

EREWASH



Sex Establishment Licensing Policy and Procedures

Sex Establishment Licensing

1 Introduction

- 1.1 Erewash Borough Council adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') previously to enable the Council to licence Sex Shops and Sex Cinemas within the borough.
- 1.2 In 2005 the Licensing Act 2003 introduced a new licensing regime which amalgamated several pieces of old legislation under the heading of "Regulated Entertainment". Entertainment of an adult nature such as lap dancing, pole dancing and striptease etc. fell under this heading. However, the power for the community to object to such applications was restricted as any objection needed to relate to the four specified licensing objectives. This made it difficult for local communities to have any control on the number and/or location of these types of venues.
- 1.3 In order to address these concerns the Policing and Crime Act 2009 introduced provisions creating a new category of Sex Establishment known as a Sexual Entertainment Venue (SEV) to enable local authorities to require venues such as lap dancing establishments to be licensed as Sex Establishments. These provisions are discretionary and it is proposed that the Council will adopt the amendment under Section 27 of the Policing and Crime Act 2009 ('the 2009 Act') on 3 March 2011 which will enable the Council to licence Sexual Entertainment Venues.
- 1.4 The 1982 Act and the 2009 Act can be viewed at www.opsi.gov.uk.
- 1.5 This draft policy forms the basis of a consultation by Erewash Borough Council on whether to adopt the amended Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 and the policy that may guide members of the public, applicants, elected members and officers. Such consultation will be undertaken between 1 January 2011 and 14 February 2011 during which time views will be sought from the public. The Licensing Authority will have regard to the views expressed in determining whether to adopt Schedule 3.
- 1.6 This document relates to applications in respect of:
 - Sex Cinemas
 - Sex shops
 - Sexual Entertainment Venues

2 Amendments to the Licensing Act 2003

- 2.1 Schedule 7 to the Policing and Crime Act 2009 amends the Licensing Act 2003 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.

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.

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).

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 that is integral to Relevant Entertainment does not apply to such venues.

3 Definitions

3.1 **Premises** include any vessel, vehicle or stall but do not include a private dwelling to which the public are not admitted.

3.2 **Sex Article** means

- a) anything made for use in connection with, or for the purpose of stimulating or encouraging:-
 - i) sexual activity;
 - ii) acts of force or restraint which are associated with sexual activity, and
- b) 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) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

- 3.3 **Sex Cinema** means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which
- a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage:-
 - i) sexual activity;
 - ii) acts or 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 Establishment** means a Sexual Entertainment Venue, Sex Cinema or a Sex Shop as appropriate.
- 3.5 **Sex Shop** means any premises, vehicle or 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 the purpose of stimulating or encouraging:-
 - i) sexual activity
 - ii) acts or force or restraint which are associated with sexual activity.
- 3.6 **Sexual Entertainment Venue** means any premises at which Relevant Entertainment is provided before a live audience for the financial gain of the organiser or the entertainer (subject to the exceptions set out in paragraph 7.1 below).
- 3.7 **Relevant Entertainment** means 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).
- 3.8 **Nudity** means:
In the case of a woman: exposure of her nipples, pubic area, genitals or anus;
and
In the case of a man: exposure of his pubic area, genitals or anus.

4 Relevant Entertainment

4.1 The Council will judge each case on its merits and the definition of Relevant Entertainment will 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

4.2 The above list is not exhaustive and as the understanding of the exact nature of these descriptions may vary, they 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.

5 Spontaneous Entertainment

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 might be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly.

6 The 'Organiser'

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. 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.

7 Sexual Entertainment Venues – exceptions

7.1 Schedule 3, Paragraph 2A(3) of the 1982 Act defines 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.
- d) Other premises or types of performances or displays exempted by an order of the Secretary of State.

7.2 Premises which:

- provide Relevant Entertainment on an infrequent basis or
- provide any form of adult entertainment which falls outside the definition of Relevant Entertainment will continue to be regulated under the Licensing Act 2003, insofar as they are providing regulated entertainment under that Act.

8 Policy

8.1 The Council do not take a moral stand in adopting this policy and we recognise that Parliament has made it lawful to operate Sex Establishments, and that such businesses are a legitimate part of the retail and leisure industry.

8.2 The Council is mindful of possible concerns that the local community may have in regard to applications for Sex Establishments and this Policy will guide the Council when considering applications for licences in balancing the conflicting needs of commercial interests, patrons, employees, residents and local communities.

8.3 When considering an application the Council will have regard to the following:-

- The proximity of residential premises, including any sheltered housing and accommodation of vulnerable people;
- The proximity of educational establishments;
- The proximity of places of worship;
- Access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises
- The proximity of shopping centres
- 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)
- Any current planning considerations
- Whether there is planned regeneration of the area.
- The proximity of other Sex Establishments

8.4 The Council has not set a limit on the number of Sex Establishments that it thinks is appropriate for any relevant locality. The Council will determine each application on its merits on a case-by-case basis.

8.5 The policy sets out:

- The process for making an application; and
- The process the Council will follow in considering and determining an application for a Sex Establishment Licence.

9 Conditions

9.1 The Local Government (Miscellaneous Provisions) Act 1982 allows the Licensing Authority to attach conditions to a licence. In order to promote the legislation the Licensing Authority will formulate a pool of model conditions in respect of each type of licensed premises. Whilst these conditions form the basis for promoting the efficient operation of premises they will be applied only where a perceived necessity exists and in a manner that is both proportionate and reasonable to promote the legislation. Each case will be dealt with on its individual merit.

10 THE APPLICATION PROCESS

Making an application

10.1 Applications may be made electronically via the Council's website at www.erewash.gov.uk.

10.2 An application may also be made in writing to: The Licensing Office, Erewash Borough Council, The Civic Centre, Long Eaton, NG10 1HU. Telephone 0115 9072244.

10.3 Applicants for a licence must complete the application form and submit it to the Licensing Office together with:

- The correct fee as set by the Council
- A location plan
- Detailed plans of the premises (in a **scale of 1:100** (1 centimetre to 1 metre) unless a different scale is agreed with the Council in advance) containing the following information:
 - (a) the location of the extent of the boundary of the building, if relevant, and any external and internal walls which comprise the premises, or in which the premises is comprised
 - (b) the location of points of access to and egress from the premises
 - (c) if different, the location of escape routes from the premises
 - (d) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment:
 - (e) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor
 - (f) in a case where the premises includes any steps, stairs, elevators or lifts, the location of those steps, stairs, elevators or lifts.

10.4 A licence cannot, however, be granted to:

- a person under 18;

- a person who has held a licence but has had it revoked within 12 months preceding the date of the application;
- to a person, other than a body corporate, who is not resident in a European Economic Area State or was not so resident throughout the period of six months immediately preceding the date when the application was made;
- to a body corporate which is not incorporated in an EEA State; or
- a person who has within the last 12 months preceding the date of the application been refused a licence in respect of the same premises.

10.5 An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on any ground specified above does not have a right to appeal unless the applicant seeks to show that the ground did not apply to him.

10.6 The Council may refuse an application for the grant or renewal of a licence on one or more of the grounds below:-

- 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;
- c) The number of Sex Establishments, or of Sex Establishments of a particular kind, in the relevant authority 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 (i.e. the locality in which the premises are situated); 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.

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

10.7 An applicant whose application for the grant or renewal of a licence is refused on either ground specified in (c) or (d) above does not have the right to appeal the decision. In such cases the applicant can only challenge the refusal by way of judicial review.

10.8 As part of the application process, applicants are required to display a notice at the proposed site for 21 days, from the date the application is lodged with the Council, setting out the application details. This notice must be blue in colour, and a minimum of A4 in size. The notice must be displayed in a prominent position for the entire 21 days and must be easily readable by passers by. Applicants are also required to place a public notice in a local newspaper giving

details of the application. The newspaper notice should appear in the publication within 7 days of the application being lodged.

10.9 The Council will send copies of the application and seek comments from:

- Local Ward Councillors
- Parish Councils
- Child Protection Officers
- Environmental Services Departments
- Any other relevant persons/organisations deemed appropriate by the Council

10.10 It is the responsibility of the applicant to send of copy of the application within 7 days of the application being lodged with the Council to the Licensing Department, Derbyshire Constabulary, D Division Headquarters, Prime Park Way, Chester Green, Derby DE1 3AB. Telephone 01332 613255.

11 **Duration of Licence**

11.1 Sex Establishment licences will normally expire on an annual basis, but may be issued for a shorter period if deemed appropriate.

12 **Renewal of Licence**

12.1 An application to renew the licence must be made in the appropriate form prior to the expiry of the existing licence.

12.2 Where, before the expiry of a licence, an application has been made for its renewal, it shall remain in force even though the expiry date has passed until the withdrawal of the application or its determination by the Council.

13 **Variation of Licence**

13.1 The application form, together with relevant plans and the appropriate fee should be forwarded to the Licensing Office. Applications for variation are required to comply with site and newspaper notice requirements (see 10.8 of this policy).

13.2 Applications for variations must relate only to proposed changes in respect of the actual premises and the hours of operation currently covered by the licence.

13.3 All variation applications will be referred to the Licensing Committee for a decision. Applicants must not operate any revised or varied arrangements until the Committee has determined the application and the licence has been issued.

14 **Transfer of Licence**

14.1 Where, before the date of expiry of a licence, an application has been made to transfer, it shall be deemed in force with any necessary modifications until the withdrawal of the application or its determination, notwithstanding that the

expiry date has passed or that the person to whom the licence is to be transferred is carrying on the business of the Sex Establishment.

15 Making Representations

15.1 Unlike other licensing regimes (such as alcohol, entertainment or gambling) a wide range of people can raise objections about Sex Establishment licences. The police are a statutory consultee for all applications.

15.2 Representations must be relevant to the application and must not be frivolous or vexatious. They must not relate to moral grounds as these are outside the scope of the 1982 Act.

15.3 Decisions as to whether objections are frivolous or vexatious will be made objectively by our officers and not on the basis of any political judgement.

15.4 Objections should be received within 28 days of the application and:

- Be made in writing
- Show the name and address of the person/organisation making the representation.
- Indicate the premises to which the representation relates
- Clearly set out the reasons for making the representations.

15.5 Unless the person/organisation making a representation consents, their name and address shall not be revealed to the applicant.

16 The Hearing

16.1 The Council shall hold a hearing before:

- refusing to grant a licence
- refusing to renew a licence
- refusing to transfer a licence
- refusing to vary a licence

16.2 The applicant and any persons who have made representations and who wish to attend the hearing will have the opportunity to address the Committee before the application is determined.

16.3 When considering an application the Council will have regard to:-

- All written representations made by responsible authorities or members of the public
- All representations made in person at the hearing

The hearing will concentrate on matters which are relevant to one or more of the grounds upon which a licence may be refused under Schedule 3 of the Act. See paragraphs 8.3, 10.4 and 10.6 above.

17 Appeals

17.1 The following may at any time, before the expiration of the period of 21 days following receipt of the applicant's determination, appeal to the Magistrates' Court acting for the relevant area:

- 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;
- A holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or,
- A holder of any such licence whose licence is revoked.

18 Exchange of Information

18.1 The authority may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the police and other partners to fulfil its statutory objective of reducing crime in the area.

18.2 Details of applications and objections which are referred to a Licensing Committee for determination will be published in reports that are made publicly available in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000.

19 Equalities Act 2010

19.1 The Council recognises that the Equalities Act 2010, which is replacing the existing anti-discrimination laws with a single Act places an obligation on all public authorities to have regard to the need to tackle discrimination and inequality and eliminate unlawful discrimination. This Act incorporates several separate pieces of legislation, including race, disability, and equalities and simplifies the law, removing inconsistencies and making it easier for people to understand and comply with it.

20 Human Rights Act 1998

20.1 The Council will implement the Act in a manner consistent with the Human Rights Act 1998.