would be inappropriate, having regard:
  - i) to the character of the relevant locality
  - ii) to the use to which any premises in the vicinity are put
  - iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

In each of the above circumstances, the councils may refuse an application.

### **Unsuitability**

4.5 This ground of refusal relates to an applicant being unsuitable to hold a licence. One of the reasons stated within the Act as to why an applicant may be unsuitable is that they

have been convicted of an offence. Whilst being convicted of an offence will not be treated by itself as a reason to refuse an application, the Licensing Authority will take into account the seriousness of the conviction and whether it would impact that person's role in running a safe, compliant premises.

4.6 Other matters which will be considered when judging an applicant's suitability are:

- Any complaints or criminal matters which have not resulted in conviction
- Any complaints or misconduct from running other licensed premises which may or may not have led to enforcement action from any regulatory body
- Any intelligence from the police or other partners which may impact on the running of a safe and compliant venue or safety of the public or staff working at the premises
- The experience of the applicant in running such a premises including, but not limited to, knowledge of the law, knowledge of the authority's requirements and licence conditions, any relevant track record in other licensed premises including those outside of sexual entertainment licensing, understanding and drafting of suitable policies to protect the welfare of the staff and customers as well as any other policies required to run a compliant venue, imposition of staff training, checking relevant right to work documents and implementing a dancers code of conduct, etc.
- Evidence of a transparent charging system so users of the premises are clear as to the charges applicable for services and products inside the premises.

4.7 Any applicant for the grant, renewal or transfer of a sex establishment licence shall be required to obtain a Basic Disclosure through the Disclosure and Barring Service. If the applicant is more than one person, all persons shall be required to obtain a Basic Disclosure. The disclosure must be dated within 30 days of it being submitted to the Licensing Authority. Applicants may also be required to attend an interview with the Licensing Authority and/or police to ascertain their suitability to hold a licence.

### **Unsuitable manager or beneficiary**

4.8 The Licensing Authority would need to consider that if a licence were to be considered to be granted, that the business would not be managed or carried out on behalf of a person that would be unsuitable. The management structure of the business shall be disclosed to the Licensing Authority and other partners if requested. If it is found that an applicant is applying on behalf of a person who would themselves not be granted a licence due to unsuitability criteria, then the application may be refused.

### **Character of locality and use of premises within that vicinity**

4.9 The councils have discretion to refuse applications where the grant would be inappropriate having regard to the character of the relevant locality and the use to which any premises in the vicinity are put. In general, the councils will treat the ward in which the premises is proposed to be situated as the relevant locality, although a different view may be taken following representations in individual cases, e.g. where the premises is close to a ward boundary, it may also include neighbouring wards. It may also be appropriate, given the relatively compact and mixed use nature of the rural market towns within both districts to treat the locality as the whole town or multiple wards. As for 'vicinity', this will be determined

in the circumstances of each case and will take into account the use of the premises locally, local circumstances and whether a grant of a sex establishment licence would be inappropriate in those circumstances.

4.10 In exercising their discretion on these grounds, the councils will take into account the following:

- schools or other facilities frequented by children such as playgrounds and playgroups,
- cultural facilities and attractions such as museums, theatres and cinemas,
- facilities frequented primarily by women such as well woman clinics,
- places of worship,
- public leisure facilities such as leisure centres, parks and open spaces,
- community buildings such as community centres, libraries and drop in centres,
- places used by vulnerable persons such as hostels and other adult social care facilities,
- residential premises and any roads, pathways or through-roads,
- hospitals and other medical facilities,
- other sex establishments, and
- any reasonable future development taking place in the locality which may alter the current dynamics of a vicinity or locality.

4.11 If an application is considered and refused on locality or vicinity grounds as laid out in paragraph 12 (3) of the Act, the Licensing Authority will use the test of 'appropriateness' as stated in the Act as relates to the needs and vision of that specific vicinity or locality. It is not incumbent on the Licensing Authority to demonstrate or prove any physical, psychological or emotional damage to individuals or damage to the amenity.

### **Layout, character or condition of the premises**

4.12 The Licensing Authority will take into account the suitability of a layout of a premises as well as its character and condition. This can include whether the premises has clear sightlines, the use of private booths and any difficulties monitoring them, as well as the image projected by the premises and whether that changes the nature of the locality and the type of clientele then likely to be drawn to the area.

## **5. Sex shops**

5.1 Licences for sex shops are required where 18R films are sold or where there is a 'significant degree' of 'sex articles' for sale.

5.2 The phrase 'sex articles' is defined in the Local Government (Miscellaneous Provisions) Act 1982 as:

- a) anything made for use in connection with, or for the purposes of stimulating or encouraging –
  - i) sexual activity, or
  - ii) acts of force or restraint which are associated with sexual activity, or

b) 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, or

c) 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.

5.3 The phrase ‘significant degree’ has not been defined in the Act. When considering whether or not a business is selling a ‘significant degree’ of sex articles and requires a licence, the Licensing Authority will consider:

- a) the ratio of sex articles to other aspects of the business
- b) the absolute quantity of the sales
- c) the character of the remainder of the business
- d) the nature of the displays within the business
- e) turnover generated by sales of sex articles
- f) the format of any literature, publicity or advertising materials
- g) any other factors which may be relevant

5.4 The Licensing Authority can refuse to grant a licence for any sex establishment including a sex shop as per the grounds set out in paragraph 12 of the Local Government (Miscellaneous Provisions) Act 1982. These have already been set out within section 4 of this policy. They are:

- The applicant is unsuitable to hold a licence due to their age, domiciliary status or previous criminal convictions,
- The number of the sex establishments in the relevant locality at the time of the application are equal to or exceeds the number which the council considers appropriate,
- That granting a licence would be inappropriate having regard to the character of the locality, the use to which any of the premises in the vicinity are put or the layout, character or condition of the premises.

5.5 The Act and relevant case law gives the Licensing Authority wide powers and control over what is suitable in a relevant locality. Both council areas are heavily rural and contain historic market towns which attract tourism and a mix of leisure and residential buildings in a close proximity. The councils also place a priority on public safety and that no person is deterred from visiting towns and rural areas within both districts due to anti-social behaviour, concerns over safety or the inappropriate location of licensed premises. Both councils have determined that the number of sex shops appropriate for each locality, taking into account the character of each locality and the use of the premises currently in that locality to be nil. It is likely therefore that any applications received shall be refused unless there are any exceptional reasons for it to be granted.

5.6 An application for a sex shop shall be made and determined in the same way as an application for a Sexual Entertainment Venue or sex cinema as detailed in this policy

document and relevant laws. This means that a licence holder shall supply all documentation relating to the use of the premises. Any policies, staff training documents and risk assessment of the potential impact on the locality and immediate vicinity shall also be provided.

5.7 Any applicant for a sex shop licence shall provide a Basic Disclosure dated within 30 days of the application. A Basic Disclosure shall be provided for all persons involved in the management of the business including directors of any company.

5.8 Any application for a sex shop licence shall be advertised as per paragraphs 7.7 to 7.11 of this policy.

5.9 Any application shall be determined in accordance with the Act and this policy and take into account any objections received and any other relevant information. As noted at paragraphs 9.2 and 9.3, the Licensing Authority has a broad discretion on whether to grant a licence or not and can take into account all relevant considerations as well as making a determination without objections being received.

5.10 The Licensing Authority shall make determinations in a fair and transparent way and give reasons for any decision within 28 days of any hearing. An applicant has the right of appeal as per what is set out in the Act and section 10 of this policy.

## **6. Sex cinemas**

6.1 A 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.

6.2 The sale of sex articles is not permitted at a sex cinema. The term 'sex articles' is defined at paragraph 5.2 of this policy.

6.3 The term 'significant degree' is not defined in the Act. The Licensing Authority will take into account and consider the matters stated at paragraph 5.3 of this policy.

6.4 The Licensing Authority can refuse to grant a licence for any sex establishment including a sex cinema as per the grounds set out in paragraph 12 of the Local Government (Miscellaneous Provisions) Act 1982. These have already been set out within section 4 of this policy. They are:

- The applicant is unsuitable to hold a licence due to their age, domiciliary status or previous criminal convictions,

- The number of the sex establishments in the relevant locality at the time of the application are equal to or exceeds the number which the council considers appropriate,
- That granting a licence would be inappropriate having regard to the character of the locality, the use to which any of the premises in the vicinity are put or the layout, character or condition of the premises.

6.5 The Act and relevant case law gives the Licensing Authority wide powers and control over what is suitable in a relevant locality. Both council areas are heavily rural and contain historic market towns which attract tourism and a mix of leisure and residential buildings in a close proximity. The councils also place a priority on public safety and that no person is deterred from visiting towns and rural areas within both districts due to anti-social behaviour, concerns over safety or the inappropriate location of licensed premises. Both councils have determined that the number of sex cinemas appropriate for each locality, taking into account the character of each locality and the use of the premises currently in that locality to be nil. It is likely therefore that any applications received shall be refused unless there are any exceptional reasons for it to be granted.

6.6 An application for a sex cinema shall be made and determined in the same way as an application for a Sexual Entertainment Venue or a sex shop as detailed in this policy document and the relevant laws. This means that a licence holder shall supply all documentation relating to the use of the premises. Any policies, staff training documents and risk assessment of the potential impact on the locality and immediate vicinity shall also be provided.

6.7 Any applicant for a sex cinema licence shall provide a Basic Disclosure dated within 30 days of the application. A criminal record check shall be provided for all persons involved in the management of the business including directors of any company.

6.8 Any application for a sex cinema licence shall be advertised as per paragraphs 7.7 to 7.11 of this policy.

6.9 Any application shall be determined in accordance with the Act and this policy and take into account any objections received and any other relevant information. As noted at paragraphs 9.2 and 9.3, the Licensing Authority has a broad discretion on whether to grant a licence or not and can take into account all relevant considerations as well as making a determination without objections being received.

6.10 The Licensing Authority shall make determinations in a fair and transparent way and give reasons for any decision within 28 days of any hearing. An applicant has the right of appeal as per what is set out in the Act and section 10 of this policy.

## **7. Application process**

7.1 Applications must be submitted to the relevant council on the relevant application form together with the application fee. The application form can be used for grant, variation, transfer and renewal applications. The application must be copied by the applicant to the

police within 7 days after the date the application was made. Applications may be submitted online.

7.2 Applicants must, at the time of submission of a new grant or variation application, provide photos, plans and schematics showing the exterior design for consideration before the premises are opened for business in order to ensure that exterior design of the premises shall be such that the interior of the premises is invisible to passers-by.

7.3 In addition, applicants must, at the time of submission of a new grant or variation application, provide a scale plan showing the interior layout of the premises for consideration by the Licensing Authority. The plan must outline the area that relevant entertainment will take place within, position and dimensions of any private booths, fire exits, location of any equipment or areas which may be used for entertainment in the premises, the location of the bar and CCTV cameras.

7.4 A Basic Disclosure from the Disclosure and Barring service shall be provided for the applicant or, if the applicant is a company, provided for each company director, person with significant control of the business and any company secretaries. Any proposed manager of the premises shall also provide a Basic Disclosure. Any disclosure shall be dated within 30 days of the application being submitted.

7.5 As part of the councils' consideration of the application and commitment to ensuring that it is appropriate for the locality it is proposed to be situated, as well as the councils' commitment to the Equality Act and Public Sector Equality Duty, applicants will be required to furnish the Licensing Authority with the following additional information:

- Copies of written policies demonstrating that the venue does not discriminate against any persons and is inclusive for all, including details of a robust complaints policy, accessibility assessment and staff training records (see paragraph 2.4 of this policy for further information) – **required for all sex establishment applications.**
- A detailed risk assessment of the vicinity and locality in which the premises is situated including analysis of other premises in the area and impact on the character – **required for all sex establishment applications.**
- Documentation demonstrating understanding of the local requirements of the police and council including knowledge of the pool of conditions – **required for all sex establishment applications.**
- The 'house rules' for the premises – **SEV applications only.**
- Dancer's code of conduct and safeguarding assessment – **SEV applications only.**
- Detailed information on the types of entertainment proposed to be provided, use of any equipment or rooms and how it will be managed – **required for all sex establishment applications**
- Evidence of a transparent charging system so users of the premises are clear as to the charges applicable for services and products inside the premises – **SEV applications only**
- Evidence that the premises has the correct planning permission for the proposed activities – **required for all sex establishment applications**

The above list is not exhaustive and the Licensing Authority may require the applicant to provide any other information it deems necessary to make a determination on the application.

7.6 The Licensing Authority may, as part of the application process or prior, visit the locality of the premises or premises itself to establish whether there are any characteristics of the locality which may require consideration by the Licensing Panel.

### **Advertisement of applications**

7.7 The Local Government (Miscellaneous Provisions) Act 1982 provides for statutory consultation to be carried out by the applicant for a licence, including a newspaper advertisement and the placing of notice of the application at the premises.

7.8 For newspaper advertisements, the advertisement must be placed in either the:

- Oxford Mail, or
- A physical newspaper that circulates predominantly in the area where the premises is proposed to be situated. This should be agreed with the Licensing Authority before any application is submitted.

7.9 The notice of application to be displayed at the premises must contain as a minimum the following information:

- the applicant's name and address,
- the date of the application,
- the category of licence being applied for, e.g. sexual entertainment venue,
- the proposed hours during which the premises will be used as a sex establishment,
- the application type, e.g. grant, renewal, transfer, variation,
- the date of the application, and
- the last date for receipt of objections.

7.10 The notice must be printed on A4 with a white background in black type, using a minimum font size of 16pt. It must be displayed in a position where it can be clearly seen by passers-by in the street at all times and must remain displayed until the last date for receipt of objections has passed.

7.11 Additionally, the Licensing Authority will seek to carry out extra consultation for applications by:

- displaying details of the application on its website,
- informing the local ward councillors for the premises and the ward councillors of adjoining wards who may be impacted by the application (if applicable), and
- consulting with neighbouring councils where the premises are located close to a borough boundary.

## **8. Commenting on applications**

8.1 Unlike some other licensing regimes (such as for alcohol, entertainment, or gambling), a wide range of people can raise objections about sex establishment licences. The police are the only statutory consultee for all applications.

8.2 Objections to an application have to be made within 28 days of the date on which the application was made and must be made in writing (email is acceptable). Objectors should limit their objection to matters which are relevant to the statutory grounds for refusal as set out in the 1982 Act and summarised in section 4 of this policy. The grounds relevant to the majority of objectors are as follows:

- that the grant, renewal or transfer of the licence would be inappropriate, having regard to the character of the relevant locality or to the use to which any premises in the vicinity of the premises, vehicle or vessel or stall in respect of which the application is made.

8.3 Those making comments on applications should state whether they consent to any of their details being disclosed to the applicant, and, if so, what details they consent to sharing, such as street name only. Details shall not be provided to the applicant for the licence of any person or organisation without consent. Please note that objections that do not contain names or addresses and are effectively anonymous may have little weight put on them if they proceed to consideration by a Licensing Panel.

8.4 Any objections received by the Licensing Authority which do not relate to the grounds set out in the Act must be rejected. Where objections are rejected, the objector will be given written reasons.

8.5 The Licensing Authority will not consider objections that are frivolous or vexatious, or which relate to moral grounds (as these are outside the scope of the 1982 Act). Decisions on whether objections are frivolous or vexatious will be made objectively by officers. Where objections are rejected, the objector will be given written reasons. A report will be made to the Licensing Panel determining the application (if appropriate), indicating the general grounds of the representation and the reasons for rejection.

8.6 A vexatious objection is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice. A frivolous objection is generally taken to be one that is lacking in seriousness.

8.7 Valid objections will be considered by the Licensing Panel at the hearing to consider the application. Applicants and objectors will be given an equal opportunity to state their case.

## **9. Determining applications**

9.1 All applications for sex establishment licences shall be considered by a Licensing Panel, regardless of whether there have been objections to the grant, renewal, transfer or variation of the licence. The Licensing Panel shall consist of at least three elected Members of the Council who are also members of the General Licensing Committee.

- 9.2 When determining an application, the Licensing Panel will have regard to:
- a) the application form submitted and any associated documents
  - b) any objections received
  - c) the Local Government (Miscellaneous Provisions) Act 1982
  - d) this statement of policy
  - e) any other relevant information including, but not limited to, local strategies, policies, other legislation, case law and relevant comments/evidence presented at a hearing.

9.3 The Local Government (Miscellaneous Provisions) Act 1982 gives the Local Authority broad decision making powers which are not constrained or diminished by any lack of objections. If no objections are received, the authority may still refuse an application if it is deemed appropriate to do so, or add conditions.

9.4 The Licensing Panel can request further information from an applicant, can disregard or put little weight on objections and determine or ultimately refuse an application or add conditions without the requirement of an objection being made. The Licensing Panel will carry out its decision making powers in a fair, rational way which is compliant with the provisions in the Act.

9.5 As stated in case law, a licensing committee or panel is not a criminal court and can therefore also take into account material which is not evidential in a judicial sense. It can take into account hearsay evidence as well as use local knowledge to determine whether a licence should be granted or refused in a particular locality.

## **Hearings**

9.6 All applications for sex establishment licences shall be considered by a Licensing Panel, regardless of whether there have been objections to the grant, renewal, transfer or variation of the licence. The Licensing Panel shall consist of at least three elected Members of the Council who are also members of the Licensing Committee. The meeting will be run in accordance with the procedures set down by the council and will likely follow the same discussion led process as per hearings under the Licensing Act 2003.

9.7 Licensing Panel decisions may not always be announced at the end of the hearing. In such cases, the Panel's decision and the reasons for it will be notified to the parties within 28 days of the date of the hearing.

9.8 Where the Licensing Panel refuses to grant an application, they shall provide their reasons for doing so in writing to the applicant within 28 days of the date of the hearing.

9.9 Those who have made comments on an application shall be invited to attend any hearing and state their case to the Licensing Panel but will only be permitted to speak on matters relevant to their written representation.

## **Duration of licence**

9.10 A sex establishment licence shall normally be granted for a period of one year, but may be issued for a shorter term if the Licensing Authority deems it appropriate in the circumstances.

## Conditions

9.11 The Licensing Authority has compiled a list of model conditions which the applicant should take cognisance of when preparing their application. If deemed appropriate, the licensing panel can add any conditions it deems appropriate to a licence which may be granted. The list of model conditions are not exhaustive and may be added to, altered or tailored to a specific premises if required.

## 10. Appeals

10.1 There are no rights of appeal for persons who have objected to the grant of a sex establishment licence nor for other statutory authorities.

10.2 There is a right of appeal for applicants/licence holders in the following circumstances:

- refusal to grant a new sex establishment licence
- refusal to renew an existing sex establishment licence
- refusal to transfer an existing sex establishment licence
- refusal to vary an existing sex establishment licence
- imposition of conditions on a sex establishment licence
- revocation of a sex establishment licence

10.3 However, an appeal **may not** be lodged where the decision has been made on the basis that:

- a) the number of sex establishments, or sex establishments of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality, or
- b) the grant is inappropriate, having regard:
  - i) to the character of the relevant locality
  - ii) to the use to which any premises in the vicinity are put
  - iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

10.4 Any appeal to the Magistrates' Court must be made within 21 days from the date on which the person is notified of the decision or became aware of the condition. Where the Licensing Panel have given an oral decisions with reasons at the end of a hearing, the time limit for lodging an appeal will start on that date.

10.5 Where an appeal is lodged, the sex establishment licence remains in force, if it were already in force, until such time that the appeal is determined or abandoned. Where an appeal is lodged against conditions applied to a sex establishment licence, the conditions are deemed not to come into force until the determination or abandonment of the appeal.

10.6 There is a further and final right of appeal from the Magistrates' Court to the Crown Court. This may be brought by the applicant/licence holder or the council. The council are not obliged to give effect to any order of the Magistrates' Court until the time limit

for the bringing of an appeal to the Crown Court has expired and, if such an appeal is brought, until the abandonment or determination of the appeal.

10.7 If an applicant or other party is aggrieved by a decision made by the council that cannot be appealed, the only course of remedy is to seek a judicial review of the decision in the High Court. This would have to be on the basis that the council had made an error of law, had acted perversely, had failed to take a material consideration into account, or had taken immaterial considerations into account when making its decision.

## **11. Revocation/cancellation/variation/transfer**

### **Revocation**

11.1 The council may revoke a sex establishment licence at any time on any of the grounds for refusing an application, excluding those relating to the character of the premises and locality or the number of sex establishments in a locality.

11.2 The council may be prompted to revoke a sex establishment licence by the complaint of a third party, including a ward councillor, or may do so unilaterally on its own behalf.

11.3 However, the council will not take steps to revoke a sex establishment licence without giving details of its reasons for considering revocation to the applicant at least 28 days before holding any hearing to consider the revocation of the licence.

11.4 The applicant shall in all cases be afforded the opportunity to appear before the Licensing Panel making the decision. Where the council decides to revoke the sex establishment licence, it shall give the reasons for its decision to the licence holder in writing within 28 days of making its decision.

### **Cancellation**

11.5 A licence holder can cancel (surrender) the licence at any time putting the request in writing to the licensing team. Where a licence is cancelled, no refund will be issued for the remainder of a licence.

### **Variation**

11.6 The holder of a sex establishment licence may apply at any time to vary the licence. The process is exactly the same as that for applying for the initial grant of the licence. The documentation required to be submitted with any variation is dependent on the nature of the variation, for example, a change of plan will require a new plan and other information relating to use of any new areas.

### **Transfer**

11.7 A person may apply for the transfer of a sex establishment licence at any times. The process of applying for a transfer is the same as that for applying for an initial grant. That includes submission of all relevant and requested documents as detailed in paragraph 7.5 of this policy and criminal record checks for all persons involved in the business.

## **Maintenance of the licence**

11.8 The licence holder shall notify the Licensing Authority of any pertinent matters relating to their involvement in the premises or any change of circumstances. This could include, but is not limited to, notifying any change of company address, any change to the house rules or management of the premises as well as notifying any new criminal convictions accrued by any person involved in the management or ownership of the premises.

## **12. Enforcement**

12.1 The Licensing Authority will work closely with all relevant stakeholders including the police to inspect, investigate and enforce conditions in relation to all licensed premises in a locality. Any enforcement will be undertaken in a proportionate and transparent way.

12.2 As per section 1 of this policy, the Licensing Authority will work closely with other bodies such as the fire service, planning and environmental health to ensure that any premises is compliant with its obligations under other legislation. As already noted, any prospective applicant should ensure that the premises they propose to license has the correct planning permission in place before applying for a licence.

12.3 A premises which has a sex establishment licence and operates in the night time is not standalone or separate from other premises that operate at that time. Licence holders will be required to run their premises in line with their conditions, any policies, house rules or documentation submitted to the Licensing Authority and in a way that assists in promoting a safe locality for all.

12.4 A licence holder which is found in breach of their conditions or policies or is found to be causing issues relating to crime, disorder, noise or anti-social/unsafe behaviour shall be given the opportunity to rectify these matters before additional enforcement action is taken. This does not, however, preclude the authority from taking enforcement action in the first instance should there be incidents or non-compliance which is deemed particularly serious or damaging to the locality.

12.5 Subject to relevant data protection laws, the council will share information with relevant partners such as the police in order to ensure, where required, a joint approach to enforcement and any compliance issues are dealt with proactively.

## **13. Fees**

13.1 The fees and application forms for the licences set out in this policy document can be located on the relevant council's website. Only when the fee has been paid and all of the requested documentation has been received, shall an application be deemed as valid.

13.2 If a licence is refused, surrendered, cancelled or revoked, no fee will be refunded to an applicant.