

# Licensing Sub Committee 26 September 2019



Working in partnership with **Eastbourne Homes**

**Time and venue:**

**6.00 pm in the Court Room at Eastbourne Town Hall, Grove Road, BN21 4UG**

**Membership:**

**Councillor Robin Maxted, Councillor Candy Vaughan, Councillor Penny di Cara**

**Quorum: 3**

*Published: Wednesday, 18 September 2019*

## Agenda

- 1 Appointment of Chair**
- 2 Minutes of the meetings held on 1 April 2019 (Pages 3 - 12)**
- 3 Apologies for absence / declaration of substitute members**
- 4 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests as required by the Code of Conduct**
- 5 Application for the variation of a Sexual Entertainment Venue Licence, Lux, 2a-2b Pevensey Road, Eastbourne, BN21 3HJ (Pages 13 - 92)**

## Information for the public

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## Information for councillors

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In the case of a disclosable pecuniary interest (DPI), if the interest is not registered (nor the subject of a pending notification) details of the nature of the interest must be reported to the meeting by the member and subsequently notified in writing to the Monitoring Officer within 28 days.

If a member has a DPI or other prejudicial interest he/she must leave the room when the matter is being considered (unless he/she has obtained a dispensation).

**Councillor right of address:** Councillors wishing to address the meeting who are not members of the committee must notify the Chairman and Democratic Services in advance (and no later than immediately prior to the start of the meeting).

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## Licensing Act Sub-Committee

**Minutes of meeting held in Court Room at Eastbourne Town Hall, Grove Road, BN21 4UG on 1 April 2019 at 4.30 pm**

### **Present:**

Councillor Pat Hearn (Chair)

Councillors Tony Freebody and Jim Murray

### **Officers in attendance:**

Danielle Ball (Specialist Advisor - Licensing, Service Delivery), Stewart Bryant (Senior Specialist Advisor (Licensing and Pollution)) and Michele Wilkinson (Lawyer (Housing & Regulatory)), and Emily Horne, Committee Officer

### **13 Apologies for absence.**

There were none.

### **14 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests under the Code of Conduct.**

There were none.

### **15 Application for a new premises licence - 32-34 Cornfield Road**

All parties present introduced themselves and the Chair detailed the procedure to be followed at the hearing. There were no objections to the procedure from those present.

The Specialist Advisor for Licensing outlined the report setting out the application for a new premises licence for 32-34 Cornfield Road.

Details of the application for a new premises licence were appended to the report. When submitting an application for a new premises licence under the Licensing Act 2003, the applicant was required to describe

any steps they intended to take to promote the four licensing objectives, as defined by the Licensing Act 2003. These were appended to the report at Appendix 1.

The premises in question is located within the cumulative impact zone (CIZ) and where valid representations were received, the cumulative impact policy (CIP) created a rebuttable presumption that the application be refused.

Following a consultation period of 28 days, three representations had been received and were included in part of the agenda pack circulated. The representations centred on the prevention of public nuisance and the prevention of crime and disorder.

Sussex Police as a responsible authority had mediated with the applicant and agreed two conditions. A copy of the e-mail correspondence was attached at Appendix 3 of the report.

Kirsty Rolfe, Sussex Police Licensing Officer, proposed alternative conditions to those previously mediated with the Applicant. See Decision Notice.

Mr Tamal Taru Saha, representative of Mr Rabin Paul, Leaseholder of 28-30 Cornfield Road, made his submission on the grounds of the prevention of public nuisance. He raised concerns regarding the applicant's proposal to play live music on Friday and Saturday evenings and on Christmas Eve and New Year's Eve till 2am, stating there would be substantive noise pollution. He urged the Sub-Committee to refuse the application.

Melaine Bell, 34a Cornfield Road and representative of Martina Ercolini, Flat 3, 12 Lushington Road, said that public notices would not act as a deterrent to prevent people congregating and creating a disturbance. She said the external doors would probably be left open allowing noise from inside the premises to escape. She also said there would not be sufficient space outside the front of the premises on the pavement for people to pass a bench or a small table safely with a pram or in a wheelchair. She raised further concerns regarding refuse and live amplified music, stating that soundproofing was not considered necessary at the time when the flats were built and she was subsequently refused planning permission for UPVC windows. She said the application, if approved, would affect the quality of their lives.

Christian Schmidt, representative of the applicant, addressed the Sub-Committee, stating that he apologised on behalf of the applicant for the ambiguity of the wording in the application. He said the purpose of the businesses was as a gallery/book club with a cafe, not as a nightclub with DJ etc. He said the premises would open under conventional hospitality hours

providing coffee, tea and snacks and occasionally there would be large events to conclude at 10pm. Different Eastbourne artists would be invited to attend every month. He said there would be no PA system, just ambient music to allow conversation. This, he said, would be a positive cultural and creative premises in the Devonshire Quarter.

In response to questions from the Sub-Committee, the applicant confirmed the internal measurements of the premises would be 10m x 5m. She confirmed the seating arrangements, stating that inside the premises there would be four café tables and several stools around the bar. Following communication with Kirstie Rolfe, no provision would be made for outside seating. Private events would be held once a month, these would include private viewings which would provide an opportunity for artists to exhibit and sell their work. These events would be limited to 20/30 people. The DJ, she said, would be herself changing CD's and playing ambient jazz and classical music. There would be no amplified music. She said it was unlikely that the landlord would allow the installation of soundproofing to limit noise emissions.

In response, Melanie Bell, questioned how the applicant intended to limit the number of attendees for live music events; and given the vertical alcohol restrictions, she said 20/30 people would not be able to sit down at four cafe tables to eat and drink. Furthermore, she said she would still be able to hear music whether amplified or not as there is no soundproofing between the buildings.

Following all the evidence presented, the Sub-Committee retired to consider and determine the application.

Having taking into account all the relevant considerations, the Sub-Committee reconvened and announced the decision as follows:

**RESOLVED:** That the application to vary the license be approved.

The meeting ended at 5.43 pm

Councillor Pat Hearn (Chair)

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**Eastbourne Borough Council  
Decision Notice**

**Licensing Act Sub-Committee held on Monday 1 April 2019**

Premises Licence Holder/Designated Premises Supervisor:	Ms Jaswant Bhopal
Premises:	32-34 Cornfield Road, Eastbourne, <b>BN21 4QH</b>
Reasons for Hearing:	Relevant representation received from interested parties under the prevention of public nuisance and the prevention of crime and disorder.
Parties in attendance:	<p>Councillors: Pat Hearn (Chair) Tony Freebody Jim Murray</p> <p>Licensing Authority: Danielle Ball (Specialist Advisor - Licensing) Stewart Bryant (Senior Specialist Advisor (Licensing and Pollution))</p> <p>Legal Advisor: Michele Wilkinson (Lawyer)</p> <p>Democratic Services: Emily Horne (Committee Officer)</p> <p>Applicant: Ms Jaswant Bhopal</p> <p>Representative: Christian Schmidt</p>
Decision made:	That the application for a premises license is granted with the modified condition that no alcohol is to be consumed outside of the premises at any time and that this condition replaces the two mediated conditions made between the Police and the applicant.
Reasons for Decision:	The application concerned the grant of a new premises licence under the Licensing Act 2003 for the supply of alcohol on Monday – Saturday between 10.00hrs and 23.00hrs and on Sunday between 10.00hrs and 22.30hrs. Apart from on Christmas Eve and New Year’s Eve when application is for 10.00hrs to 2.00hrs. Further the application was for a licence for live music on Thursday and Friday between 19.00hrs and 22.00hrs, and

recorded music on Monday – Saturday between 10.0hrs and 23.00hrs and on Sundays between 10.00hrs and 22.30hrs.

In discharging its functions the Sub Committee considered the promotion of the relevant licensing objectives, the Council's own Licensing Policy, the Home Office guidance and the rules of natural justice.

As a result of the consultation process three representations were received. The Sub Committee gave due regard to the written representations received from Martina Ercolini, Rabin Paul and Melanie Bell and in addition the oral representations of Tamal Taru Saha made on behalf of Rabin Paul and Melanie Ball made on behalf of herself and Martina Ercolini.

The representations involved the licensing objectives of the prevention of public nuisance and the prevention of crime and disorder. Representations were made that the playing of both live and recorded music would cause a significant noise nuisance particularly to those living in the immediate vicinity of the premises given the lack of sound proofing in the building. Representations were also made about the premises being within the Cumulative Impact Zone and that Cornfield Road was a centre of night life with residents having to deal with nuisance and criminal behaviour so that another licensed premises in that area would be likely to exacerbate the situation.

The Sub Committee considered the new application and the oral representations made by the applicant's representative at the hearing that the premises would not be predominately a drinking establishment but more of a café/gallery (intended it to be a cultural hub). That alcohol would mainly be served only at occasional small (generally not more than 20 people) private viewings and gatherings. The applicant's representative stated that any music would be largely in the background and clarified, that contrary to their application, amplified music would not be played.

The Sub Committee noted that the premises are within the Cumulative Impact Zone.

The Sub Committee noted that no Responsible Authorities had made any representations although Sussex Police had mediated with the applicant two conditions, which were outlined at Appendix 3.

In its deliberations the Sub Committee considered what decision would be appropriate and proportionate from the options outlined in paragraph 9 of the Report.



	<p>The Sub Committee resolved to grant the premises licence with the modified condition that no alcohol is to be consumed outside of the premises at any time and that this condition replaces the two mediated conditions made between the Police and the applicant.</p> <p>The Sub Committee were satisfied that upon clarification by the applicant of the uses of the premises that the grant of the application would not add to the cumulative impact in the area or undermine the licensing objectives, in particular those of the prevention of public nuisance or crime and disorder.</p>
Date of Decision:	1 April 2019
Date decision notice issued:	4 April 2019

A written or electronic copy of this Notice will be available to all Parties and published on the Council's website.

### **RIGHT OF APPEAL**

The Licensing Act provides a right appeal to the Magistrates Court in respect of an application for a variation of a premises licence. An appeal must be commenced by notice of appeal being given by the appellant to the Magistrates Court within a period of 21 days beginning on the date the appellant was notified in writing of the decision of the Licensing Act Sub-Committee.

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## General Licensing Sub-Committee

Minutes of meeting held in Court Room - Town Hall on 1 April 2019 at 6.30 pm

### Present:

Councillor Pat Hearn (Chair)

Councillors Colin Murdoch and Jim Murray

### Officers in attendance:

Danielle Ball (Specialist Advisor - Licensing, Service Delivery), Stewart Bryant (Senior Specialist Advisor (Licensing and Pollution)), Michele Wilkinson (Lawyer (Housing & Regulatory)), and Emily Horne (Committee Officer).

### 5 Apologies for absence.

There were none.

### 6 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests as required by the Code of Conduct.

There were none.

### 7 Exclusion of the public.

**RESOLVED:** That the public be excluded from the remainder of the meeting as otherwise there was a likelihood of disclosure to them of exempt information as defined in schedule 12A of the Local Government Act 1972. The relevant paragraphs of Schedule 12A are shown below.

### 8 Determination of a licensed Public Hire and Hackney Carriage Driver Licence

The Sub-Committee, considered the Officer's report, the representations made and whether the applicant was a 'fit and proper' person to hold a Public Hire and Hackney Carriage Driver's Licence.

**Resolved** – The Licensing Sub Committee decision is to give a written warning which will stay on the licence holder’s record for a period of 12 months. The Sub Committee noted that should any complaint, of any nature, be made against the licence holder within this period then that complaint would be referred to the Licensing Sub Committee for further consideration.

**Reasons** - The Sub Committee took into account his previous exemplary record and the provocation experienced by the licence holder leading up to the incident. The Sub Committee also took into account that he did deal with the passenger, following the incident, by completing the journey (taking the passenger to his destination). It also noted the licence holder’s sincere expressions of apology and remorse.

(Exempt information reasons 1 and 2 – Information relation to an individual or likely to reveal the identity of an individual.)

The meeting ended at 7.26 pm

Councillor Pat Hearn (Chair)

**Report to:** Licensing Sub Committee

**Date:** 26<sup>th</sup> September 2019

**Title:** Application for the variation of a Sexual Entertainment Venue Licence, Lux, 2a-2b Pevensey Road, Eastbourne, BN21 3HJ

**Report of:** Director of Service Delivery

**Ward(s):** Devonshire Ward

**Purpose of report:** To determine a variation application of a Sexual Entertainment Venue Licence.

**Officer recommendation(s):** (1) That the Licensing Sub Committee considers the variation application.

**Reasons for recommendations:** The Council is responsible for considering variations to Sexual Entertainment Venue Licences.

**Contact Officer(s):** Name: Danielle Ball  
Post title: Specialist Advisor  
E-mail: danielle.ball@lewes-eastbourne.gov.uk  
Telephone number: 01323 415333

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## 1 Introduction & Background

- 1.1 The Scheme for the control of sex establishments by the way of a licensing regime is contained in the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009. The Council as the Appropriate Authority is encouraged to have regard to the Home Office Sexual Entertainment Venues Guidance for England and Wales (March 2010) (“the Guidance”), included as **Appendix 1**.
- 1.2 In addition Eastbourne Borough Council adopted its Sexual Establishment and Encounter Policy (“the Policy”) on the 23<sup>rd</sup> February 2011 and its current version on the 9<sup>th</sup> December 2015, to which Members should have regard. This is included at **Appendix 2**.
- 1.3 There is currently this one sexual entertainment venue in the Borough of Eastbourne. The licence was initially granted in July 2018, due to the delay in issuing the licence it runs from 6<sup>th</sup> December 2018 to the 5<sup>th</sup> December 2019. It is currently not operating as a sexual entertainment venue. Each licence is only valid for a maximum of one year.
- 1.4 This premises has a valid premises licence under the Licensing Act 2003 that

covers:

Recorded music Monday to Saturday 18:00- 04:00  
Sunday 18:00- 03:00

Performance of Dance Monday to Saturday 18:00-04:00  
Sunday 18:00- 03:00

Supply of Alcohol Monday to Saturday 18:00- 03:30  
Sunday 18:00- 02:30

## **2 The Application**

2.1 An application has been received by Eastbourne Borough Council the 'Appropriate Authority', for a variation to a Sexual Entertainment Venue Licence. A valid application was received on the 31<sup>st</sup> July 2019. A copy of the application is included at **Appendix 3**.

2.2 Sexual Entertainment Venue is defined as any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

Relevant Entertainment means:

Any live performance or

Any live display of nudity

Which is of such a nature that, ignoring financial gain, it must be reasonable to 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.)

2.3 The variation application is for the removal/rewording of specific conditions held within the current licence.

**Remove condition 7:** The only form of entertainment which is approved and may be provided at the premises is striptease entertainment in the form of pole dancing by club dancers only in the following format:

Full nudity is not permitted. The dancer/performers should at all times, wear a G-string or similar piece of clothing which is not transparent, on the appropriate part of the body in order to cover the groin/genital area.

**Replace with** - The only form of entertainment which is approved and may be provided at the premises is striptease entertainment in the form of pole dancing.

**Remove condition 10** - There will be a minimum distance of one meter between the dancer and the seated customers at all times.

**Remove condition 15 (as duplicates Condition 8)** - There shall be no physical contact between the customer and the dancer before, during or after the performance when the performance is complete. All monetary transactions will

take place at the reception/entrance area and shall be lieu of a ticket, covering the cost of the performance of pole dancing only. Notices outlining this shall be clearly displayed at every table and be on display at the entrance of the premises and in each bar area.

**Remove from Performers Code of Conduct condition 26** - Full nudity is not permitted. The dancer/performers should at all times, wear a G-string or similar piece of clothing which is not transparent, on the appropriate part of the body in order to cover the groin/genital area.

Under definitions for both customers and performers:

**Remove-** Pole dancing- private dancing will not require the placement of a physical pole, but the 1m minimum distance applies

**Replace with-** Pole dancing- private dancing will not require the placement of a physical pole.

A copy of the current licence is included at **Appendix 4**.

### **3 Consultation process**

- 3.1 As part of the Policy at paragraph 9.1, applications are required to be advertised both on the premises, and in a local newspaper in order to inform the public of the application to vary the licence. The site notice is required to be on display for 21 days and the public have 28 days to make a representation against the application in writing. These requirements have been complied with.
- 3.2 A copy of the application was served on the Chief Officer of the Police. Sussex Police have not made a representation concerning this variation application.
- 3.3 As a result of the consultation process, no representations have been made against this application.
- 3.4 However within the Policy at paragraph 9.3 it is stated that 'All variation applications for sex establishment licences must be referred to the Councils Licensing Sub-Committee for a decision.

### **4 Considerations**

- 4.1 The Policy and the Guidance attached to this report outlines the matters that the Authority should consider when determining the variation. Of particular interest is the 'Special Conditions' section of the Policy condition 25, condition reads:

Full nudity is not permitted. The dancer/performers should at all times wear a G-string or similar piece of clothing which is not transparent on the appropriate part of the body in order to cover the groin/genital area.

Condition 31 reads:

There will be a minimum distance of one meter between the dancer and the seated customers at all times.

## **5 Options available to Members**

5.1 Members may:

- Make the variations specified in the application
- Make such variations as Members think fit
- Refuse the application

## **6 Appeal**

6.1 An applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application is refused may appeal within 21 days of being notified of the refusal to the Magistrates Court.

## **7 Financial appraisal**

7.1 The cost of delivering the licensing function is fully covered by the Licensing fees.

## **8 Legal implications**

8.1 The Legal Section considered this Report on 5 September 2019 (IKEN-8542-EBC- MW)

## **9 Appendices**

- Appendix 1 - Home Office Sexual Entertainment Venues Guidance for England and Wales (March 2010)
- Appendix 2 - Sex Establishment and Encounter Policy 2015
- Appendix 3 - Variation application for the Sexual Entertainment Venue licence
- Appendix 4 - Current licence

## **10 Background Papers**

None





Home Office

## **Sexual Entertainment Venues**

Guidance for England and Wales

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## MINISTERIAL FOREWORD



In September 2008, the previous Home Secretary announced the Government's intention to give local people greater say over the number and location of lap dancing clubs in their area. This followed a consultation with local authorities which highlighted concerns that existing legislation did not give communities sufficient powers to control where lap dancing clubs were established.

In order to address these concerns, section 27 of the Policing and Crime Act 2009 reclassifies lap dancing clubs as sexual entertainment venues and gives local authorities in England and Wales the power to regulate such venues as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

These new measures, which take effect on 6th April 2010 in England and on 8th May in Wales, will, if adopted by local authorities, give local people a greater say over where and how many lap dancing clubs open and operate in their neighbourhoods.

These are important reforms to further empower local communities and the purpose of this guidance is to provide advice to local authorities, operators, local people and other interested parties on the new measures introduced by section 27 and the associated secondary legislation.

**Alan Campbell**

A handwritten signature in cursive script that reads "Alan Campbell".

**Parliamentary Under-Secretary of State for Crime Reduction**

**March 2010**

## **INTRODUCTION**

### **Definitions**

**1.1 In this guidance –**

The "2009 Act" means the Policing and Crime Act 2009

The "1982 Act" means the Local Government (Miscellaneous Provisions) Act 1982

The "2003 Act" means the Licensing Act 2003

"Section 27" means section 27 of the Policing and Crime Act 2009

"Schedule 3" means Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982

### **Policing and Crime Act 2009**

**1.2 Section 27 introduces a new category of sex establishment called 'sexual entertainment venue', which will allow local authorities to regulate lap dancing clubs and similar venues under Schedule 3.**

**1.3 Section 27 gives local authorities more powers to control the number and location of lap dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where they are adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area.**

### **The Guidance**

**1.4 The guidance is provided for local authorities carrying out their functions under Schedule 3, as amended by section 27. It will also be of use to operators, the police and the general public.**

- 1.5 Interpretation of the relevant primary and secondary legislation is ultimately a matter for the courts. However, local authorities are encouraged to have regard to the guidance when exercising their functions (although there is no statutory requirement to do so) in order to promote best practice and consistency across England and Wales.
- 1.6 The guidance is composed of 3 sections. Section 2 focuses on the 2009 Act and the definition of 'sexual entertainment venue'. Section 3 provides an explanation of the meaning and effect of Schedule 3 to the 1982 Act and section 4 provides guidance on the transitional provisions as set out in the transitional orders: *The Policing and Crime Act 2009 (Commencement No.1 and Transitional and Saving Provisions)(England) Order 2010* and the *Policing and Crime Act 2009 (Consequential Provisions )(England) Order 2010* and any equivalent orders made by Welsh Ministers in respect to Wales.
- 1.7 Apart from extending the scope of the 1982 Act to cover the licensing of sexual entertainment venues and removing the sex encounter establishment category in those local authority areas that adopt the new provisions, the 2009 Act and the associated secondary legislation makes only minor changes to the operation of Schedule 3.
- 1.8 Section 27 of, and Schedule 3 to, the 2009 Act come into force in England on 6<sup>th</sup> April as does the *Policing and Crime Act 2009 (Consequential Provisions) (England) Order 2010*. In Wales, the equivalent provisions come into force on 8<sup>th</sup> May 2010.

## **POLICING AND CRIME ACT 2009**

### **Meaning of Sexual Entertainment Venue**

- 2.1 Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a 'sexual entertainment venue' and 'relevant entertainment' for the purposes of these provisions. A sexual entertainment venue is defined as *"any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer."*
- 2.2 The meaning of 'relevant entertainment' is *"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 (whether by verbal or other means)."* An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 2.3 While local authorities should judge each case on its merits, we would expect that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:
- Lap dancing
  - Pole dancing
  - Table dancing
  - Strip shows
  - Peep shows
  - Live sex shows
- 2.4 The above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should 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.

- 2.5 For the purposes of these provisions a premises includes any vessel, vehicle or stall but does not include a private dwelling to which the public are not admitted.

### **Nudity**

- 2.6 It is important to note that although the definition of relevant entertainment makes reference to a 'live display of nudity', the mere fact that there is a display of nudity does not mean that a sex establishment licence will necessarily be required. For example, if the display forms part of a drama or dance performance in a theatre, in most cases it cannot reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.
- 2.7 Paragraph 2A(14) of Schedule 3 sets out the definition of a 'display of nudity'. In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and, in the case of a man; it means exposure of his pubic area, genitals or anus.

### **The Organiser**

- 2.8 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.
- 2.9 The 'organiser' must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for



one person to hold a sexual entertainment venue licence for premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.

### **Spontaneous Entertainment**

2.10 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.

### **Premises that are not sexual entertainment venues**

2.11 Paragraph 2A(3) of Schedule 3 sets out those premises that are not sexual entertainment venues. These are:

- sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act);
- premises which provide relevant entertainment on an infrequent basis. These are defined as premises where-
  - a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
  - b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
  - c) no such occasion has lasted longer than 24 hours.
- other premises or types of performances or displays exempted by an order of the Secretary of State.

2.12 Premises which provide relevant entertainment on an infrequent basis will continue to be regulated under the 2003 Act, insofar as they are

providing regulated entertainment under that Act, either by virtue of a premises licence or club premises certificate issued under Part 3 or Part 4 or a temporary events notice issued under Part 5 of that Act. Any premises that provide relevant entertainment on more occasions, more frequently or for a longer period of time than is permitted under the exemption will be operating as a sexual entertainment venue and will have committed an offence under Schedule 3 unless they hold a sexual entertainment venue licence or the local authority has waived the requirement for such a licence.

### **Amendments to the Licensing Act 2003**

- 2.13 Schedule 7 to the 2009 Act amends the 2003 Act to ensure that premises for which a sexual entertainment venue licence is required or held (or for which the requirement has been waived under paragraph 7 of Schedule 3 to the 1982 Act) do not also require a premises licence, club premises certificate or temporary events notice in order to provide relevant entertainment. This is because such entertainment is expressly excluded from the definition of regulated entertainment found in the 2003 Act. However, if the premises also carry on other licensable activities (e.g. the sale of alcohol or the provision of regulated entertainment that is not relevant entertainment), they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the 2003 Act for those other activities, subject to any exceptions contained in that Act.
- 2.14 In practice, this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment not covered by the definition of relevant entertainment.
- 2.15 Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from

the definition of regulated entertainment in the 2003 Act. Therefore, a sexual entertainment venue will not require a premises licence or club premises certificate just because it plays recorded music for a performer to dance to. (Nor will providing entertainment facilities for the purposes of the provision of relevant entertainment be regulated entertainment under the 2003 Act).

- 2.16 Premises which fall under the exemption created for infrequent entertainment do not require a sexual entertainment venue licence but will instead need an appropriate authorisation under the 2003 Act, for example, to cover the performance of dance. The exemption from requirements of the 2003 Act for live music or the playing of recorded music which is integral to relevant entertainment does not apply to such venues.

#### **Consultation with Local People**

- 2.17 If a local authority has not made a resolution to adopt the provisions introduced by section 27 within one year of it coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution.
- 2.18 The purpose of this duty is to ensure that local authorities consider the views of local people where, for whatever reason, they have not adopted the provisions.
- 2.19 This duty should be seen to be an extension to existing general duties on local authorities to consult and involve local people when exercising their functions.
- 2.20 The 2009 Act is not prescriptive about how local authorities should consult with local people in order to comply with this duty. Local authorities have extensive experience of engaging with local people and will know what works best in their individual areas. Clearly, the Secretary of State expects that any consultation exercise carried out under this duty will be fair and meaningful. Local authorities should

seek to make any relevant information available to local people in order to inform their understanding and publish the outcomes of the consultation on the internet.

2.21 In practice, local authorities may decide to consult local people on this matter when they consult and involve local people on broader local priorities and crime and disorder or anti-social behaviour priorities as part of their work to develop Local Area Agreements/Local Delivery Agreements and crime and disorder strategies, as required under various existing duties, including, section 138 of the Local Government and Public Involvement in Health Act 2007 and regulation 12 of the Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007. This will ensure that consultations are not onerous and form part of the ongoing engagement with local communities undertaken by all local authorities.

2.22 For the purposes of this duty 'local people' are defined as anyone who lives or works in the local authority area.

## **SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

### **The Appropriate Authority**

- 3.1 The appropriate authority is responsible for determining applications for sex establishment licences. For the purposes of the 1982 Act 'appropriate authority' means the local authority which passed a resolution under section 2 of that Act to adopt Schedule 3 in their area. 'Local authority' means—
- (a) the council of a district (including a unitary County Council) or, in Wales, the principal council<sup>1</sup>;
  - (b) the council of a London borough; and
  - (c) the Common Council of the City of London.

### **Committee or Sub-Committee**

- 3.2 Functions under Schedule 3 are the responsibility of the full council of the appropriate authority, as defined above. Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or sub-committee of the appropriate authority.
- 3.3 An authority may delegate its functions to those who sit on its licensing committee set up to discharge licensing functions under the 2003 Act. However, when dealing with an application for a sex establishment licence, the members of the committee would not be acting as the licensing committee under the 2003 Act and would instead be exercising their functions under Schedule 3.

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<sup>1</sup> See section 2 of the 1982 Act. Section 17 of the Local Government (Wales) Act 1994 provides that legislative references to district councils are to be interpreted as references to principal councils in Wales. Unitary County Councils have all the functions and powers of district councils.

## **Adopting the Provisions**

- 3.4 Section 27 comes into force on 6<sup>th</sup> April 2010 in England and 8<sup>th</sup> May in Wales<sup>2</sup>. On or following this date local authorities may resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in their area.
- 3.5 Although many local authorities will have already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas, a further resolution is necessary before the provisions introduced by Section 27 will have effect in the local authority area. However, where a local authority has not resolved to adopt Schedule 3 to the 1982 Act before the coming into force of Section 27, the amendments made to Schedule 3 by section 27 will apply automatically if a resolution to adopt Schedule 3 is made subsequently (see Schedule 3 to the 2009 Act).
- 3.6 The procedure for local authorities to adopt Schedule 3 as amended by section 27 is set out in section 2 of the 1982 Act. Firstly, the local authority must pass a resolution specifying that Schedule 3 or, in the case of an authority where Schedule 3 is already in force, the amendments made by section 27 to that Schedule, shall apply to their area and the day on which it or they shall come into force in the area. The specified day must be more than one month after the day on which the resolution was passed.
- 3.7 The local authority shall publish notice that they have passed a resolution under section 2 of the 1982 Act or (in cases where Schedule 3 is already in force but the local authority is adopting the amendments made by section 27) paragraph 2(2) of Schedule 3 to the 2009 Act for two consecutive weeks in a local newspaper that is circulated in their area. The first publication shall not be later than 28 days before the day specified in the resolution for the provisions to come into force in the

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<sup>2</sup> Section 27 (11) was brought into force on 2nd March 2010 but only for the purpose of making the transitional orders.

local authority's area. The notice should state the general effect of Schedule 3.

- 3.8 While there is no statutory duty to do so, prior to deciding whether to pass a resolution, local authorities may, as a matter of good practice, wish to seek the views of local people and businesses. The Secretary of State also encourages local authorities to engage with known sexual entertainment venues at the earliest possible opportunity once a decision to adopt the provisions has been made, to ensure affected businesses are aware of what action they will need to take in order to comply with the new regime.

#### **Requirement for a Sex Establishment Licence**

- 3.9 Any person wishing to operate a sex establishment as defined by Schedule 3 requires a sex establishment licence, unless the requirement for a licence has been waived by the appropriate authority.
- 3.10 An applicant can apply for a waiver either as part of the application for a licence or separately. The local authority can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. Where a waiver is granted the appropriate authority should inform the applicant that a waiver has been granted. The waiver may last for such a period that the appropriate authority think fit, but can be terminated by the appropriate authority at any time with 28 days notice.

#### **Premises that are deemed to be Sexual Entertainment Venues**

- 3.11 Paragraph 27A of Schedule 3 deems premises with licences to operate as sexual entertainment venues to be sexual entertainment venues whilst their licence remains in force, irrespective of how frequently they are or have been providing relevant entertainment. This remains the case even if premises operate within the exemption for infrequent events.

- 3.12 If an operator with a sexual entertainment venue licence is operating within the exemption for infrequent events and no longer wants their premises to be treated as a sexual entertainment venue (e.g. because they are no longer operating as a lap dancing club) they may write to the relevant local authority to request that their licence be cancelled. Upon receiving such a request from a licence-holder a local authority must cancel the licence in question.

### **Notices**

- 3.13 Applicants for a sex establishment licence must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than 7 days after the date the application is made.
- 3.14 Where the application relates to premises, a notice should also be displayed on or near the premises in a place where it can be conveniently read by members of the public. The notice should be displayed for a period of 21 day beginning with the date the applications was made.
- 3.15 All notices should be in the form prescribed by the appropriate authority and identify the premises or, if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment.
- 3.16 There are similar notification requirements for applications made under the 2003 Act. Where an applicant is making an application under both Schedule 3 and the 2003 Act at the same time they may wish to combine these requirements where permitted.

### **Application Forms**

- 3.17 Unlike the 2003 Act there is no prescribed application form for an application made under Schedule 3 to the 1982 Act. However, the application must be in writing and contain the details set out in paragraph 10 of Schedule 3 along with such other details as the



appropriate authority may reasonably require. Local authorities must provide for applications to be made electronically and may produce and publish recommended application forms for sex establishment licences setting out all the details required.

### **Single Point of Contact**

- 3.18 Following amendments to sub-paragraph 10(14) made by the Provision of Services Regulations 2009, where an application for the grant, renewal or transfer of a licence is made by means of a relevant electronic facility it will be the responsibility of the appropriate authority to send a copy of an application to the chief officer of police, not later than 7 days after the date the application is received.
- 3.19 Where an application is made by any other means the responsibility to send a copy of the application to the chief officer of police within 7 days of the application being made will remain the responsibility of the applicant.
- 3.20 For the purpose of Schedule 3 a relevant electronic facility means the electronic assistance facility referred to in regulation 38 of the Provision of Services Regulations 2009 or any facility established and maintained by the appropriate authority for the purpose of receiving applications under this Schedule electronically.

### **Fees**

- 3.21 Schedule 3 to the 1982 Act states that an application for the grant, renewal, variations or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authorities, but does not expand on what would be considered to be reasonable.
- 3.22 However, local authorities should have regard to the following documents when determining their fee: *The European Services*

*Directive: Guidance for Local Authorities<sup>3</sup> and LACORS Guidance on the impact of the Services Directive on councils setting and administering local licence fees within the service sector.<sup>4</sup>*

## **Objections**

- 3.23 When considering an application for the grant, renewal or transfer of a licence the appropriate authority should have regard to any observations submitted to it by the chief officer of police and any objections that they have received from anyone else within 28 of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 for refusing a licence. Objections should not be based on moral grounds/values<sup>5</sup> and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12. Objectors must give notice of their objection in writing, stating the general terms of the objection.
- 3.24 Where the appropriate authority receives notice of any objection the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the appropriate authority shall not without the consent of the person making the objection reveal their name or address to the applicant.

## **Hearings**

- 3.25 Under paragraph 10(19) of Schedule 3, before refusing an application, all applicants should be given the opportunity to appear before and be heard by the local authority committee or sub-committee that is responsible for determining the application.
- 3.26 Schedule 3 does not make explicit provision for objectors to be heard, but this does not mean that such hearings cannot take place. Rather, case law on this matter states that while local authorities are under no

<sup>3</sup> <http://www.berr.gov.uk/files/file50026.pdf>

<sup>4</sup> [www.lacors.gov.uk](http://www.lacors.gov.uk)

<sup>5</sup> R v Newcastle upon Tyne City Council ex parte The Christian Institute [2001] B.L.G.R. 165

obligation to offer an oral hearing to objectors, they may do so at their discretion. Although a local authority is under a duty to consider any objections made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.<sup>6</sup>

### **Refusal of a Licence**

**3.27** Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence.

A licence must not be granted:

- (a) to a person under the age of 18;
- (b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- (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, within a period of 12 months immediately preceding the date when 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.

**3.28** A licence may be refused where:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) 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;

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<sup>6</sup> R v Plymouth City Council v Quietlynn [1998] Q.B. 114.

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

3.29 A decision to refuse a licence must be relevant to one or more of the above grounds.

3.30 When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.<sup>7</sup>

3.31 The Provision of Services Regulations 2009<sup>8</sup> amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it on one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.

### **Relevant Locality**

3.32 Paragraph 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities 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 authority considers appropriate for that locality; or that a sex establishment would be inappropriate having

<sup>7</sup> *Belfast City Council v Miss Behavin' Ltd* (Northern Ireland) (2007) [2007] UKHL 19

<sup>8</sup> Regulation 47

regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.

- 3.33 Schedule 3 to the 1982 Act does not define “relevant locality” further than to say that:
- (a) in relation to premises, it is the locality where they are situated; and
  - (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.
- 3.34 Clearly, the decision regarding what constitutes the ‘relevant locality’ is a matter for the appropriate authority. However, such questions must be decided on the facts of the individual application.<sup>9</sup>
- 3.35 Therefore, it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. Nevertheless, all applications must be considered on their individual merits.
- 3.36 When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless a local authority’s view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, for example, by concluding that two sex establishments 200 miles away from one another were in the same

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<sup>9</sup> See *R v Peterborough City Council ex parte Quietlynn* 85 L.G.R. 249 for further guidance.

locality. Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.<sup>10</sup>

- 3.37 Once the appropriate authority has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality.
- 3.38 Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the appropriate authority may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

### **Licence Conditions**

- 3.39 Once the appropriate authority has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions applicable to all sex establishments, or particular types of sex establishments, prescribed by regulations made by the appropriate authority under paragraph 13 of Schedule 3.
- 3.40 Paragraph 13 provides examples of the matters that standard conditions may address which include but are not restricted to:
- The hours of opening and closing
  - Displays and advertisements on or in sex establishments
  - The visibility of the interior of a sex establishment to passers-by
  - Any change of use from one kind of sex establishment to another

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<sup>10</sup> R v Peterborough City Council ex parte Quietlynn 85 L.G.R. 249

- 3.41 Where the appropriate authority decides to produce standard conditions under paragraph 13 they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.
- 3.42 Most sexual entertainment venues will require a 2003 Act licence as well as a sex establishment licence. Where this is the case, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on the each licence are relevant to the activities authorised by that licence. For example, conditions relating to the sale of alcohol should only appear on a premises licences or clubs premises certificate and should not be imposed on sexual entertainment venue licence. Likewise, conditions relating the provisions of relevant entertainment should appear on the sexual entertainment venue licence and not a premises licence or club premises certificate. Local authorities should also avoid imposing conditions on either licence that are contradictory.

### **Duration of Licences**

- 3.43 Licences for sex establishments can be granted for up to one year.

### **Appeals**

- 3.44 In the event that the appropriate authority refuses an application for the grant, renewal or transfer of a sex establishment licence the applicant may appeal the decision in a magistrates' court, unless the application was refused under 12(3)(c) or (d), in which case the applicant can only challenge the refusal by way of judicial review.

### **Licensing Policies**

- 3.45 While local authorities are not required to publish a licensing policy relating to sex establishments they can do so if they wish as long as it

does not prevent any individual application from being considered on its merits at the time the application is made.<sup>11</sup>

- 3.46 A licensing policy for sex establishments might include statements about where local authorities are likely to consider to be appropriate or inappropriate locations for such venues. This could be set out in general terms by reference to a particular type of premises, such as a school or place of worship, or more specifically, by reference to a defined locality.
- 3.47 Local authorities could also use a licensing policy to indicate how many sex establishments, or sex establishments of a particular kind, they consider to be appropriate for a particular locality.
- 3.48 Local authorities can also produce different policies or a separate set of criteria for different types of sex establishments. This might be appropriate to reflect distinctions between the operating requirements of different sex establishments or the fact that the location that a local authority considers appropriate for a sex shop may be different to that of a sexual entertainment venue.

## Offences

- 3.49 The offences under Schedule 3 are set out in paragraphs 20 to 23 of that Schedule and include:
- knowingly causing or permitting the use of any premises as a sex establishment without a licence;
  - being the holder of a licence, knowingly employing a person in a sex establishment who is disqualified from holding a licence;
  - being the holder of a licence, knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in a licence;
  - being the servant or agent of the holder of a licence, without reasonable excuse knowingly contravenes, or without reasonable

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<sup>11</sup> R v Peterborough City Council ex parte Quietlynn Ltd (1986) 85 LGR 249



excuse knowingly permits the contravention of, a term, condition or restriction specified in a licence;

- being the holder of a licence, without reasonable excuse knowingly permits a person under the age of 18 to enter the establishment
- being the holder of a licence, employs a person known to them to be under 18 years of age in the business of the establishment.

3.50 A person guilty of any of the above offences is liable on summary conviction to a fine not exceeding £20,000.

3.51 It is also an offence for the holder of a licence, without reasonable excuse to fail to exhibit a copy of the licence and any standard conditions applicable to the licence in a suitable place as specified in the licence. A person guilty to this offence shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Provisions Relating to Existing Premises**

3.52 Where a local authority resolves that Schedule 3 apply in their area having not previously made such a resolution, paragraphs 28 and 29 will have effect for the purpose of sex shop, sex cinemas and hostess bars, but will not have effect for the purpose of sexual entertainment venues. The transitional provisions relating to sexual entertainment venues are explained in part 4 of this guidance.

### **The Services Directive**

3.53 Schedule 3 to the 1982 Act constitutes an authorisation scheme under Article 9 of the EU Services Directive 2006/123/EC ("the Directive") which was implemented in the UK by the Provision of Services Regulations 2009 ("2009 Regulations"), which came into force on 28th December 2009. Local authorities must ensure they comply with the Regulations when applying the licensing provisions in Schedule 3.

3.54 The Department of Business, Innovation and Skills (BIS) has produced guidance for both businesses and local authorities to assist in

understanding the impact of the Directive and 2009 Regulations and what service providers and relevant authorities must do in order to comply. Both guidance documents can be found on the BIS website: <http://www.berr.gov.uk/whatwedo/europeandtrade/europe/services-directive/page9583.html>

- 3.55 In particular, the 2009 Regulations may affect the way in which local authorities set application fees, process applications and grant licences.

## **TRANSITIONAL PROVISIONS**

- 4.1 This section provides guidance on the transitional provisions as set out in the *Policing and Crime Act 2009 (Commencement No. 1, and Transitional and Saving Provisions)(England) Order 2010 ("the Transitional Order")* and the *Policing and Crime Act 2009 (Consequential Provisions)(England) Order 2010 ("the Consequential Order")* and the equivalent orders made by Welsh Ministers for Wales.

### **Transitional Period**

- 4.2 The 'transitional period' will last for 12-months beginning with the date that the local authority resolves that Schedule 3 as amended by the 2009 Act will come into force in their area ('the 1st appointed day'). Six months following the 1st appointed day will be known as the '2nd appointed day' and the day on which the transitional period ends will be known as the '3rd appointed day'.
- 4.3 The appointed days will vary across local authority areas depending on when individual local authorities resolve that the provisions will come into force in their area.

### **Existing Operators**

- 4.4 To allow time to comply with the new regime, existing operators, who, immediately before the 1st appointed day, have a 2003 Act licence and lawfully use premises as a sexual entertainment venue under that licence or are undertaking preparatory work to use the venue in that way will be allowed to continue to provide relevant entertainment until the 3rd appointed day or the determination of any application they have submitted before that time (including any appeal against the refusal to grant a licence), whichever is later.

- 4.5 "Preparatory work" refers to work carried out by an operator, such as a refurbishment or refit, in order that they can use the premises as a sexual entertainment venue in the future. The operator will have been granted a 2003 Act licence before the 1<sup>st</sup> appointed day but will not have used the premises as a sexual entertainment venue by that date. It is likely that such operators will be known to a local authority. However, where a dispute arises between a local authority and an licence-holder over whether the licence-holder qualifies as an existing operator by virtue of this provision the local authority will need to seek evidence from the licence-holder to demonstrate that they clearly intended to operate a sexual entertainment venue in the future and work had been done to achieve this end.
- 4.6 For the purposes of the Transitional Order a "2003 Act Licence" means a premises licence or club premises certificate under which it is lawful to provide relevant entertainment.

#### **New Applicants**

- 4.7 New applicants are people who wish to use premises as a sexual entertainment venue after the 1st appointed day but do not already have a premises licence or club premises certificate to operate as such under the 2003 Act or do have such a licence but have not taken any steps towards operating as such. After the 1st appointed day new applicants will not be able to operate as a sexual entertainment venue until they have been granted a sexual entertainment venue licence.

#### **Determining Applications Received On or Before the 2nd Appointed Day**

- 4.8 Applicants will be able to submit their application for a sexual entertainment venue from the 1st appointed day onwards.

- 4.9 As the appropriate authority is able to refuse applications having regard to the number of sex establishment they consider appropriate for a particular locality, all applications made on or after the 1<sup>st</sup> appointed day but on or before the 2nd appointed day shall be considered together. This will ensure that applicants are given sufficient time to submit their application and all applications received on or before the 2nd appointed day are considered on their individual merit and not on a first come first serve basis.
- 4.10 No applications shall be determined before the 2nd appointed day. After the 2nd appointed day the appropriate authority shall decide what if any licences should be granted. If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence, it will not take effect until the 3rd appointed day, up to which point they will be allowed to continue to operate under their existing premises licence or club premises certificate.

#### **Determining Applications Received After the 2nd Appointed Day**

- 4.11 Applications made after the 2nd appointed day shall be considered when they are made but only once all applications made on or before that date have been determined. However, reference to determination here does not include references to the determination of any appeal against the refusal of a licence.
- 4.12 As with applications received on or before the 2nd appointed day, licences granted to new applicants shall take effect immediately and licences granted to existing operators shall take effect from the 3rd appointed day or, if later, the date the application is determined.

#### **Outstanding Applications**

- 4.13 Local authorities should attempt where possible to determine outstanding applications made under the 2003 Act, which include an application for the provision of relevant entertainment, before the date

that Schedule 3 as amended by the 2009 Act comes into force in their area.

- 4.14 Where it has not been possible to determine application before the 1st appointed day, local authorities should advise applicants that they will need to submit an application for a sex establishment licence as set out in Schedule 3 if they wish to provide relevant entertainment. From the 1st appointed day onwards outstanding applicants shall be dealt with as though they are new applicants.

### **Existing Licence Conditions**

- 4.15 In many cases licences granted under the 2003 Act to existing operators will contain conditions that relate expressly and exclusively to the provision of relevant entertainment. Such a condition might prohibit contact between a performer and customer during a lap dance. In these cases, in order to avoid duplication, where conditions on premises licences or club premises certificates relate only to the provision of relevant entertainment, they shall be read as if they were deleted from the 3rd appointed day onwards.
- 4.16 In cases where conditions on a premises licence or clubs premises certificate are inconsistent with, and less onerous than, the conditions in the licence granted under the 1982 Act they shall likewise be read as though they have been deleted.
- 4.17 Where a local authority decides to grant a sex establishment licence to an existing operator, who is subject to conditions on their existing premises licence or club premises certificate that relate expressly to the provision of relevant entertainment, they may wish to replicate the existing conditions on the new sex establishment licence if they believe that the existing conditions are sufficient. However, they could equally decide to impose new conditions consistent with Schedule 3 if they believe that new or additional conditions are necessary.

4.18 Although the Transitional Order does not require redundant conditions to be physically removed from a premises licence or club premises certificate, operators and local authorities may agree that this is desirable in order to clarify the operator's legal obligations. Such changes can be made via the minor variations procedure under section 41A of the 2003 Act.

### **ECHR Considerations**

4.19 The Transitional Order allows local authorities to refuse applications, whether they are from existing operators or new applicants, on one or more grounds set out in paragraph 12 of Schedule 3. When making such decisions, local authorities must take into account any rights the existing operators may have under Article 1, Protocol 1 of the European Convention on Human Rights (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

4.20 In light of the leading case of *Belfast City Council v Miss Behavin' Ltd (Northern Ireland)*<sup>12</sup> it would be prudent for local authorities to assume that freedom of expression includes the right to use particular premises as sexual entertainment venues and that a person who is denied the right to use his premises as a sexual entertainment venue where he already has a licence to do so under the 2003 Act (or in future under the 1982 Act) has been deprived of possessions. (Some Lords did not decide this point or disagreed that such rights were engaged and therefore it would still be open to local authorities to argue that such rights were not engaged in a particular case). However, in any event, the House of Lords were agreed that such rights would only be engaged at a low level. This led Lord Hoffman to say that if the local authority exercises its powers rationally and in accordance with the purposes of the statutory provisions, it would require very unusual facts for it to amount to a disproportionate restriction on Convention rights.

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<sup>12</sup> [2007] UKHL 19

4.21 Nevertheless, local authorities would be well advised to consider whether any interference with the applicant's rights under Article 10 or Article 1, Protocol 1 of the European Convention on Human Rights is necessary and proportionate for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others or, in the case of Article 1, Protocol 1, can be justified in the general interest.

### **Changes to Licensing Policies**

4.22 Many local authorities who have already adopted Schedule 3 will have published a licensing policy for sex establishments. Such policies may provide a useful guide to potential applicants about whether a particular application is likely to be successful or not.

4.23 Upon resolving to adopt the sexual entertainment venue provisions introduced by the 2009 Act, local authorities should ensure that their licensing policies for sex establishments are up to date and reflect the changes introduced by Section 27. This could mean updating existing policies or producing a policy specific to regulation of sexual entertainment venues.

## **London**

### **Sex Encounter Establishments**

4.24 London local authorities which have adopted Schedule 3 to the 1982 Act as amended by the Greater London Council (General Powers) Act 1986 are able to regulate sex encounter establishments. However, under sub-paragraph 3A(i) premises that hold a premises licence or club premises certificate for the provision of regulated entertainment or late night refreshment are not regarded as sex encounter establishments. This means that, in practice, there are very few, if any, premises that are licensed as sex encounter establishments.



4.25 Therefore, the transitional provisions set out that where a local authority, which has previously adopted provisions to regulate sex encounter establishments, passes a resolution to adopt Schedule 3, as amended by section 27, the existing sex encounter establishment category will be replaced by the new sexual entertainment venue category.

4.26 In these circumstances, an existing sex encounter establishment licence will be treated as though it had been granted under the new sexual entertainment venue regime with any terms, conditions and restrictions carried over.

### **Hostess Bars**

4.27 The hostess bar category of sex establishment, as introduced by section 33 of the London Local Authorities Act 2007, is largely unaffected by the 2009 Act provisions.

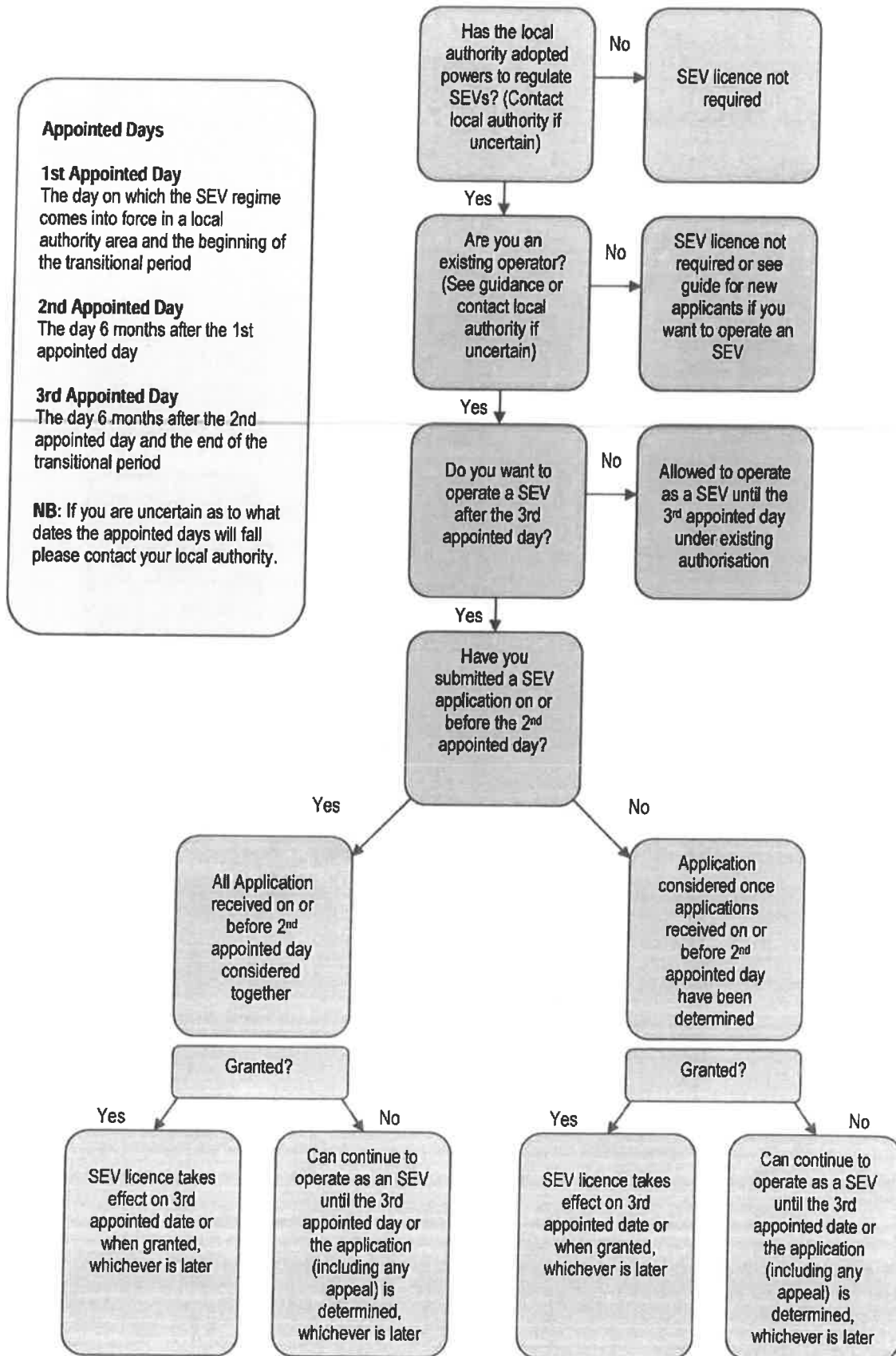
4.28 In cases where a London local authority has already resolved that the hostess bar category has effect in their area, they will be able to retain this category after the amendments made by the 2009 Act have been adopted and the sex encounter establishment category has been repealed, subject to the amendments made to Schedule 3 by the 2009 Act. Where London local authorities have not adopted the sexual entertainment venue provisions, it will still be open for them to resolve to adopt the hostess bar category after the 2009 Act provisions have been adopted without having to adopt the sex encounter establishment category.

### **Soliciting for Custom**

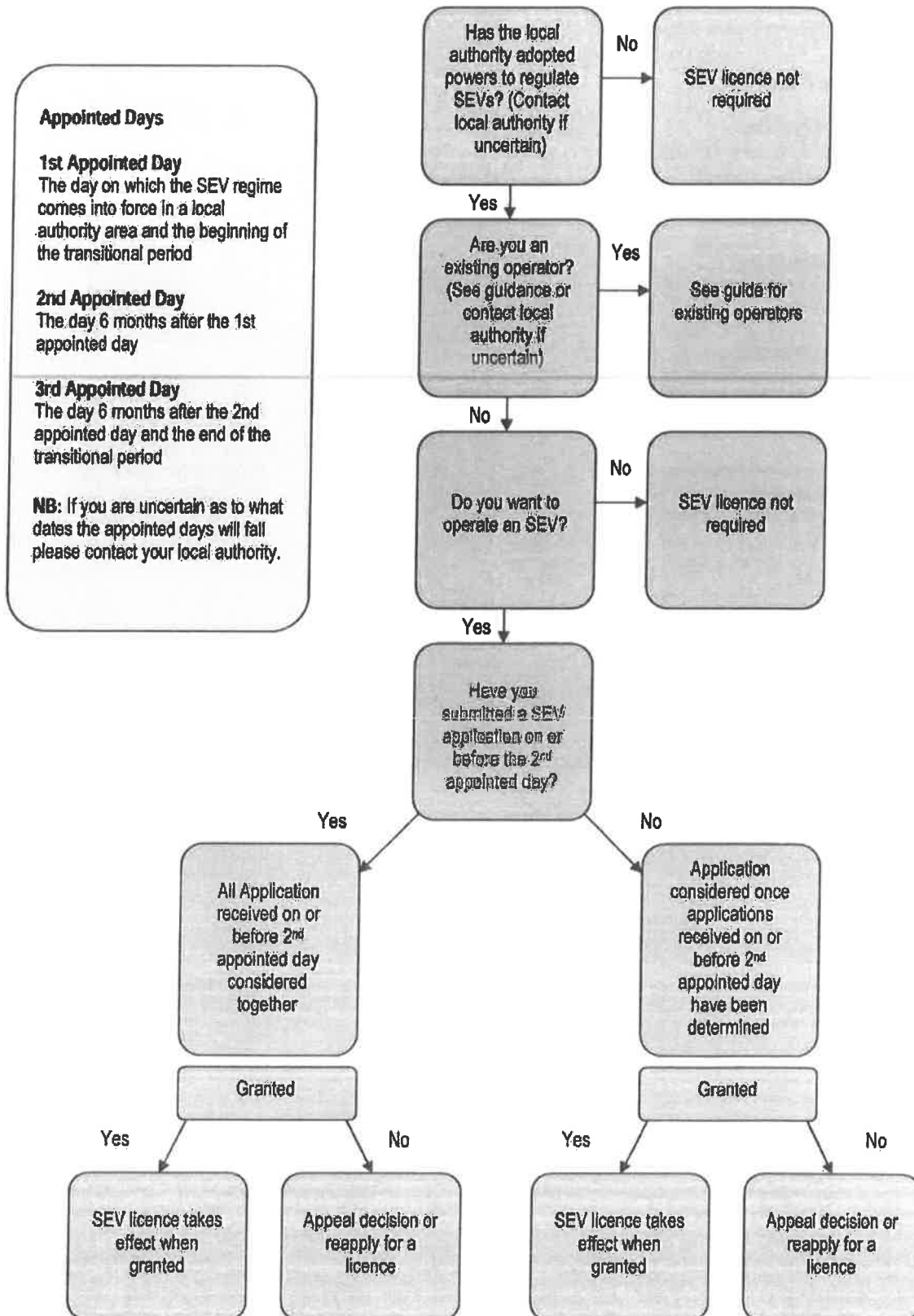
4.29 Under Section 22 of the London Local Authorities Act 2004, as amended by Section 72 of the London Local Authorities Act 2007, it is an offence in London to solicit for custom for a sex establishment. However, paragraph 2A provides a defence if the premises concerned are licensed under Part 3 of the 2003 Act.

**4.30** When a London local authority resolves to adopt the provisions introduced by Section 27, it will be a defence if the premises are licensed as a sexual entertainment venue under Schedule 3 of the 1982 Act or are operating lawfully under a 2003 Act licence during the transitional period at the time of the alleged offence.

## ANNEX A: GUIDE TO TRANSITIONAL PERIOD AND EXISTING OPERATORS



## ANNEX B: GUIDE TO TRANSITIONAL PERIOD AND NEW APPLICANTS





**SEX ESTABLISHMENT AND ENCOUNTER POLICY**

**ADOPTED 9th December 2015**

**Eastbourne Borough Council  
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# **Eastbourne Borough Council**

## **Sex Establishment Policy**

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## **1.0 Introduction**

- 1.1 This document relates to applications for sex establishment licences. Sex establishments fall into one of the following three categories:
- sex cinemas
  - sex shops
  - sexual entertainment venues
- 1.2 The scheme for the control of sex establishments by way of a licensing regime is contained in the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009. The Council has had regard to the Home Office Sexual Entertainment Venues Guidance for England and Wales (March 2010).
- <http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=23464>
- 1.3 This Policy sets out the Council's approach for the benefit of applicants, and operators. It also aims to guide and re-assure the public and other public authorities, ensuring transparency and consistency in decision making. When the decision making powers of the Council are engaged, each application will be considered on its merits.
- 1.4 The procedure outlines:
- the process for making an application, and
  - the process the Council will follow in considering and determining an application for a sex establishment.

## **2.0 Consultation**

- 2.1 Consultation on this Policy took place with:
- One or more persons who appear to the authority to represent the interests of persons carrying, or proposing to carry on, the business of a sex establishment in the authority. One or more persons who appear to the Authority to represent the interests of persons who are likely to be affected by, or otherwise have an interest in the Policy. This includes; Sussex Police, the Fire Authority, Community Safety, Planning Authority, Town Centre Neighbourhood Panel and Child Protection
- 2.2 The Licensing Authority will give due weight to the views of those consulted, and amend the Policy where appropriate. In determining what weight to give particular representations, the factors to be taken into account will include:
- Who is making the representation (what is their expertise or interest)
  - How many other people have expressed the same or similar views
  - How far the representations relate to matters the Council should include in its Policy.
- 2.3 The policy is published via::

- 2.4 Should you have any comments regarding this Policy, please send them via email or letter to Customer First at Eastbourne Borough Council
- 2.5 The consultation on this Policy took place from 1<sup>st</sup> July 2015 until 24<sup>th</sup> September 2015.

### **3.0 Definitions**

#### **3.1 The Act**

This refers to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009.

#### **3.2 The Policy**

This refers to the Eastbourne Sex Establishment and Encounter Policy.

#### **3.3 Sex Cinema**

A sex cinema is any premises, vessel, vehicle or stall used to a significant degree for the exhibition of moving pictures however produced, which:

- (a) are concerned primarily with the portrayal of, or primarily deal with or relate to or intending to stimulate or encourage sexual activity, acts of force or restraint which are associated with sexual activity
- (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 .

#### **3.4 Sex Shop**

A sex shop is 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
- (b) other things intended for use in connection with or for stimulating or encouraging:-
  - (i) sexual activity
  - (ii) acts of force or restraint which are associated with sexual activity.

#### **3.5 Sex Articles**

A sex article is anything for use in connection with or for stimulating or encouraging

- (a) sexual activity
- (b) acts of force or restraint which are associated with sexual activity
- (c) anything:-



i) 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

ii) to any recording of vision or sound, which

a) 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

b)

b) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

### **3.6 Sexual Entertainment Venue**

A sexual entertainment venue is any premises where any live performance or any live display of nudity is of such a nature that, regardless of financial gain, it must reasonably be assumed to have been provided solely or mainly for the purpose of sexually stimulating any member of the audience. It includes, but is not limited to, lap dancing, pole dancing, table dancing, strip tease, live sex shows and similar activities.

### **3.7 The Organiser**

This is any person who is responsible for the organisation or management operation of the relevant entertainment or the premises.

### **3.8 Display of nudity**

This means:

- in the case of a woman: exposure of her breasts, nipples, pubic area, genitals or anus; and
- in the case of a man: exposure of his pubic area, genitals or anus.

### **3.9 Relevant locality**

This is the locality where premises are situated or where the vehicle, vessel or stall is going to be used as a sex establishment. The locality and the area that this covers is a matter for the Local Authority to decide at the time it considers an application for the grant, renewal or transfer of a sex establishment licence.

### **3.10 Permitted hours**

These are the hours of activity and operation that have been authorised under a sex establishment licence.

### **3.11 Appropriate Authority**

Eastbourne Borough Council is the 'Appropriate Authority' for the purposes of the sex establishment licensing regime introduced by the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and adopted by Council on 23<sup>rd</sup> February 2011.

## **4.0 Policy Considerations**

### **Relevant Locality**

- 4.1 This Policy applies to the areas covered by Eastbourne Borough Council. Eastbourne is a thriving seaside town and a spectacular gateway to the South Downs and the national beauty spot, Beachy Head..
- 4.2 With five miles of beaches, the largest manmade marina in the UK, and over 4,000 acres of South Downs countryside, Eastbourne regularly receives awards from Blue Flag to Best UK Resort and Most Group-Friendly UK Destination.
- 4.3 Tourism is crucial to this cosmopolitan area and is Eastbourne's primary industry. It attracts over 4 million visitors and is worth over £343 million to the local economy every year with over £5.5 million in conferencing business alone.
- 4.4 With one of the largest quantities of tourist accommodation in the South East, Eastbourne has approximately 7,500 bed spaces, and as a result the town stages a busy events programme which includes; international ladies tennis, theatre shows direct from the West End and an international four day air show, Airbourne, bringing over 800,000 visitors.
- 4.5 In addition, a Tourism Strategy seeks to secure investment in the town. It develops new marketing initiatives which will add new audiences for Eastbourne in the future, targeting 35+ age groups with high spending capability.
- 4.6 The Council's vision is to achieve balanced, sustainable communities and neighbourhoods to enable a good quality of life for all. In consultation with its partners it has developed and adopted a number of strategies, policies and plans that set out how we mean to achieve this vision.
- 4.7 In devising this Policy, regard has been given to the available data, findings, shared vision and plans informing Eastbourne's Sustainable Community Strategy (the "Strategy"), adopted by the Council and local strategic partnership.

### **Strategic Vision**

- 4.8 The Strategy has the following vision for the Borough:
  - A Borough with greater opportunity and prosperity for everyone, whatever their background, and the narrowing of economic environmental and health inequality.
  - Safe, strong and cohesive communities, and a shared sense of fairness, citizenship and social responsibility.
- 4.9 The Council aims to integrate this Policy with the objectives of the Sustainable Community Strategy and the Core Strategy so that it contributes to achieving the vision of the Borough. This is considered in the context of:
  - the relative size of the borough taken as a whole

- population density and growth trends
- ward profiles
- borough profile
- poor economic and health specific deprivation indices
- level of social housing and tenure
- areas subjected to regeneration initiatives
- locations of: premises attracting vulnerable people such as GP surgeries and addiction centres
- areas and premises attracting families such as leisure and sport facilities and play spaces and play path finders, parks and open spaces
- premises attracting young people such as schools, nurseries and other educational establishments
- our diverse cultural communities
- places of worship
- Cumulative densities of certain types of commercial premises in any one location

4.10 Working with its partners in Health, Education, the Police and the business and voluntary sectors, the Council will continue to ensure that it reasonably and proportionately reflects the needs of its local communities through:

- continued meaningful consultation
- the promotion of a consistent and fair approach to regulation
- consultation with the Police and other agencies as appropriate, to establish protocols for effective enforcement

4.11 The Council understands that the co-ordination and integration of policies, strategies and initiatives is important. This policy takes account of, and is supported by, other Council policies and relevant legislation..

4.12 Through partnership working, the Council will seek to secure the proper integration of its Policy with other; licensing policies, local crime prevention, planning, tourism, race equality schemes and cultural strategies, and any other plans introduced for the management of the town centre and the night time economy:

<http://www.eastbourne.gov.uk/about-the-council/council-policies-plans-and-strategies/>

## 5.0 General Policy

### Principles to be applied

5.1 Specific mandatory grounds for refusal of a licence are set out in the Act.

A licence cannot be granted:

- a) to anyone under 18 years of age
- b) to someone who has held a licence that was revoked in the last 12 months (from the date of revocation) and who was disqualified from holding a licence for that period.
- c) to someone who has been refused a new licence or renewal of licence within the last 12 months (from the date of making the application)
- d) to an individual who is not resident in the United Kingdom or who has not been resident for six months prior to the making of an application
- e) to a company not incorporated in the United Kingdom

5.2 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 effects on crime and disorder. It aims to do all it can to prevent crime and disorder in its area. The possible impact of crime and disorder are clearly relevant factors in the consideration of all applications. In giving "due regard" to these possible implications, Members will consider all information available and representations made from all objectors, the applicant and in particular the Sussex Police.

5.3 Every application for the grant, renewal or transfer will be considered on its merits, on a case by case basis.

5.4 The Council may also refuse a licence if the applicant is unsuitable to hold a licence because they have been convicted of an offence or for any other reason. The determination of the suitability of the applicant is a matter for the local authority to decide at the time that the application is made.

5.5 Each application will be considered on its own merits. The Local Authority will take into account representations from the applicant, any person objecting and the Chief Officer of Police. The Council shall normally take into account:

- previous knowledge and experience of the applicant and their managerial competence
- any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other borough
- any report about the applicant and management of the premises received from objectors or the Police and any criminal convictions or cautions of the applicant
- that the operator is proposing a management structure which will deliver compliance with operating conditions, and policies; detailing the training of staff, welfare of performers and means to protect the public.
- any other relevant reason

5.6 With regard to a business for which an application relates that would be considered to be managed, or carried on for the benefit of a person other than the applicant, the determination is a matter for the local authority to. Each application will be considered on its own merits. The local authority will take into account

representations from the applicant, any person/organisation objecting and shall normally take into account:

- comments/observations of the Police and Council personnel, including compliance with licensing conditions, relevant history (including noise complaints) together with details of previous convictions/prosecutions pending.
- the suitability and fitness of an applicant/operator to hold a licence.

- 5.7 The number of sex establishments or sex establishments of a particular kind in the relevant locality at the time the application is determined is equal to or exceeds the number which the local authority consider is appropriate for that locality at that time.
- 5.8 The grant or renewal of a licence would be inappropriate having regard to:
- i) the character of the relevant locality
  - ii) the use to which any premises in the vicinity are put; or
  - iii) the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made
  - iv) Where it can be shown that the business would be managed for the benefit of a third party who would be refused a licence.
- 5.9 The relevant locality will be determined in accordance with where the premises are situated or where the vehicle, vessel or stall is going to be used. The area and extent of the relevant locality is a matter of the local authority to decide at the time the application is made. Each application will be considered on its own merits.
- 5.10 In determining the character of relevant locality and the appropriate number of sex establishments in that relevant locality, the Local Authority will take into account, but not limit its determination to:
- (a) the use to which any premises in the vicinity are put;
  - (b) the number of existing sex establishments both in total and also in respect of each type (*i.e.* sex cinemas, sex shops and sexual entertainment venues);
  - (c) the number of existing premises engaged in and or offering entertainment]of an adult or sexual nature or entertainment or associated with an adult or sexual nature (for example tattooing, piercing etc;)
  - (d) the proximity of residents to the premises, including any sheltered housing and accommodation for vulnerable persons;
  - (e) the proximity of educational establishments to the premises;
  - (f) the proximity of places of worship to the premises;
  - (g) access routes to and from schools, play areas, nurseries, children's centres or similar premises;
  - (h) the proximity to shopping centres;

- (i) the proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs. This list is not exhaustive;
- (j) the potential impact of the licensed activity on crime and disorder and public nuisance;
- (k) the potential cumulative impact of licensed premises in the area taking into account the days and hours of operation of the activity and the character of the locality where the premises are situated;
- (l) the nature and concerns of any objections received from residents/establishments objecting to the licence application;
- (m) any evidence of complaints about noise and/or disturbance caused by the premises;
- (n) current planning permission/planning requirements on the premises;
- (o) any current planning policy considerations;
- (p) whether there is planned regeneration of the area;
- (q) any current licensing permissions related to the premises in relation to activities, uses and hours;

## **6.0 Renewal Applications**

- 6.1 Where a licence was in existence before the introduction of this Policy, this Policy will become a consideration when the licence is due for renewal.
- 6.2 It should be noted that the Council in applying its decision-making discretion may consider it appropriate to refuse the renewal of the licence even where there has been no change in the character of the relevant locality or in the use to which any premises in the locality are put.
- 6.3 If a renewal application is not opposed, it shall be approved under Authority delegated to relevant officer(s). All contested applications for renewal, as described in the Act shall be referred to the Licensing Sub-Committee for decision.

## **7.0 The Application Process**

### **Making an application**

- 7.1 Any application should be made in writing to Customer First at Eastbourne Borough Council. Please note that generally, applications may take 8-12 weeks to determine.
- 7.2 Applicants for a licence must complete and return the application form, together with:
  - 2 sets of floor plans, drawn to scale and showing all means of entry and exit, any parts used in common with any other building and indicating how the premises lie in relation to the street;

- 2 sets of plans showing the existing and front elevation of the premises depicting all signage;
  - 2 sets of plans (scale 1:500) showing the sex establishment in relation to other premises within 100 metres;
  - 2 sets of plans (scale 1:50) showing the layout of the sex establishment;
  - the correct fee as set by the Council's Licensing Committee
- 7.3 As part of the application process, applicants are required to post a white A3 notice at the proposed site for 21 days, from the date the application is lodged with the Council, setting out the application details.
- 7.4 The notice must be posted in a prominent position on the premises for the whole of that time so that it can be easily read by passers-by. Applicants are also required to place a public notice in a local newspaper, for example the Eastbourne Gazette or Eastbourne Herald, at their own expense. The newspaper notice should appear in the publication within 7 days of the application being lodged.
- 7.5 Authorised Officers from the relevant Authority may choose to inspect the premises. This includes Council Officers, Sussex Police, and the Fire Authority to ensure that required technical standards are met. If works are required to bring the premises up to standard, the applicant will be notified. Licences will not be issued until all required works are satisfactorily completed.
- 7.6 As part of the established procedure for dealing with applications, the Council's Noise Pollution Specialists will be consulted. If there is the possibility of noise nuisance for example from amplified music, these officers may also carry out an inspection and recommend noise insulation work. Any requirements they identify must be complied with at all times any licence is in force.
- 7.7 Notice of all applications shall be given to Council Officers, Sussex Police, the Fire Authority, ward members and any other relevant person/organisation as deemed appropriate by the licensing authority.
- 7.8 Applicants are advised that any person who, in connection with an application for the grant renewal or transfer of a licence, makes a statement which s/he knows to be false in any material respect, or which s/he does not believe to be true, is guilty of an offence and liable to summary conviction to a fine not exceeding £20,000.
- 7.9 Any licence approved does not constitute any approval under any other Acts (for example, the Town and Country Planning Act 1990) or Bye-Laws. The applicant must ensure that all other necessary consents and approvals are obtained prior to operation.
- 7.10 The Council will not determine an application for grant of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the sex establishment.
- 7.11 On the grant of a licence, the licence document will have the agreed days and hours of operation set out, together with any other specific and/or standard conditions applied. Licence holders must comply with this.
- 7.12 Application forms, sample advertisements and site notices are available via:

<http://www.eastbourne.gov.uk/businesses/licences-and-registrations/sex-establishment-shop-cinema-licence/>

## **8.0 Renewal of Licences**

- 8.1 To continue operating a sex establishment, licence holders must make a renewal application prior to the expiry of the existing licence.
- 8.2 The Council may not determine an application for renewal of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the sex establishment.

## **9.0 Variation of Licence**

- 9.1 The application form, with relevant plans and fee should be sent to the Licensing Authority. Please note that applications for variation of licence are also subject to the site and newspaper notice requirements set out statute.
- 9.2 Variation applications relate only to proposed changes to such matters as the hours and area of the premises covered by the licence. Any changes in Licensee must be the subject of a transfer application.
- 9.3 All variation applications for sex establishment licences must be referred to the Council's Licensing Sub-Committee for decision. Applicants must not operate any revised or varied arrangements until such an application has been approved and any revised or varied licence has been issued.

## **10.0 Transfer of Licence**

- 10.1 The Council may not determine an application for transfer of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the sex establishment.

## **11.0 Representations on an Application**

- 11.1 Any person wishing to object to an application must submit a written representation within the 28 day consultation period specified to the Licensing Authority, setting out the grounds of objection.
- 11.2 Valid representations must be made within 28 days of the application being submitted. Representations made before the application is submitted can be taken into account. The Council also has discretion to consider representations made after the 28 day consultation period, although this will be assessed on a case by case basis.
- 11.3 The legislation dictates that, unless a person making representations consents, their name and address shall not be revealed to the applicant. They may also be reluctant to appear before a hearing of the Sub-Committee.
- 11.4 However, the grounds of any objection made on the application must be provided to the applicant prior to the determination of the application. The report to the Licensing Sub-Committee may have full details of the objections, including any actions / undertakings proposed by the applicant to address matters raised.



- 11.5 Additionally, the applicant and any persons who made representations and who wish to attend the hearing will have the opportunity to address the Licensing Subcommittee before the application is determined.

## **12.0 Duration of Licence**

- 12.1 Sex Establishment Licences will normally expire on an annual basis, but can be issued for a shorter term, if deemed appropriate.

## **13.0 Appeals**

- 13.1 There is no right of appeal:

- against refusal of a licence on the grounds set out in the above, unless an applicant can prove the appropriate ground of refusal does not apply to them;
- where refusal of a licence is based on the grounds set out in earlier in this Policy;
- against conditions applied to a licence

- 13.2 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.

- 13.3 Where an appeal is lodged (other than on grounds previously stated) against refusal to renew or for revocation, the licence remains in force until such time as the appeal is determined. Where an appeal is lodged against conditions applied to a licence, the conditions are deemed not to come into force until the determination or abandonment of the appeal.

## **14.0 Human Rights**

- 14.1 In determining applications, the principles of the Human Rights Act 1998 must be taken into consideration. The Act acknowledges that local authorities are entitled, amongst other things, to act where this is in the "general interest". Should it be decided to refuse or to grant an application, or to attach conditions, the rights of appeal that exist through the Magistrates' Court will ensure that the principles of the Human Rights Act are adhered to.
- 14.2 The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a Convention right.

## **15.0 Policy Review**

- 15.1 This Policy will be reviewed to incorporate statute and guidance as appropriate.

## **Appendix 1**

### **Licensing Committee Hearing Procedure Pursuant to the Local Government (Miscellaneous Provisions) Act 1982 and Policing and Crime Act 2009 - Control of Sex Establishments and Sex Encounter Establishments.**

#### **PROCEDURE AT COMMITTEE**

- 1.1 The Chair will open the meeting by introducing Members of the Committee and Officers present. The Chair will then invite other parties present to introduce themselves and the capacity in which they are attending (e.g. local residents, business representatives or legal advisor etc). The Chair will then explain the nature of the decision to be taken, and the procedure to be followed.
- 1.2 Thereafter the Chair will direct the parties to the hearing (the Applicant, Objectors, the local police or any other public or private bodies who have made an objection or representation), to address the Committee on their application, objection or representations. The Chair may direct a party to provide further information or other evidence that the Chair feels requires expansion or clarification.
- 1.3 The Authorised Officer will provide an outline of the application, objections and representations received and highlight relevant policy considerations.
- 1.4 Members, Applicants and Interested Parties are then permitted to ask questions of the Licensing Manager.
- 1.5 The Police, Objectors and other parties will then be heard by the Committee and may be questioned in turn.
- 1.6 The Applicant will then have an opportunity to set out their application and any further evidence upon which they propose to rely.
- 1.7 The Chair will direct that parties should limit their oral representations to those matters which relate to the grounds upon which a licence can be refused and/or upon such conditions as might reasonably and proportionately be imposed in the circumstances of the application.
- 1.8 The Chair may also direct that an appropriate time limit be set to allow each individual an equal opportunity to present their case.
- 1.9 The Chair will invite the Members of the Committee and thereafter other parties to ask any relevant questions after each of the representations. The Chair will direct that parties should limit their questions to those matters which engage with the grounds upon which a licence can be refused and/or upon such conditions as might reasonably and proportionately be imposed in the circumstances of the application.
- 1.10 The Chair will invite each of the parties to make a very brief closing speech/summing up if they wish. No new information may be introduced at this stage.
- 1.11 The Chair will invite Members to go into closed session to make their decision. The Committee will be accompanied by the Council's Legal Adviser. Any legal advice given to the Committee will be given in outline to the parties.

- 1.12 Members will then return to the open session. The Chair will announce the decision, giving reasons, and any conditions placed upon the licence (if granted). Alternatively, the Committee may inform the parties that its decision will be given in writing and not at the conclusion of the hearing. In such a case the decision will be notified to all the parties within five working days of the hearing (not including the date of the hearing).

## **NOTE**

- The Council requires that any evidence supplementary to the original submissions, in support of or against an application must be received a minimum of 5 working days before the date on which the matter is to be heard, to ensure that all parties have sight of the evidence in advance of the hearing.
- The applicant will normally be notified in writing of the decision within 5 working days.
- Applicants and Licence holders have right to appeal against a decision in certain circumstances, details of which can be obtained from the Licensing Manager.
- The Council is committed to taking decisions in an honest, accountable and transparent fashion but on occasion may find it necessary to exclude members of the press and public based upon the legal framework given by the Local Government Act 1972 Schedule 12a and/or local policy. On these occasions decisions based on the above framework will be given. Generally this authority endeavours to allow all parties to speak and ask questions of another party present during a Licensing hearing. However, this decision has to be taken on a case by case basis and in some cases (a reason will be given) verbal representation and cross examination may not be permitted.
- The Authority has the right to exclude any parties disrupting this hearing, at its discretion.
- The Authority reserves the right to amend the hearing procedure without notice.

## **Appendix 2**

### **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED BY THE POLICE AND CRIME ACT 2009**

#### **Sex Establishment Schedule of Standard Conditions**

##### **Display Of Licence**

- A copy of the Sex Establishment Licence and the standard conditions made by the authority must be kept exhibited in the public area of the premises.

##### **Age Policy**

- No person under 18 years of age to enter the premise.
- All customers appearing to be under the age of 21 to be required to provide photographic proof of their age before being allowed access to the shop.
- No person under 18 years of age is to be employed in the business of the establishment.
- At all entrances there shall be prominently displayed so as to be visible at all times to persons approaching the premises a notice prohibiting entry to all persons under 18 years of age.
- The Licensee of the premises shall ensure that all persons employed on the premises are aware of the age restriction on clients and that they exclude or remove from the premises any person attempting to evade the restriction.

##### **Site Specific Conditions - Sex Shop**

- A premises licensed as a Sex Shop under the provisions of Schedule III of the Local Government (Miscellaneous Provisions) Act, 1982, shall be used only for the purpose of a Sex Shop as defined in Paragraph 4 of the said Schedule 3 and shall not be used, wholly or in part, for any other purpose during the period the premises are licensed as a Sex Shop.
- The Licensee shall not display outside, near to, or within the premises any advertising material, sign or pictorial display referring to the licensed premises or the goods, articles or services provided at the premises, in such a position or manner that it is visible to any person using adjacent highways, streets, footpaths or forecourts except any notice displaying the name or trading title of the Licensee, any Notice indicating the name of the premises, times of opening of the premises for business, any Notice required by any statute, regulation or bylaw applicable to the premises or business carried thereon or any notice prescribed by these conditions.
- The use of loudspeakers and displays on business vehicles is strictly prohibited.
- The licensed premises shall be so arranged by screening or obscuring 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. The external doors shall be fitted with automatic closing devices which shall be maintained in good working order.
- The Licensee shall not supply or permit to be supplied to any person, other than a person employed to work on the premises, any article of food or drink whether for consumption on or off the premises.
- All refuse produced on the premises and materials, goods or articles discarded for any reason shall be securely stored within the premises and delivered in sealed containers to the refuse collection service.

- The Licensee shall make such provision for the reception of goods and articles for sale, hire, exchange, loan, demonstration or display on the premises so that they are received directly into the premises and are not subject to storage for any period of time on any pavement, footpath, forecourt or yard nor in any vessel or vehicle, etc. where they may be seen by members of the public.
- The Licensee or a Responsible Person nominated by him in writing for the purpose and approved by the Council shall be in charge of and upon the licensed premises during the whole time they are open to the public. Such written nominations shall be continuously available for inspection by authorised officers of the Council or the Police.
- The Licensee or their nominated representative shall ensure that no employee or other person shall seek to obtain custom for the premises by means of personal solicitation outside or in the vicinity of the premises.
- The external appearance of the premises must be as approved by the Council and neither the interior nor the exterior of the premises shall be altered without the approval of the Council.
- No advertisements, other than advertisements relating to other licensed sex establishments or relating to goods sold from the premises, shall be displayed in the premises.
- A record shall be kept of all mail order transactions (if any) in such form as agreed by the Council.
- The licence is not transferable by the Licensee other than through the formal application process to the Licensing Authority.
- The Licensee shall immediately notify the Council he/she intends ceasing to carry on the business.
- The Licensee shall inform the Council if he/she is convicted under the Obscene Publications Act, 1959, the Protection of Children Act, 1978, or the Customs and Excise Management Act, 1979 or if an order for forfeiture is made under the Obscene Publications Act, 1959 following the service of a summons on the Licensee. The Council will take into consideration any such conviction or orders for possible revocation or non-renewal of the licence.
- The Licensee shall not in the conduct of the business employ any person:-
  - Whose application for a licence to carry on a sex establishment, or renewal thereof, has been refused by the Council or any other licensing authority
  - Whose licence to carry on the business of a sex establishment has been revoked by the Council or any other licensing authority;
  - The name, address, date of birth and details of any criminal convictions of all individuals who will have responsibility for the operation or management of the store in the absence of the licence holder are to be provided to the Licensing Authority prior to such persons commencing their role at the premises.

The Licensee shall not, in the conduct of the business, employ any person who has a criminal conviction or simple caution under:

- The Obscene Publications Act, 1959,
- The Protection of Children Act, 1978, or
- The Customs and Excise Management Act, 1979
- No external signage is to be displayed on the premises, except for the company name, the hours of business and details of the age restriction, without the written authorisation of the Licensing Authority.
- The windows of the premises must be such that there is no view from outside into the interior of the premises and no window display is to be permitted. A lobby area is to be installed with double doors so restricting the view into the premises when patrons are entering and leaving.

- CCTV is to be installed, operated and maintained to a standard agreed with by Sussex Police and the Licensing Authority. The system is to include 28 day Imaging storage and be available for inspection in accordance with the Police's requirement.
- All goods to be discreetly wrapped before leaving the premises.
- No part of the premises is to be used for the showing of recorded videos, DVDs or other moving pictures.
- Any breach of legislation or failure to comply with the Conditions attached to this Licence may result in prosecution or in the revocation of the Licence.

### **Premises where activities include lap dancing, pole dancing, nudity and/or sexual stimulation - the prevention of crime and disorder**

#### **Security Industry Authority Door supervisors:**

- 1) The [either: the licensee or a Responsible Person nominated by him in writing or the organiser] NOT --- Designated Premises Supervisor (DPS) or their authorised representative will ensure that all personnel carrying out security functions at the premises shall be licensed by the Security Industry Authority. (SIA)
- 2) There will at all times be a minimum of 2 SIA door supervisors at the main entrance to the premises and thereafter to a ratio of 1 SIA Door Supervisor per 100 patrons or part thereof. There will be a further two SIA door supervisors on each floor whilst that floor is in operation, deployed as directed.
- 3) Additional door supervisors must be provided on the respective floor on a ratio of 1 to 100 on any occasion when the capacity on that floor exceeds 200 customers. The two door supervisors operating at the entrance to the premises will be excluded from this calculation.
- 4) Records shall be maintained at the premises containing the full name, badge number, date and hours of employment of every Door Supervisor.
- 5) If Registered Door Staff are employed through an agency the name and address of the agency must be included in the entry referring to the person employed by the agency.
- 6) Any such record must be in a form approved by the Licensing Authority. [In the event that no form is either issued or approved by the Licensing Authority, the management may draft their own form but this must contain all the information stipulated in this section].
- 7) The [either: the licensee or a Responsible Person nominated by him in writing or the organiser] NOT --- Designated Premises Supervisor or their nominated representative shall ensure door supervisors display a approved SIA badge

#### **Close Circuit Television (CCTV) and Associated Recording Equipment**

- 8) CCTV and appropriate recording equipment to be installed, operated and maintained throughout the premises internally and externally to a standard specification following consultation with Sussex Police. Such CCTV footage will be stored for a minimum of 28 days, and the management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is requested for the prevention and detection of suspected or alleged crime.

- 9) The Chief Officer of Police, or his/her representative of the rank of Inspector or above, must be afforded access to video recordings upon request and be provided with a copy, which will be returned to the club within a reasonable time.
- 10) The premises will not open unless and until written confirmation has been supplied to the Council Licensing Authority by the Police that they are satisfied that the installation, operation and coverage of the CCTV system meets the required standard.
- 11) Security arrangements for the dressing rooms in the form of a combination lock with deadlocking latch and a discreet panic alarm within the dressing rooms, linked to the club reception, shall be maintained at all times whilst the premises are open. No member of the audience shall be admitted to this room under any circumstances and a notice to this effect will be displayed on the door.

### **Drugs**

- 12) The management and premises will have an absolute zero tolerance policy towards drugs and drug misuse. Any illegal drugs seized will be stored in a secure 'drugs box', and periodically the management will request the Police to come and remove all drugs in the 'drugs box' for destruction.
- 13) In the event that a person is found on the premises actively taking or dealing in drugs, that person will be detained and the Police will be called to the premises.
- 14) The management will permit the Police to use an 'ION Track' drugs detector or other similar device inside the premises to detect the illegal use of drugs and will sign the Police consent form.

### **Public Safety**

- 15) Capacity limits. The number of persons on the premises shall not exceed that as stated by the Fire Officer. Such a figure will **include** staff and performers.
- 16) When the [either: the licensee or a Responsible Person nominated by him in writing or the organiser] NOT --- DPS is not on site, an appropriately authorised, trained and nominated individual shall assume management and control of the site.
- 17) Crime prevention and security measures shall be instigated throughout the premises following consultation with Sussex Police Crime Prevention Design Advisor or their nominated representative, as reasonably required.
- 18) The management of the premises will meet with the Police to discuss the safe and proper management of the premises on a minimum three monthly basis, unless the Police confirm in any one quarter that such a meeting is not necessary.
- 19) The premises will continue to be a member of NIGHT WATCH or any similar organisation set up to replace this.
- 20) Shatterproof drinking receptacles will be used throughout the site where practicable.
- 21) No persons under 18 will be admitted to the premises.
- 22) No under 18s events will be hosted anywhere on the premises at any time.
- 23) Whilst striptease entertainment is taking place, no customer under 18 shall be on the premises and clear notices shall be displayed at the entrance to the premises in a

prominent position so that it can easily be read by persons entering the premises in the following terms:



**NO PERSONS UNDER 18 TO BE ADMITTED  
ENTERTAINMENT WITHIN THESE PREMISES INVOLVES  
A FORM OF NUDITY**

**Special Conditions**

- 24) The only form of entertainment which is approved and may be provided at the premises is striptease entertainment in the form of pole dancing by club dancers only, in the following format:
- 25) Fully nudity is not permitted. The dancer/performers should at all times wear a G-string or similar piece of clothing which is not transparent on the appropriate part of the body in order to cover the groin/genital area.
- 26) The approved striptease/pole dance entertainment shall be given only by the performers/entertainers and no audience participation shall be permitted.
- 27) There shall be no physical contact between the customer and the dancer before, during or after the performance when the performance is complete. All monetary transactions will take place at the reception/entrance area and shall be lieu of a ticket, covering the cost of the performance of pole dancing only. Notices outlining this shall be clearly displayed at every table and be on display at the entrance of the premises and in each bar area.
- 28) Dancers shall only perform within a designated area to seated customers. No booth seating or performances shall be permitted at any time. All areas will have adequate lighting to ensure the safety of the dancer and to ensure that both the member/guest/audience and the performer are adhering to the Club rules at all times.
- 29) There shall be no simulated sex acts or use of props, save for the pole, as part of the performance.
- 30) There shall be no physical contact between dancers whilst performing.
- 31) There will be a minimum distance of one metre between the dancer and the seated customers at all times.
- 32) Dancers may not give out any personal information, including telephone numbers, email addresses or other contact details to audience members. Dancers may not accept any telephone number, address, business card or any other information from any customer.
- 33) All dancers/performers will be aged over 18 years of age and legally entitled to work in the UK before they perform at the Club. Copies of all dancers' files will be made available to Licensing Authority for inspection upon request.
- 34) At no time will members or their guests be permitted into the performers changing room(s).
- 35) Members and their guests may not at any time take photographs, film, video or mobile phone photographs or footage of performers. This will be an express written condition of membership.

- 36) Both floors will be dedicated to table and/or pole dancing on design. The premises will not permit one floor to be used for table and/or pole dancing or other forms of adult entertainment, whilst permitting the other floor to be used for other types of function (whether open to the public or via private booking) without first receiving prior written confirmation and approval for the specific event from the Police and the Council Licensing Department.
- 37) There shall be no mixed gender performance at any time.
- 38) Outside of premises advertising. The Designated Premises Supervisor or their nominated representative will ensure that there is no display outside of the premises of photographs or other images that indicate or suggest that pole dancing striptease or similar entertainment takes place on the premises. No photographs or other images or words of a sexually explicit nature shall be displayed on the outside of the premises.
- 39) Website. Any promotional website for the premises will not display photographs or other images of topless or nude performers, or show photographs or other images that may be reasonably construed as sexually explicit. The website will include clear statements as to the 48 hour prior membership application requirement and the over 18 age requirement for members and guests.
- 40) Promotional literature. Any promotional literature circulated outside of the premises will not display photographs or other images of topless or nude performers, or show photographs or other images or words that may reasonably be construed as offensive. All promotional literature will include clear statements as to the 48 hour prior membership requirement and the over 18 age requirements for members and guests.

### **Conditions**

- G1. Only activities to which the Council has given its consent shall take place.
- G2. The approved activities shall take place only in areas designated by the Council and the approved access to the dressing room(s) shall be maintained whilst striptease entertainment is taking place and immediately thereafter.  
**Note** The Council will not permit striptease to be in a location where the performance can be seen from the street.
- G3. The striptease entertainment shall be given only by the performers/entertainers and the audience shall not be permitted to participate.
- G4. Whilst striptease entertainment is taking place no person under the age of 18 shall be on the premises. A clear notice shall be displayed at each entrance to the premises in a prominent position so that it can be easily read by persons entering the premises with the words:

### **NO PERSON UNDER 18 WILL BE ADMITTED**

- G5. There shall be no physical contact between the customer and performer before, during or after the performance other than the placing of notes by the customer in a garter worn by the performer for that purpose.
- G6. Notices outlining this shall be clearly displayed at every table, be on display at the entrance of the premises and at each bar area.

- G7. The performers shall at all times wear at least a G-string which shall not be removed as part of the performance and which shall at all times cover the genitalia.
- G8. Entertainment under this consent may be provided solely by dancers performing on the stage or to customers seated at a table in the approved part of the premises.
- G9. CCTV shall be installed to cover all the areas where dancing will take place.
- G10. Whilst dancing takes place, registered door supervisors shall be employed in that part of the premises used for dancing. The number of registered door supervisors employed shall be stipulated by the Council as part of the conditions of consent.



Application for \* VARIATION  
 OF A SEX ESTABLISHMENT LICENCE



\* (insert GRANT/RENEWAL/VARIATION/TRANSFER)

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

Please return this form to: Eastbourne Borough Council, 1 Grove Road, Eastbourne, BN21 4TW

You may wish to keep a copy of the completed form for your records.

I/We F. FORTE DEVELOPMENTS LTD  
 (insert name/s of applicant/s - please read guidance note 1)

apply for the Grant/Renewal/Variation/Transfer\* of a Sex Establishment Licence for the premises described in Part 1 below (the premises) in accordance with schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (\*delete as necessary)

**Part 1 - Premises Details** (Please read guidance note 2)

Postal address (including trading name, postcode and telephone number of premises)  
LUX (FORMALLY KNOWN AS SALON PRIVE)  
2A-23 PRINCESSY ROAD  
EASTBOURNE  
BN21 3HT

The premises are a (please tick one):

building  vehicle  stall

Will the sex establishment occupy the whole premises?      yes  no

Are the premises currently in use as a sex establishment?      yes  no

**Part 2 - Applicant Details**

Please state whether you are applying for a licence as (Please tick one)

- a) an individual or Individuals \*       please complete sections A, C & D
- b) a person other than an individual \*
  - i. as a limited company       please complete sections B, C & D
  - ii. as a partnership       please complete sections B, C & D
  - iii. as an unincorporated association or       please complete sections B, C & D

iv. other (for example a statutory corporation)

Please complete sections B, C & D

**A. Individual Applicant Details** (Please read guidance note 3)

Mr <input type="radio"/>	Mrs <input type="radio"/>	Miss <input type="radio"/>	Ms <input type="radio"/>	Other Title	
Surname			First names		
Date of birth					
Current postal address including post code					
Telephone number (if any)					
Email address (optional)					
Mr <input type="radio"/>	Mrs <input type="radio"/>	Miss <input type="radio"/>	Ms <input type="radio"/>	Other Title	
Surname			First names		
Date of birth					
Current postal address including postcode					
Telephone number (if any)					
Email address (optional)					

(Continue on separate page if necessary)

**B. Other Applicants**

Please provide name and registered address of applicant in full. Where appropriate please give any registered number.

Name	F. FORIE DEVELOPMENTS LTD
Address including postcode	23 ST. LEONARDS ROAD BEXHILL-ON-SEA E. SUSSEX TN40 1HH
Registered number	01229598
Description of applicant (e.g. partnership, company, etc.)	LIMITED COMPANY
Telephone number (if any)	
Email address (optional)	

C. Description of Trading Activity

The premises will trade as:  
 a sex cinema  a sex shop  a sexual entertainment venue

The premises will trade on the following days and between the following times:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
From 22:00 HRS	From 22:00	From 22:00	From 22:00	From 22:00	From 22:00	From 22:00
To 04:00 HRS	To 04:00	To 04:00	To 04:00	To 04:00	To 04:00	To 04:00

Provide details of the goods to be offered for sale, films to be shown or nature of the entertainment to be provided

PERFORMANCE OF EXOTIC DANCING BY MALE AND FEMALE DANCERS (NOT MIXED)

How will you prevent the interior of the premises being visible to passers by?

THE 2ND FLOOR OF THESE PREMISES ~~IS~~ IS NOT OVERLOOKED BY ANY OTHER BUILDING - THERE ARE NO WINDOWS ON THIS FLOOR.

Provide details of any advertisements or displays to be exhibited, including sizes

EXTERNAL WILL BE POSITIONED ABOVE THE ENTRANCE DOOR - AS SHOWN ON THE PLAN OF ENTRANCE ELEVATION. DETAIL OF EXTERNAL SIGNAGE WILL BE SUBMITTED PRIOR TO THE OPENING OF THE PREMISES





**Part 3 - Declaration**


I/We: (Please tick)

- Enclose the fee (Please make cheques payable to Eastbourne Borough Council) ✓
- Understand that the information given may be used in conjunction with other authorities for the prevention and detection of fraud, and will be held on computer, subject to the Data Protection Act 1998. ✓
- Confirm that the information supplied in this application is true to the best of my/our knowledge and belief. ✓

**IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE NOT EXCEEDING LEVEL 5 ON THE STANDARD SCALE, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION**

**Signatures** (Please read guidance note 4)

Signature of applicant/s or applicant/s' solicitor or other duly authorised agent. If signing on behalf of the applicant please state in what capacity.

Signature/s	
Date	01-08-19
Capacity	LICENSING AGENT

**Contact Details** (Please read guidance note 5)

Contact name	GRAHAM DOVE
Contact postal address including post code	37 FRANKFIELD RISE TUNBRIDGE WILLS TN2 5LF.
Telephone number (if any)	07827 845986
Email address (optional)	G.R.DOVE.TW@GMAIL.COM

**All applicants are required to send with the application:**

- 2 plans showing the area to be licensed;
- Complete all statutory declarations on the form.

Appendix 1

Application for Variation to current Sex Establishment Licence for Lux (formally known as Salon Prive),  
2a-2b Pevensey Road, Eastbourne, BN21 3HT

Application to vary existing conditions as follows:

Customers Code of Conduct:

Remove no.7 and replace with – “The only form of entertainment which is approved and may be provided at the premises is striptease entertainment in the form of pole dancing.”

Remove no.10

Remove no.15 (duplicate of No. 8)

Performers Code of Conduct:

Remove no. 26

Definitions: (for both customers and performers)

Pole Dancing to read – “private dances will not require the placement of a physical pole.”

Definitions: (for both customers and performers)

Pole Dancing, revised to read – “private dances will not require the placement of a physical pole.”

Date: 01 August 2019

**LICENSING ACT 2003**

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971 FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND, PURSUANT TO SECTION 21 OF THE SAME ACT WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.

In acknowledgement of S. 158 of the Act as detailed above:

WE, F.FORTE DEVELOPMENTS Ltd. HEREBY AUTHORISE GRAHAM DOVE, OUR APPOINTED LICENSING AGENT, TO ACT ON OUR BEHALF.

SIGNED



NAME (please print)

*Gino Forte*

(for and on behalf of F.Forte Developments Ltd - Holder of Premises Licence)



Appendix 4



**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982,  
PART 2 AS AMENDED BY SECTION 27 OF THE POLICING AND  
CRIME ACT 2009**

**LICENCE FOR A SEX ESTABLISHMENT**

**Eastbourne Borough Council** being the **Licensing Authority** under the above Act hereby grants this **Licence** to

**F. Forte Developments Ltd**  
**23 St Leonards Road, Bexhill on Sea, East Sussex TN40 1HH**

In respect of the premises known as

**Salon Prive**  
**2a - 2b Pevensey Road, Eastbourne, East Sussex BN21 3HJ**

for the purposes of a **SEX ESTABLISHMENT VENUE**, AS DEFINED IN **SCHEDULE 3** of the said Act, subject to the conditions shown in **Schedule 1** of this licence.

This Licence shall have effect from **6<sup>th</sup> December 2018** until the **5<sup>th</sup> December 2019**

Dated this **29<sup>th</sup> November 2018**

**Signed:**

A handwritten signature in black ink that reads 'Danielle Ball'. The signature is written in a cursive style with a large 'D' and 'B'.

(Danielle Ball, Specialist Advisor)  
**For Eastbourne Borough Council**

Address for all other communications regarding this licence:

Licensing  
1 Grove Road  
Eastbourne  
East Sussex  
BN21 4TW

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982,  
PART 2 AS AMENDED BY SECTION 27 OF THE POLICING AND  
CRIME ACT 2009**

**Schedule 1 to the licence for Salon Prive, 2a – 2b Pevensey Road,  
Eastbourne, East Sussex BN21 3HJ**

**Conditions**

**Customers Code of Conduct**

1. We appreciate the cooperation of customers by dressing smartly.
2. The premises are covered by digital CCTV in all areas
3. No person under the age of 18 will be admitted as stipulated in the conditions shown on the Premises Licence 050994.
4. Members and their guests may not at any time take photographs, film, video or mobile phone photographs or footage of performers. This will be an express written condition of membership.
5. Table service is provided in order that customers may remain seated if preferred.
6. Striptease entertainment shall be given only by the performers/entertainers. None shall be permitted by audience or staff members working or contracted to work at the premises whilst in operation.
7. The only form of entertainment which is approved and may be provided at the premises is striptease entertainment in the form of pole dancing by club dancers only, in the following format:  
Full nudity is not permitted. The dancers/performers should at all times, wear a G-string or similar piece of clothing which is not transparent, on the appropriate part of the body in order to cover the groin/genital area.
8. There shall be no physical contact between the customer and the dancer before, during or after the performance when the performance is complete. All monetary transactions will take place at the reception/entrance area and shall be lieu of a ticket, covering the cost of the performance of pole dancing only. Notices outlining

this shall be clearly displayed at every table and be on display at the entrance of the premises and in each bar area.

9. Propositioning, shouting or profane language is not permitted.
10. There will be a minimum distance of one metre between the dancer and the seated customers at all times.
11. The management reserves the right of admission and removal.
12. The management operates a zero-tolerance policy to the supply of drugs and the use of drugs as stipulated in the conditions shown on the Premises Licence 050994.
13. Members shall not throw, or encourage others to throw money at, or otherwise give gratuities to, performers.
14. There shall be no deliberate physical contact between the customer and the dancer, with the exception of shaking hands and customers and/or leading a customer by the hand from a seated area to a booth for a private dance.
15. There shall be no physical contact between the customer and the dancer before, during or after the performance when the performance is complete. All monetary transactions will take place at the reception/entrance area and shall be lieu of a ticket, covering the cost of the performance of pole dancing only. Notices outlining this shall be clearly displayed at every table and be on display at the entrance of the premises and in each bar area.
16. Customers must remain fully clothed at all times.
17. Customers leaving the premises must do so quietly.
18. When the DPS is not on site, there will be a control document held and maintained on site, which will state who is in effective control and management of the premises in the absence of the DPS. Other persons in control and management of the premises in the absence of the DPS will ideally be personal licence holders and will be fully competent in all licensing matters, health and safety and emergency evacuation measures.
19. The premises will report all instances of crime and disorder to the Police
20. Dancers shall only perform on the stage area or at a designated place to seated customers. All booths will have adequate lighting to ensure the safety of the dancer and to ensure that both the member /guest/audience and the performer are adhering to the club rules at



all times. An SIA door supervisor will have a full and unrestricted view of any dancer performing in a booth at all times.

21. The private booths will be designed in such a way that there can be no curtain or other visual barrier that can be pulled across the entrance, thus concealing activities inside the booth area. The booths will be designed in such a way that the door supervisors and Booth CCTV operator staff can see into the booths to ensure the safety of the dancers performing inside and to ensure that the club rules are being strictly adhered to at all times.
22. The role of Booth CCTV operator will be a member of staff designated exclusively for that purpose whilst the performances are taking place. The operator should monitor the booths at all times when in use. A record will be maintained with details of the nominated Booth operators at any given time.
23. All dancers will be escorted from the premises at the end of each evening to their transport (e.g. taxis) to ensure their personal safety and security.
24. Customers purchasing a private dance must do so in person. If payment is made using debit/credit card contactless, ID must be shown at the point of sale to prove they are the named person on that debit/credit card.

#### **Definitions:**

- Pole Dancing – private dances will not require the placement of a physical pole, but the 1m minimum distance applies.
- No Touching – performers will be permitted to accept tokens handed to them and they will be permitted to lead the customer to the private area for a dance, thus involving some minimum contact.

#### **Performers Code of Conduct**

1. All dancers/performers will be aged over 18 years of age and legally entitled to work in the UK before they perform at the Club. Copies of all dancers' files will be made available to Licensing Authority for inspection upon request.



2. Striptease performers are to dress at the conclusion of each performance and are to remain fully clothed whilst acting in the capacity of hostess
3. There shall be no physical contact between the customer and the dancer before, during or after the performance when the performance is complete. All monetary transactions will take place at the reception/entrance area and shall be lieu of a ticket, covering the cost of the performance of pole dancing only. Notices outlining this shall be clearly displayed at every table and be on display at the entrance of the premises and in each bar area.
4. Customers must remain fully clothed at all times. Performers shall not remove customer clothing at any time.
5. The area proposed for striptease shall be sited where the performance is not visible from the street.
6. Private striptease provided in private designated dance areas located on the premises shall be to customers seated on fixed seating within this area only.
7. Striptease shall only be performed in those areas of the premises which are advised by the management.
8. There shall be no tableside striptease performances.
9. Striptease and lap dancing performers are to remain standing during a performance of striptease.
10. Performers engaged in striptease or booth private dancing shall remain standing during their performance.
11. The changing room in the premises shall only be accessed by striptease performers during trading hours.
12. When performances are taking place, no performer shall dance with or towards another performer, and shall make no physical contact with another partner.
13. The management operates a zero tolerance policy to the supply or use of drugs and to the consumption of alcohol by performers during trading hours.
14. Performers shall not encourage customers to throw money at or otherwise to give gratuities.
15. The Code of Conduct for striptease performers shall be lodged with the Authority responsible for licensing (Eastbourne Borough Council). All performers shall sign the Code of Conduct as agreed by Sussex Police in their proper name acknowledging that they have read and understood, and are prepared to abide by the said Code of Conduct, and a copy so signed be retained by the DPS and shall be

readily available for inspection by the Police and all authorised persons upon reasonable request.

16. There shall be **no simulated** sexual acts between performers of striptease.
17. Striptease performances shall only be given by employed performers and no member of the public or staff shall be permitted to participate in the performances in any way or at any time.
18. The licensee shall provide a suitable dressing room/area where performers may change and shall provide within the room/area a wash hand basin with a hot and cold water supply. Security arrangements for the dressing rooms in the form of a combination lock with deadlocking latch and a discreet panic alarm within the dressing rooms, linked to the club reception, shall be maintained at all times whilst the premises are open. No member of the audience shall be admitted to this room under any circumstances and a notice to this effect will be displayed on the door.
19. There shall be no striptease performances to customers at the bar or standing customers.
20. Dancers shall only perform on the designated stage area or a designated booth area table to seated customers.
21. Dancers may not give out any personal information, including telephone numbers, email addresses or other contact details to audience members. Dancers may not accept any telephone number, address, business card or any other information from any customer.
22. Striptease performers are to re-dress at the conclusion of a performance **and are** to remain fully clothed whilst acting in the capacity of host or hostess **but may work solely behind the bar** topless.
23. All booths will have **adequate** lighting to ensure the safety of dancers and to ensure that members/guests and performers are adhering to the Club rules at all times.
24. At all times when public entertainment is by way of striptease, pole dancing or topless persons are serving at the bar, there shall be a minimum of three Security Industry Authority (SIA) registered door supervisors employed on the premises during striptease performance hours. The security staff / DPS will also regularly monitor the public toilets and changing room/area.
25. All dancers/performers will be aged over 18 years of age and legally entitled to work in the UK before they perform at the premises. Copies of all dancers' files will be made available to the Licensing Authority for inspection upon request.

26. Fully nudity is not permitted. The dancer/performers should at all times, wear a G-string or similar piece of clothing which is not transparent, on the appropriate part of the body in order to cover the groin/genital area.

**Definitions:**

- Pole Dancing – private dances will not require the placement of a physical pole, but the 1m minimum distance applies.
- No Touching – performers will be permitted to accept tokens handed to them and they will be permitted to lead the customer to the private area for a dance, thus involving some minimum contact.

