



SEX ESTABLISHMENT LICENSING POLICY

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Part A – General Considerations

1. Preface

- 1.1 Kirklees Council has adopted schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) which allows the Council to licence sex shops, sex cinemas and sexual entertainment venues. In this policy, such premises will be referred to as 'sex establishments'.
- 1.2 This document contains the policy of Kirklees Council on the regulation of sex establishments. It is intended to apply to all applications received after the date on which it is approved by the Council.
- 1.3 The Council does not take a moral stand on adopting this policy. The Council recognises that Parliament has made it lawful to operate a sex establishment and that such businesses are a legitimate part of the retail and leisure industries. It is the Council's role as a licensing authority is to administer the licensing regime in accordance with the law.
- 1.4 At the time of preparing this policy the Council licenses four sex shops, their addresses are set out in Appendix A to this policy. The number of licensed sex shops could change prior to this policy being approved.
- 1.5 At the time of preparing this policy there are currently two premises in Kirklees which require a sexual entertainment venue licence under the 1982 act as amended to operate lawfully. The number of such premises could change prior to this policy being approved.

2. Relevant Locality

- 2.1 The Council can only refuse a grant or renew a sex establishment licence on one or more of the specific grounds set out in schedule 3 to the 1982 Act. For ease of reference, these are reproduced in Appendix B to this policy.
- 2.2 Two of these grounds (against which there is no statutory right of appeal) are that:
 - (1) *The number of sex establishments in the locality where they are situated at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality.*
 - and*
 - (2) *The grant of renewal of the licence would be inappropriate having regard to-*
 - (i) *The character of the locality where they are situated, or*

- (ii) *The use to which any premises in the vicinity are put, or*
- (iii) *The layout, character or condition of the premises in respect of which the application is made.*

2.3 The first of the above grounds means that a licence application may be refused if when a licence is considered the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority would consider appropriate for that locality.

2.4 With regards to the second of the above grounds, the council has decided, without prejudice to the generality of the statutory ground, that it would be inappropriate to grant or renew a sex establishment licence in any case where:

- The character of the locality is of a residential or predominantly residential nature
- The character of the locality is historically important
- Premises in the vicinity are used for religious worship
- Premises in the vicinity are used for schools, children's nurseries, youth clubs, children's centres or similar such establishments which children under 18 years of age may reasonably be expected to attend.
- Premises in the vicinity are used for community facilities including, but not limited to, swimming pools, leisure centres, public parks, sheltered housing, and accommodation for vulnerable people.
- Premises in the vicinity are used for sex establishments
- The application premises are of a permanent character and do not have the necessary planning permission in place to enable the licensed activities sought to occur lawfully

The above grounds will not however prevent any individual application from being considered on its own merits at the time the application is made, but the above considerations are unlikely to be overridden except in exceptional circumstances.

3.0 Existing premises seeking licences to be Sexual Entertainment Venues.

3.1 For the avoidance of doubt, when considering applications from existing premises, the Council will take into account the guidance contained in paragraph two above.

3.2 The Council would also consider how the venue has operated previously and any complaints received. The Council may check with West Yorkshire Police to ascertain whether they have any concerns about the management of the premises.

3.3 Experience of operating a sex establishment premises previously within Kirklees will also be taken into account.

4.0 Children

- 4.1 The licensing authority is committed to protecting children from harm and views this as an important licensing objective. The Council's licensing team works with Children's Services during the development of licensing policy where the protection of children is concerned. Intelligence sharing and the exchange of current strategy developed by the Kirklees Council's Safeguarding Children Board ensure that the protection of children from harm remains key.
- 4.2 The Licensing Authority has become aware from intelligence sharing with partners, that alcohol use, misuse and abuse is one of the recurring key 'parental factors' in child protection and safeguarding, often contributing to parental neglect of children and domestic abuse and violence within families.
- 4.3 Parental neglect may be a factor in risk taking behaviour by young people who may also drink irresponsibly and then get involved in activities that otherwise they would not. Nationally, evidence has been found of the sexual exploitation of children taking place on a variety of licensed premises, or licensed premises being used for the purposes of grooming and enticement.
- 4.4 Kirklees Safeguarding Children Board (KSCB) works with other statutory authorities and will engage with the licensing trade to promote risk management in relation to child sexual exploitation. The KSCB can provide advice to assist licensees to identify risk and report concerns at different types of licensed premises so that children remain safe and businesses operate responsibly.
- 4.5 The Licensing Authority encourages licence holders and operators of licensed premises:
- To ensure that they are fully aware of the signs of child sexual exploitation and to understand that the sexual exploitation of a child is sexual abuse and a crime and
 - To raise the awareness of their staff about child sexual exploitation and provide intelligence to the appropriate authorities about concerns and about perpetrators who may be operating in their areas.

The Kirklees Safeguarding Children Board has a webpage dedicated to providing local information about child safety, child sexual exploitation, policies and procedures including risk factors and signs and symptoms:

<http://www.kirkleessafeguardingchildren.co.uk/>

5.0 Applications

5.1 The Council may specify the form of application for the grant, renewal or transfer of a Sex Establishment Licence or renewal of an existing one submitted after the date of the approval of this policy must be accompanied by a scale plan showing the extent of the premises seeking to be licensed and such other information as may be from time to time specified.

5.2 The applicant must give public notice of the application by publishing, within 7 days of making the application, an advertisement in a local newspaper circulating in Kirklees. In addition, public notice of the application shall be displayed on or near the application premises, so that it can be read conveniently, for 21 days from the date of the application. The Council may specify the form of public notice.

5.3 The applicant must give a copy of the application to the chief officer of West Yorkshire Police within 7 days after the date of the application.

6.0 Fees

6.1 All applications for the grant, renewal or transfer of sex establishment licences must be accompanied by a non-returnable application fee. The fees are reviewed annually against any rise in Council costs of administering the licence regime.

7.0 Objections

7.1 Objections may be made by any person to an application for the grant renewal or transfer of a sex establishment licence.

7.2 An objection must be in writing and state the grounds on which the objection is made.

7.3 Objections may only be made within the period of 28 days following the date on which the application was given to the Council.

7.4 The Council will not consider any objection that does not contain the name and address of the person making it.

7.5 Where objections are made the Council will provide copies to the applicant. The Council will not divulge the identity of the objector/s to the applicant without the consent of the objector's to do so.

7.6 Where objections are made and not withdrawn, a committee or subcommittee will be held to consider the application and the written representations. The committee or subcommittee will also have regard to any observations submitted by West Yorkshire Police.

7.7 The applicant, licence holder or person to whom a licence is intended to be transferred will be given the opportunity to attend and be heard by the committee or subcommittee, in

line with the provisions of the 1982 Act, any objectors do not have the right to be afforded an oral hearing but, at the discretion of the council may be afforded such an opportunity.

7.8 Applicants or licence holders that are aggrieved by a decision of the Council may (depending on the precise reasons of the Council's decision) have a right of appeal to the Magistrates Court within 21 days beginning on the date of which the person is notified of the Council's decision. Any person considering an appeal is recommended to seek independent legal advice from a solicitor before doing so.

7.9 The grounds upon which the Council must or may refuse a licence are fixed by the 1982 Act and are shown in Appendix B to this policy for information.

7.10 Where no objections are made, the Council will grant the licence subject to standard terms, conditions and restrictions set out in the relevant regulations.

8.0 Revocation of Licences

8.1 The Council may revoke a licence:

- On any grounds specified in paragraph 1 of Appendix B to this policy;
- On either of the grounds specified in paragraph 3(a) and (b) of Appendix B to this policy.

8.2 The Council will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before a committee or subcommittee. Where a licence is revoked, its holder shall be disqualified from holding or obtaining a licence in the Kirklees authority area for a period of 12 months beginning with the date of revocation.

9.0 Duration of Licence

9.1 The licence holder may request the Council in writing to cancel the licence.

9.2 In the event of the death of a licence holder, the licence will be deemed to have been granted to his personal representatives and will remain in force for a period of 3 months from the date of his death, unless previously revoked.

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

9.4 Unless cancelled or revoked, a licence shall remain in force for one year or for a shorter period as the Council may think fit when granting it.

10.0 Waivers

10.1 The Council does not consider it would be appropriate to permit waivers from the requirement to hold a sex establishment licence, except in very exceptional circumstances considered by the Licensing Committee.

11.0 Complaints

11.1 Where possible and appropriate the Council will give early warning to licence holders of any concerns about problems identified at premises and of the need for improvement.

12.0 Delegated Powers

12.1 All applications for new sex establishment licences will be determined by the Licensing Committee.

12.2 All renewal or variation applications for sex establishment licences will be determined by the Licensing Committee if there are objections, otherwise they will be approved by the Licensing Manager, providing the Licensing Manager is satisfied that such approval will not be inconsistent with any aspect of this policy. If the Licensing Manager is not so satisfied then the application will be referred to the Licensing Committee.

12.3 All transfer applications for sex establishment licences will be determined by the Licensing Committee if there are objections, otherwise they will be approved by the Licensing Manager.

Part B – Sex Shops

1. When is a licence for a Sex Shop required?

Licences for sex shops are required for any premises, vehicle, vessel or stall:

- a. Where there are 18R films being sold, or
- b. Used for a business which consists to a 'significant degree' of selling, hiring, exchanging, lending, displaying or demonstrating 'sex articles' or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

2. What are sex articles?

'Sex articles' are:

- a. Anything made for use in connection with , or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity, and
- 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, and to any recording or 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.

3. What constitutes a 'significant degree'?

The meaning of 'significant degree' is not expressly defined in the legislation. It is for the Licensing Authority to determine on the individual circumstances of each case presented to it whether the 'significant degree' threshold has been reached. It will involve considering a number of factors such as:

1. The ratio of sex articles to other aspects of the business
2. The absolute quantity of sales
3. The character of the remainder of the business
4. The nature of the displays in the business
5. Turnover
6. Other factors which appear to be materially relevant

4. Licence Conditions

The Council has adopted standard conditions for the operation of sex shops which are set out at Appendix C. Where it is reasonable and necessary to do so, our Licensing Committee will impose additional proportionate conditions on a licence. Wherever possible, these will be discussed in advance with operators by our licensing officers.

Part C – Sexual Entertainment Venues

1. Relevant Entertainment

Licences for sexual entertainment venues are required for 'any premises at which relevant entertainment is provided before a live audience for financial gain of the organiser or the entertainer'. 'Relevant Entertainment' is defined in schedule 3 (as amended by section 27 of the Policing and Crime Act 2009) as 'any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience' (either verbal or by other means). An audience can consist of one person e.g. in a private booth.

In deciding whether entertainment is 'relevant entertainment' the authority will judge each case on its merits, but will generally apply to:

1. Lap dancing
2. Pole dancing
3. Table dancing
4. Strip shows
5. Peep shows
6. Live sex shows

Adult entertainment not classed as 'relevant entertainment' may still require licensing under the Licensing Act 2003.

2. Length of Licence

We will, unless there are exceptional reasons otherwise, grant licences for the maximum duration of a year at a time to provide certainty to those operating businesses.

3. Application Form

We have a standard application form, including public notices, which are available on request from our licensing team.

4. Licence Conditions

We have adopted standard conditions for the operation of sexual entertainment venues which are set out at Appendix D. where it is reasonable and necessary to do so; our Licensing Committee will impose additional proportionate conditions on a licence. Wherever possible, these will be discussed in advance with operators by our licensing officers.

Appendix A

Refusals and Revocations of Licences

1. The Council must refuse to grant or transfer a licence to:
 - a. A person under the age of 18
 - b. A person who for the time being is disqualified from holding a licence
 - c. A person, other than a body corporate, who is not resident in the United Kingdom or who was not so resident throughout the period of six months immediately preceding the date on which the application was made.
 - d. A body corporate which is not incorporated in the United Kingdom
 - e. A person who has , within the period of 12 months immediately preceding the date on which the application was made, 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.

2. The Council may refuse
 - a. An application for grant or renewal of a licence on one or more of the grounds shown in paragraph 3 below:
 - b. An application for transfer of a licence on either or both of the grounds shown in paragraph 3(a) and (b) below.

3. The grounds mentioned in paragraph 2 above are:
 - a. That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason:
 - b. That if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person , other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself:
 - c. That the number of sex establishments in the relevant locality that the application is made is equal to or exceeds the number which the Council considers appropriate for the locality
 - d. That the grant or renewal of the licence would be inappropriate having regard to:
 - (i) The character of the relevant locality (which means, in relation to a vehicle, vessel or stall , any locality where it is desired to use it as a sex establishment);
 - (ii) The use to which any premises in the vicinity are put; or
 - (iii) The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Appendix B

REGULATIONS PRESCRIBING STANDARD CONDITIONS FOR SEX SHOP LICENCES

Management of the Premises

1. The licensee, or some responsible person nominated by him and notified in writing to the Council for the purpose of managing the sex establishment ('the manager') shall have personal responsibility for and be present on the premises at all times when the premises are open to the public.
2. Where the licensee is a body corporate or an incorporated body any change of director, company secretary or other person responsible for the management of the body shall be notified in writing to the Council within 14 days of such change and such written details as the licensing authority may require in respect of the change of personnel shall be furnished within 14 days of a request in writing from the Council.
3. A copy of the licence shall at all times be displayed in a conspicuous position on the premises, so as to be available for inspection by the public, police, the fire authority, and authorised officers of the Council and local trading standards authority.
4. The licensee shall retain control over all parts of the premises and shall not let, licence or part with possession of any part. The Council must be immediately notified in the event that any part of the premises is affected by the termination of a lease or other event affecting the Licensees control of the premises.
5. The licensee shall ensure that the public is not admitted to any part of the premises that has not been licensed.
6. No person under the age of 18 shall be admitted to the premises and a notice to this effect in accordance with condition 19, shall be displayed on the outside of the premises. No person under age of 18 shall be employed to work at the licensed premises.
7. Neither the licensee nor any employee or agent shall seek to obtain custom for the licensed premises outside or in the vicinity of the premises, by means of personal solicitation, flyers, hand-outs or any like thing.
8. Access must be afforded at all reasonable times to authorised officers of the Council, police and fire service.
9. The licence holder shall ensure that no part of the licensed premises shall be used by prostitutes (male or female) for soliciting or for any immoral purposes.

10. The premises shall not, without the written consent of the Council, be opened and used for the purposes for which the licence is granted on Christmas Day or Good Friday.

Conduct of the Premises

11. No change from a sex cinema to a sex shop or a sex shop to a sex cinema shall be made without the written consent of the Council.
12. A sex shop shall be conducted primarily for the purposes of the sale of goods by retail.
13. No film or video recording or computer game shall be exhibited, sold or supplied unless it has been passed by the British Board of film Classification and bears a certificate to that effect.

External Appearance

14. The holder of a sex establishment licence shall exhibit on the outside of the premises a notice containing the words 'No person under the age of 18 allowed, people appearing to be under the age of 21 will be required to show proof of their age'.
15. No external loudspeakers will be installed.
16. Unless approved in writing by the Licensing Manager, there shall be no advertisements, notices, photographs, and illustrations, statements of any kind or similar items displayed so as to be visible from the exterior of the premises.
17. The Council shall approve the design of the front elevation of the shop which may include reference to the name of the shop, its postal address, opening hours, website address and any security grilles or shutters. The Council shall approve the final exterior signage including the shop name which shall be of an uncontentious nature.
18. The exterior and entrance to the licensed premises shall be suitably screened so as to prevent any part of the interior being visible from outside the shop.
19. There shall be a solid outer and inner door fitted with automatic closures with such devices being maintained in good working order. Both doors shall be kept closed at all times except when being used for access or egress.
20. On the external facing of the inner door, there shall be displayed a notice in accordance with the requirements of the indecent Displays (Control) Act 1981 namely:

'WARNING'

Persons passing beyond this notice will find material or activities on display which they may consider indecent. No admittance to persons under 18 years of age'

State, Condition and Layout of Premises

21. The Licensee shall maintain the licensed premises in good order, repair and state of cleanliness at all times, which will include the need to maintain the front and rear of the premises in a clean and tidy condition.
22. The licensee shall take appropriate measures to ensure that refuse and discarded sex articles or waste stock from the premises are kept secure from public accessibility pending removal from the site.
23. No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency.
24. Lighting shall be in operation continuously during the whole of the time that the licensed premises is open to the public such lighting to be sufficient to enable persons therein to see clearly all parts of the premises and to read readily any literature or notices displayed to customers.
25. Alterations or additions either internal or external shall not be made to the licensed premises (including any facilities, lighting, construction etc., without prior written consent from Kirklees Planning where necessary and the Councils Licensing Manager. Without prejudice to the foregoing, the areas provided for ingress, egress and circulation of the public within the premises shall not be reduced, obstructed or altered without prior written consent from Kirklees Planning and the Councils Licensing Manager.
26. Any facilities for previewing films, video recordings or other similar material shall be physically separated from the display area of the shop in such a manner that no material being displayed by way of preview shall be visible or audible outside the preview area.
27. No fastenings of any description shall be fitted on any booth or cubicle within the sex establishment nor shall more than one person (including any employee) be present in any such booth or cubicle at any one time.

Safety and Security

28. The Licensee shall institute steps to check the age of customers entering the shop who appear to be between the ages of 18 and 21 in order to ensure that they are not younger than 18.
29. Whilst the licensed premises are in use, no door or other barrier which exists within the areas provided for ingress and circulation of the public shall be locked or bolted in any manner which prevents it being opened immediately and easily.

Goods Available in Sex Shops

30. The Licensee shall without charge display and make available in the sex shop such free literature on counselling on matters related to sexual problems as may be published by the Family Planning Association and by such other similar organisations from time to time and in particular any such material related to sexually transmitted diseases. Such literature is to be displayed in a prominent position adjacent to all cash collection points in the sex shop.

Appendix C

REGULATIONS PRESCRIBING STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUE LICENCES

1. The licensee or some responsible person over the age of 18 nominated by him and notified in writing to the Council for the purpose of managing the sex establishment ('the manager'), shall have personal responsibility for and be present on the Premises at all times when the premises are open to the public.
2. Any individual employed on the premises to conduct a security activity (within the meaning of paragraph 2(1) (a) of schedule 2 to the Private Security Industry Act 2001) must be licensed by the Security Industry Authority.
3. The licensee must ensure that staff are employed to supervise the interior of the premises including toilets whilst the premises are open for business.
4. No person under the age of 18 shall be admitted to the premises. Customers who appear to be under the age of 21 must be asked to provide photographic proof of their age. The licensee must provide prominent notices at each entrance to the premises to this effect.
5. Performers shall be aged not less than 18 years. The licensee must maintain adequate records of the names, addresses and dates of birth of performers including adequate identity checks.
6. An appropriate room shall be set aside to provide a private changing and rest area for performers to which customers are not admitted.
7. The licensee shall not permit the display outside of the premises of photographs or other images which indicate or suggest that striptease or similar entertainment takes place on the premises.
8. The licensee shall ensure to the Councils Licensing Manager's satisfaction that the exterior of the premises is maintained to a satisfactory standard. At no point may dancers be visible from outside of the premises. Scantily clad persons must not exhibit in the entrance way or in the vicinity of the premises.
9. Performers shall only perform on the stage area, or to seated customers or in such other areas of the licensed premises as may be agreed in writing by the Councils Licensing Manager.

10. Performers must remain clothed in public areas and all other areas except while performing in areas specified by the council where sexual entertainment may be provided, as at 9 above.
11. Performers must dress fully at the end of each performance.
12. Performers may not accept any telephone number, email address, address or contact information from any customer.
13. Performers must never be alone in the company of a customer except in an area open to the public within the premises.
14. The licensee is to ensure a sufficient number of security staff are employed inside and outside the premises whilst sexual entertainment is provided to supervise the performers and customers.
15. The licensee must ensure that during a performance of a table dance:
 - (i) Customers must remain seated during the entire performance of the dance
 - (ii) Performers must not approach closer than 30cms (12") to any part of a customer
 - (iii) Performers must not part their legs, sit or straddle the customer
 - (iv) Performers must not place their feet on the seats
16. The licensee must ensure that during performances of any kind to which this licence relates;
 - (i) Performers may not perform any kind of act that simulates any sexual act.
 - (ii) Performers may not intentionally touch a customer any time during the performance unless absolutely accidentally or due to a third party
 - (iii) Performers may not use inappropriate, suggestive or sexually graphic language at any time.
 - (iv) Performers must never perform with a another performer
 - (v) Performers must not engage in communications that could be deemed as acts of prostitution or solicitation, even if the performer has no intention of carrying out the act
 - (vi) There is no audience participation
17. The Licensee must ensure that during performances of any kind to which this licence relates:

- (i) Customers do not dance at any time except in areas specifically designated by the Council as being separate from areas for sexual entertainment
 - (ii) Customers must remain appropriately clothed at all times.
18. The licensee shall ensure that CCTV is installed and maintained to the satisfaction of West Yorkshire Police, and that any images are (a) retained for a period of at least 31 days and (b) made available on request to a police officer or authorised officer of the Council.
19. The licensee shall provide upon request copies of any documents reasonably required by an authorised officer of the Council in relation to compliance with this licence.