

SEX ESTABLISHMENT LICENSING POLICY



PLYMOUTH
CITY COUNCIL

draft

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Sex Establishment Licensing Policy

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INTRODUCTION

The City Of Plymouth is the second largest City on the south coast of England and, after, Bristol, the largest in the South West with a residential population in the region of 256,700. Looked upon as the regional capital of Devon and Cornwall, Plymouth has a rich combination of heritage and natural beauty in what is a thriving maritime city that attracts millions of visitors.

The City is located in an area of outstanding beauty, with the Dartmoor National Park to the north, the natural harbour of Plymouth Sound to the south and the rivers Plym and Tamar on either side. Plymouth's rich history and maritime heritage, combines the advantages of city living with the benefits of having the diverse countryside and coastline of Devon and Cornwall on its doorstep.

Plymouth City Council employed the world-renowned architect David Mackay and the 'Mackay Vision' are embedded in the on-going re-development of Plymouth. It is likely that over the next twenty years it is reasonable to expect that the population of Plymouth could rise to between 300,000 - 350,000 due to urban expansion.

This Licensing Authority recognises that the provision of entertainment is a major contributor to the economy of the City, attracting tourists and visitors, making for a vibrant City, which in turn continues to be a major employer. Commercial occupiers of premises have a legitimate expectation of an environment that is attractive and sustainable for their businesses balanced by the needs of residents and views of the Council.



SCOPE AND PURPOSE

The Council recognises and values the communities' views and opinions. The government has amended controls on the legitimate operation of sex establishments and that such businesses are a legitimate part of the retail and leisure industry. The Council is not able to take a moral view on sex establishments.

This policy statement has amongst other things, four main purposes;

- To inform applicants of the parameters within which the Council will make licensing decisions.
- To provide guidance to local residents and businesses of the boundaries within which the Licensing Authority will make licensing decisions.
- To provide Members of the Licensing Committee with a decision making framework.
- To support the Licensing Authority if it has to demonstrate in a court of law how it arrived at its licensing decisions

Plymouth City Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous) Provisions Act 1982 (as amended) on the ...TBC....., providing that anyone wishing to operate a "sex establishment" within the City must first obtain a licence from the Council.

This policy sets out the principles that the Council will apply when making decisions relating to the operation of sex establishments. It outlines the control measures that the Council will consider prior to licensing a sex establishment including guidance on the quantity limits to be applied in defined areas. It is the Council's intention to facilitate well run and managed businesses with licence holders displaying sensitivity to the impact of their premises on local residents.

All applications for new, variation or transfer of sex establishment licences outlined in this policy will be considered by the Licensing Sub-Committee (Miscellaneous) or Licensing Sub-Committee (Miscellaneous) as the committee responsible for determining applications at a public hearing, or officers where appropriate delegated powers have been granted.

A 'sex establishment' means a 'sex shop', a 'sex cinema' or a 'sexual entertainment venue'. It includes any premises, vehicle, vessel or stall used as a sex establishment but does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control or primarily relate to birth control.

The definitions of each type of sex establishment can be found in Appendix I

Appendix 3 contains transitional provisions and is contained only for guidance and to make this document as comprehensive as possible

LICENSING OBJECTIVES

The Council will expect applicants to submit applications and where a licence is granted operate their businesses, to prevent or minimise its impact on;

- The prevention of crime and disorder
- The protection of safety, health or public decency
- The prevention of nuisance
- The protection from children from harm
- Protecting the nature, amenity and character of a neighbourhood

These licensing objectives will be taken into account when determining an application and any conditions attached will be necessary and designed to achieve the licensing objectives. Applicants must satisfy the Council of how they will promote the licensing objectives.

Guidance on the issues to be considered is below.

Prevention of Crime and Disorder:

In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications. In giving due regard to these possible implications members will consider and weigh up all the information available and representations made, including those from the public and other relevant authorities.

Applicants should consider the following control measures as examples of good practice that may be considered as part of their application.

- Use of appropriate numbers of security personal and stewards ensuring effective controls at all times
- Training staff in crime prevention measures
- Membership requirements where appropriate
- Use of CCTV inside of all areas to which the public have access and the outside areas of the premises, ensuring digital systems comply with Information Commissioners Office (ICO) minimum requirements.
- Quality of supervision and surveillance in premises
- Regular checks by management and door supervisors of all public areas including toilets
- Assessment of customer profile ensuring effective management of customers both inside premises and in outside smoking / external seating areas
- Anti-discriminatory policies and practice covering e.g. homophobia, racism and hate crime
- Awareness of drink spiking
- Zero tolerance drug policies including the appropriate use of searching and drug safes to combat drug crime
- Active participation in club/pub watch schemes
- Maintenance of comprehensive staff records and training records
- Clear published policies regarding the standards of behaviour expected from staff and customers

Protection of Safety, Health and Public Decency

The operation of any sex establishment should not prejudice the safety or health of anyone, including any performers. In addition the presence and operation of a sex establishment must not adversely affect the public decency and behaviour of residents or patrons. Applicants should consider control measures that will address the following factors;

- The health, safety and wellbeing of any performers, e.g. secure access and egress, adequate changing facilities, internal CCTV.
- Provision of information to performers regarding support groups for those working in the sex industry.
- Clear policies relating to drug, alcohol and substance misuse
- The health, safety and wellbeing of any patrons
- Maintenance of acceptable behaviour of patrons
- Positive messages regarding sexual health
- Active participation in schemes to reduce and prevent sexual violence and maintenance of policies in respect of same
- The external appearance and advertising of the business will not overtly alert passersby to the presence and nature of the business

Prevention of Nuisance

Any commercial activity has the potential to create nuisance whether by noise, litter or anti-social behaviour from the operation of the business or the activities of patrons. Applicants should have regard to the following factors;

- The nature and hours of operation
- The location of premises and character of the surrounding area in relation to the proximity to residential and other noise sensitive premises
- Latest admission times
- Measures for the limitation of noise emissions from the premises. These may include noise limitation devices, sound insulation, the installation of acoustic lobbies and double glazing and the installation of air quality management systems.
- Measures to deal with queuing outside the premises
- Effective management and control of outside areas i.e. smoking areas
- Measures to deal with dispersal of customers from the premises including the employment of door supervisors, use of dedicated taxi firms, notices in the premises requesting customers to respect neighbours

Protection of Children from Harm:

The operation of any sex establishment should not prejudice the safety of children and applicants should have regard to following factors that may be used to protect children from harm;

- Premises to have a policy relating to the protection of children from harm
- No unsuitable external promotion or advertising of the premises whilst the premises is closed e.g. flashing neon signs or similar
- Premises to operate a Challenge 21/25 proof of age scheme before patrons access the premises
- Prominently displayed signs barring under 18 year olds
- Screening or obscuring of windows, doors and other openings so that the interior of the licensed premises and the displays of articles sold at the premises shall not be visible at any time to persons outside the building
- Goods to be discreetly wrapped before leaving the premises and when being delivered
- The external appearance and advertising of the business will not overtly alert children to the presence and nature of the business
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Protecting the Nature, Amenity and Character of a Neighbourhood

The Council does not wish for an establishment to be inappropriately located or for any neighbourhood or locality to become dominated by the presence of sex establishments. Equally the Council recognises the need to encourage the promotion and development of a broad range of entertainment and leisure opportunities. When considering applications decisions will balance the needs of the community with the needs of the applicant.

The Council will consider the following factors and expect applicants to develop management strategies that have regard to the locality including nearby sensitive buildings or activities.

- The external appearance of premises
- Sightlines and surveillance
- Lighting and ability to monitor in relation to crime and disorder
- External advertising on buildings
- Hours of operation
- Nature of activities
- The concentration of premises licensed as Sex Establishments in a particular neighbourhood or locality

RELEVANT LOCALITY STATEMENT

Schedule 3 of the Act allows the Council to refuse applications on grounds related to an assessment of the “relevant locality”. A licence can be refused if either, at the time the application is determined 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 Council considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use of any premises in the vicinity or the layout, character or condition of the premises. Nil may be the appropriate number.

The Council does not consider it appropriate to define the entire city as having the benefit of a quantity limit. A ‘locality’ is not defined on a map with a finite arbitrary boundary but it is intended to be a virtual boundary that has regard to neighbourhoods, natural boundaries, postal districts and local precedents. Material decisions that might be relevant to a local community could include a licensed premises that is ‘on the way to the’ local shops, school or places of worship.

In relation to a vehicle, vessel or stall the locality under consideration will be where it is desired to use it as a sex establishment.

The Council will consider it unsuitable to have a sex establishment located within an inappropriate distance from;

- A residential area
- Premises, areas or access routes to such premises or areas which are designed for or attract children or families, such as; schools, play areas, parks, children’s centres, youth clubs, nurseries or leisure facilities and other similar sensitive premises
- Places of public religious worship
- A shopping area aimed at attracting residents and visitors to the City
- Community facilities or public buildings
- Historic buildings, cultural attractions, educational establishments or areas and tourist attractions
- A locality with a history of specific social difficulties

- A gateway to an identifiable locality
- Where there is already a sex establishment

An inappropriate distance will be dependant on the type, size, appearance, position and operation of the premises when considered against the specific nature of the locality in question.

Given the above criteria it is considered that currently the only areas may be considered as suitable for the provision of certain defined licensed sex establishment premises are the areas known as;

- Union Street
- City Centre

All other parts of the City are generally considered unacceptable, although each case would be considered on its own merits having regard to the specific detail of the application. For example; it may be appropriate based on the individual merits of the application to grant a licence in a commercial area where there are no residential properties, such as on a business park.

QUANTITY LIMIT STATEMENT

The Act allows the Council to determine a number of sex establishments in a specific locality. This can include determining that the appropriate number is **nil**. The Council considers that there is an over-riding public interest to justify quantity limits for the areas known as Union St and the City Centre to avoid an excessive build up of sex establishments, thereby undermining the character and nature of the designated areas.

Whilst applications will be determined based on their individual merits there will be a presumption against granting additional licenses in areas where the number considered appropriate for that locality have already been granted.

The Council will not take account of commercial need. This is a matter for market forces and may be a relevant consideration for planning applications. The existence or absence of suitable planning approval is not a relevant consideration for the Council, but is a matter for the applicant.

For each of the following areas the number of sex establishments considered as appropriate is;

Location	No of Sex Shops / Cinema	No of Sexual Entertainment venues
Union Street	1	2
City Centre	1	Nil

For all other localities the appropriate number will be **nil**.

DETERMINATION OF APPLICATIONS

Existing Businesses

Those businesses either licensed or undertaking licensable activities prior to the adoption of this policy (see transitional arrangements) may apply under the new licensing regime. Existing businesses have limited rights to continue trading even though it may not completely accord with the new policy aspirations and expectations. A balance must be obtained between the achievement of the licensing objectives and human rights; these being Article 1, Protocol 1 of the European Convention on Human Rights (peaceful enjoyment of possessions) and Article 10 (Freedom of expression).

Any decision to refuse an existing licence must be rational, necessary and proportionate for the promotion of the licensing objectives. Anyone wishing to object to the grant of a licence for existing businesses must provide supporting evidence to demonstrate the impact on the locality with reference to the licensing objectives.

Applications for the grant, variation, renewal or transfer

The application process is set out in Appendix 2.

The transitional arrangements for the introduction and implementation of this policy for the inclusion of sexual entertainment venues within Schedule 3 of the Act and for ease are set out in Appendix 3.

The Council will expect applicants to submit applications and where granted, operate their businesses to prevent or minimise an impact on the licensing objectives;

- Crime and disorder
- The protection of safety, health or public decency
- The prevention of nuisance
- The protection from children from harm
- Protecting the nature, amenity and character of a neighbourhood

When considering an application for grant, renewal or variation, the Council will in particular consider the;

- (a) Type of activity
- (b) Duration of proposed licence
- (c) Proposed hours of operation
- (d) Layout, appearance and condition of the premises
- (e) The use to which premises in the vicinity are put
- (f) The character of the locality in which the premises are situated or relevant development or strategic plans adopted by the Council
- (g) Levels of recorded crime and disorder in the area

The Council will expect the applicant to have undertaken reasonable steps to consult local residents, business and community groups in relation to applications for grant, or variation of the terms or conditions of a licence. The nature and extent of consultation will depend on the history of a particular premises and the perceived likelihood of problems occurring and objections being received.

Where an application is to renew an existing sex shop, sex cinema or sexual entertainment venue the Council will have regard to the previous history of the premises, and material changes to the operation of the premises, any non-compliance, any planning policies and regeneration factors and any other matters considered material to the application.

When considering all applications the Council will take into account:

- (a) Past demonstrable adverse impact from the activity
- (b) Whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.
- (c) Premises that were previously granted a licence cannot automatically expect re-issue where, for example, the medium and long term aspirations for the locality have changed and the continuation of that licensed premises would undermine the revised aspirations of that locality and as a consequence re-issue would not be justified.

Fitness of Applicant

An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence or a transfer the Council will have regard to;

- (a) Previous knowledge and experience of the applicant and
- (b) Any evidence of the operation of any existing or previous licence held by the applicant, including any licence held in any other Licensing Authority and
- (c) Any report about the applicant and management of the premises received from statutory objectors/responsible authorities
- (d) Any criminal convictions or cautions of the applicant.

Length of Licence

Licences will generally be granted for a duration of 1 year.

Waivers

The Council does not consider it appropriate for waivers to be issued except in extreme circumstances.

Notices

Applicants for sex establishments must offer proof of giving public notice of the application in a local newspaper. The advertisement must be no later than 7 days after the date the application is made.

Where it relates to a premise a notice must be displayed on or near the premises in a place where it can conveniently be read by members of the public. The notice must be in place for 21 days beginning with the date the application was made.

All notices must be in the form prescribed by the Council at that time. Where a separate application is being made under the Licensing Act 2003 a separate notice will be required.

Applications for any sex establishment must be the subject of separate public notices and advertisements and not linked to any premises licence application. This is to ensure that the local community has every opportunity to be aware of the specific submission of an application within the terms of Schedule 3 of the Act.

Fees

The Act states that applicants shall pay a reasonable fee for the grant, renewal, variation or transfer of a sex establishment licence. The City Council will set fees on the basis of full cost recovery.

Hours of Opening

The Council will apply hours of operation that are commensurate to the existing use area and its effect on residential property. There shall normally be no operation of licensable activities on Sundays (06.00 am to midnight), Christmas Day or Easter Sunday. Alternative opening restrictions may be put in place dependant on the character of each locality.

Disability Discrimination

The Disability Discrimination Act 1995 introduced measures to tackle discrimination encountered by disabled people in the areas of employment, access to goods, facilities and services and the management, buying or renting of land or property. Applicants will be expected to:

- Make reasonable adjustments for disabled people, such as providing extra help to make changes to the way they provide their services
- Make reasonable adjustments to the physical features of the premises to overcome physical barriers to access

The Council will have regard to the likely impact of licensing of sex establishments on disability discrimination particularly when considering the operation and management of the premises.

Sex Shop

Licenses for sex shops are required where R18 films being sold or where a significant degree of sex articles are offered for sale.

The term significant degree is not defined. When considering whether or not a licence is required the following factors will be considered;

1. The ratio of sex articles to other aspects of the business
2. The absolute quantity of sales
3. The character of the remaining business
4. Nature of the displays in the business
5. Turnover

The Council will consider any other relevant material, information or data relevant to the particular premises.

MANAGEMENT OF THE PREMISES

The Council requires all licence holders to ensure that they and their employees comply with all relevant licence conditions.

In terms of management of licensed sex establishment, the Council strongly encourages where possible and appropriate, that licence holders;

- (a) Work with statutory agencies such as the Police, and Council departments in order to create and maintain a safe environment, both within licensed premises and in the environs around them
- (b) Develop crime prevention strategies in consultation with the Police and the Council, in particular where premises are located in areas with high levels of recorded crime.

In terms of the employment of staff in licensed premises, the Council requires that all staff be appropriately trained in areas such as the legislation relating to sex establishments, any licence conditions, and any proof of age policies.

ENFORCEMENT

Once licensed, it is essential that the premises are maintained and operated so as to ensure the compliance with the specific terms of the licence and any condition attached. The Council will make arrangements to monitor premises.

The Council will work closely with all other relevant statutory bodies to ensure an efficient deployment of all personnel engaged in enforcing licensing law and inspecting licensed sex establishments, in order to ensure that resources are targeted at problem and high risk premises, whilst ensuring that all such premises meet the required standards.

Failure to maintain compliance may result in action being taken in accordance with the Council's relevant Enforcement Policies.

EXCHANGE OF INFORMATION

From time to time the Council may exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the Police and other partners to fulfil the statutory duty of reducing crime

The name and addresses of objectors will not be disclosed to applicants or published in public reports.

POLICY REVIEW

The Council will review this policy as required by the governing legislation or when deemed necessary.

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APPENDIX I

DEFINITIONS

The meanings assigned in this document have been paraphrased from Schedule 3 of the Act. The definitions are considered correct as at the date of this policy. Please refer to the Act for final interpretation.

A ‘sex establishment’ means:

A ‘sex shop’, a ‘sex cinema’ or a ‘sexual entertainment venue’. It includes any premises, vehicle, vessel or stall used as a sex establishment but does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control or primarily relate to birth control”.

A “sexual entertainment venue” means:

“Any premises at which relevant entertainment is provided before a live audience for financial gain of an organiser”

“Relevant entertainment” means:

“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). An audience includes an audience of one”

For the purpose of the definitions for “sexual entertainment venue” and “relevant entertainment definitions”, it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.

“Audience” includes an audience of one

“A display of nudity” means:

- (a) In the case of a woman, exposure of her nipples, pubic area, genitals or anus; and
- (b) In the case of a man, exposure of his pubic area, genitals or anus;

“The organiser” means any person who is responsible for the organisation or management of;

- (a) The relevant entertainment; or
- (b) The premises;

“Premises” includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted.

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.

No premises shall be treated as a sex cinema by reason only

- (a) If they may be used for an exhibition of a film (with the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (within the

meaning of section 136 of that Act) of their use in accordance with that authorisation; or

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

A **“sex shop”** means:

Any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating

- (a) Sex articles; or
- (b) Other things intended for use in connection with, or for the purpose of stimulating or encouraging -
 - (i) Sexual activity; or
 - (ii) Acts of force or restraint which are associated with sexual activity.

No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.

A **“sex article”** means;

- (a) Anything made for use in connection with, or for the purpose of stimulating or encouraging
 - (i) Sexual activity; or
 - (ii) Acts of force or restraint which are associated with sexual activity; and
- (b) Anything to which the below applies.

To any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and

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.

APPENDIX 2

APPLICATION, CONSULTATION AND HEARING PROCEDURES

Application Process

The Licensing Section, Public Protection Service will have responsibility for processing any application having regard to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ("the Act") , relevant statutory guidance, national and local licensing policies.

The application form and relevant documentation for the new licence, renewal, variation or transfer must be completed and returned with the appropriate fee as determined by the Council's fees and charges. Application forms can be accessed from the Council's Licensing website or are available upon request from the Licensing Section.

In keeping with the requirements of the EU Services Directive applications may be made electronically. For further information, please visit the Council's licensing website or contact the Licensing Section. It should be noted that as a result of The Provision of Services Regulations 2009 (Regs.47 and 19) tacit authority of an application does not apply as different arrangements are in place for dealing with applications for sex establishments as set in the following.

A notice of the application must be advertised both on or near the premises and in a local newspaper circulating within the area of the premises i.e. Evening Herald. The notice must clearly identify the premises to which the application relates. Sample prescribed notices are available on the website. The notice on or near the premises shall be displayed for 21 days beginning with the date of the application and in a place where it can be conveniently read by the public.

The notice in the newspaper shall be published no later than 7 days after the date of the application.

The Council recognises that there will be some 'cross over' in the management and control of the premises having regard to the requirements of the Licensing Act 2003. The Council will expect the applicant to have considered the factors and to have drawn comparisons where appropriate in promoting the licensing objectives. This is particularly relevant where the premises already has or is applying for a premises licence.

Applicants are advised to consider the Council's pool of conditions

The applicant shall use the prescribed form published by the Council for any application and supply the details requested. These details may include:

Site plan (1:1250)

Premises plan (1:50) showing all entrance and exit points, all parts used and the licensed areas suitable marked

Drawings of the elevations including signage and advertising

Personal / company details

Details of previous convictions

Consultation

A copy of the application form and supporting documentation must be sent to the Chief Officer of Police within 7 days of the date the application was given to the Licensing Authority. The application should be sent to the Police Licensing Team, Charles Cross Police Station, Hampton St, Plymouth, PL4 8HG.

The Council may consult with the following authorities to ensure that all relevant information is available when considering an application;

- Devon & Cornwall Police
- Devon and Somerset Fire & Rescue Service
- Public Protection Service, Plymouth City Council
- Planning Department, Plymouth City Council
- Crime Reduction Safety Partnership
- Child Protection Board

The Council will consult any other organisation it deems relevant to a particular application. Relevant Ward Councillors will be notified of all applications for grant, renewal and transfer of licences and the variation of conditions within their Ward, and also those on or near the Ward boundary.

Representations

Representations may be made to an application by any person, business, community group or representative of any of the above who live in the vicinity and /or have a reasonable expectation to be in a position to comment. The final arbiter of whether any representation is relevant having regard to the specific application will be the Licensing Officer duly authorised by the Council to process the application.

A relevant representation will state the grounds on which the objection/positive representation is made and will need to be made in the following terms:

- Be made in writing
- Indicate the name and address of the person or organisation making the representation
- Indicate the premises to which the objection relates
- Indicate the proximity of the premises to the person making the representation.
- Link the representation as to how the licensing objectives would be compromised

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

The Council will not normally consider any representation that does not contain the name and address of the person making it. Any personal details received will not be disclosed in the Committee report

Representations received that are frivolous or vexatious or which relate solely to moral grounds is likely to be given lesser weight.

Where representations are made the Licensing Authority will provide copies to the applicant.

Where objections are made and not withdrawn, a hearing before a Licensing Sub Committee will normally be held within 20 working days of the end of the period during which representations may be made, unless all parties agree that a hearing isn't necessary. At this point all interested parties will have the opportunity to attend.

Decision Making

The Council recognises that the licensing of sex establishments is controversial and stimulates very emotive arguments. However, the Council does not have the right to, and will not, have regard solely to the morality of sex establishments. Its approval or disapproval of sex establishments is not a matter that can be considered. Consequently, objections on the grounds that sex establishments should not be allowed only on moral grounds will not be considered.

Hearings

All applications for new, variations or transfer of sex establishment licences will be considered at a public hearing by Licensing (Miscellaneous) or Licensing Sub-Committee (Miscellaneous) as the committee responsible for determining applications or officers where appropriate delegated powers have been granted.

With regard to renewals where the appropriate application procedures have been followed and where no relevant representations have been submitted officers will normally have delegated authority to process the application and where appropriate, issue the licence

Representations will be considered by Committee. There are no explicit provisions for objectors to be heard, but the Council has discretion on this matter.

Individuals or responsible authorities will only normally be afforded a hearing if the Chair is satisfied that;

- (a) A relevant written objection was received during the statutory 28 day consultation period
- (b) The objector will be confined to putting forward only those points that are relevant to consideration of the grounds of refusal and which have been notified in writing to the applicant
- (c) Objectors and applicant will be heard on the same occasion as the hearing
- (d) The applicant will be afforded the opportunity to address the committee and respond to any enquiries members may have.

Members may adjourn to private session to discuss the case before making a decision. A verbal decision will normally be given that day with a written decision sent within 5 working days stating the Committee's reasons for that decision.

The Committee after due consideration may decide to grant or refuse the licence under the provisions in Schedule 3 of the Act, or may grant a licence on such terms and conditions and subject to such restrictions as it may specify.

Conditions may be imposed for example to control:

- (a) The external appearance of the premises;
- (b) The operating hours of the business;
- (c) The visibility of the interior of the establishment to passers by;
- (d) Any change of use of any kind of sex establishment to another;
- (e) Displays or advertisements on or in such establishments;
- (f) CCTV provision;
- (g) The employment of suitable management & staff.
- (h) Restrictions on age of customers
- (i) Suitable proof of age schemes or policies

A pool of conditions will be used to provide conditions that are proportionate and necessary for the operation, management and control of the particular premises. Officers will recommend suitable conditions for each application.

Grounds for Refusal

Mandatory Refusal - under the provisions in Schedule 3 of the Act, the Council must refuse a licence for the following reasons

- (a) To a person under the age of 18; or

- (b) To a person who is disqualified by virtue of the revocation of a previous licence in the area within the preceding 12 months; or
- (c) To a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made, or**
- (d) To a body corporate which is not incorporated in an EEA State; or**
- (e) To a person who has been refused an application for a licence for the premises within the preceding 12 months, unless the refusal has been reversed on appeal.

Discretionary refusal – the Council may refuse to grant a licence 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 for any other reason;
- (b) That 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 a licence if he made the application himself;
- (c) That the number of sex establishments 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 (the number may be nil);
- (d) That the grant of the licence would be inappropriate, having regard to:
 - (i) The character of the locality where the premises 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, vehicle, vessel or stall in respect of which the application is made.

Appeals

An applicant for the grant of a licence whose application is refused has the right of appeal to the Magistrates' Court within 21 days. However, if refusal was on the grounds specified in paragraphs above then no right of appeal is available under this legislation. A person whose application is refused due to these reasons may attempt to invoke a judicial review of the Council's use of its discretion in coming to a decision. Those making representation, objecting to or supporting an application, have no right of appeal under this piece of legislation.

APPENDIX 3

TRANSITIONAL PROVISIONS

The legal aspects of the transitional provisions are set out in the Policing and Crime Act 2009 (Commencement No1 and Transitional and Saving Provisions)(England) Order 2010 (The transitional Order) and the legal aspects of the transitional provisions are set out in the Policing and Crime Act 2009 (Consequential Provisions)(England) Order 2010 (The Consequential Order)

The 1st Appointed day will be XX/YY/2011

The 2nd Appointed day will be XX/YY/2011

The 3rd Appointed day will be XX/YY/2011

Existing Operators

Existing operators who immediately before the 1st Appointed Day that have a licence and lawfully use that premises as a sexual entertainment venue under that licence will be allowed to continue to provide relevant entertainment until the 3rd Appointed Day or the determination of any application submitted before that time.

New Applicants

New applicants who do not meet the criteria for an existing operator will not be able to operate any activities which require a licence under this policy until the appropriate licence has been granted.

Determination of Applications received on or before the 2nd Appointed Day

Applicants can submit applications from the 1st Appointed Day onwards. Any applications received after the 1st Appointed Day but before the 2nd Appointed Day shall be considered together, so that in the case of a locality with a quantity limit applications are considered on their merit and not on a first come first served basis.

No applications will therefore be determined before the 2nd Appointed Day.

If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence it will take effect on the 3rd Appointed Day.

Determination of Applications received on or before the 2nd Appointed Day

Applications will be considered when they are made. If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence it will take effect on the 3rd Appointed Day or if later the date the application is determined.

CONTACT POINTS

For advice on any aspect of this policy please contact:

Licensing Section, Public Protection Service, Plymouth Council, Floor 6 Civic Centre, Plymouth, PL1 2AA

Tel: 01752 – 304141

Fax: 01752 – 226314

Email: licensing@plymouth.gov.uk

Police Licensing Team, Devon & Cornwall Constabulary, Hampton Street, Charles Cross, Plymouth, PL4 8HG

Tel: 01752 720469

Fax: 01752 720487

Email: plymlc@devonandcornwall.pnn.police.uk

Child Protection, Child Protection Team, Social Services, Ginkgo House, 156 Mannamead Road, Plymouth, PL3 5QL

Tel: 01752 306340

Fax: 01752 306344

Email: childprotect@plymouth.gov.uk

Devon & Somerset Fire & Rescue Service, West Devon Headquarters, Glen Road, Plympton, Plymouth, PL7 3XT

Tel: 01752 333600

Fax: 01752 333640

Email: westfiresafety@devfire.gov.uk

Environmental Health Service, Public Protection Service, Plymouth Council, Floor 6, Civic Centre, Plymouth, PL1 2AA.

Tel: 01752 304141

Fax: 01752 226314

E-mail: public.protection@plymouth.gov.uk

Planning & Regeneration Service, Plymouth Council, Floor 9 Civic Centre, PL12AA

Tel: 01752 – 304366

Email: planningconsents@plymouth.gov.uk

Plymouth Community Safety Partnership, Floor 8, Civic Centre, Plymouth, PL1 2AA

Tel: 01752 315788

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