

## Appendix 1



**BRISTOL CITY COUNCIL**  
**Local Government (Miscellaneous Provisions) Act 1982**  
**Control of Sex Establishments**

## Contents

<b>1. Introduction.....</b>	<b>1</b>
<b>2. Scope of this policy.....</b>	<b>2</b>
<b>3. Decision making responsibility.....</b>	<b>3</b>
<b>4. Determining applications.....</b>	<b>3</b>
<b>5. General obligations that apply to the discharge of all of the Council’s powers and duties.....</b>	<b>4</b>
<b>6. Considering applications and representations.....</b>	<b>5</b>
<b>7. Grounds for refusal.....</b>	<b>6</b>
<b>Mandatory grounds.....</b>	<b>6</b>
<b>Discretionary grounds for refusal.....</b>	<b>6</b>
<b>Factors for consideration.....</b>	<b>7</b>
<b>Discretionary grounds (a) and (b).....</b>	<b>7</b>
<b>Discretionary ground (c).....</b>	<b>7</b>
<b>Discretionary grounds (d).....</b>	<b>9</b>
<b>8. Conditions.....</b>	<b>10</b>
<b>9. Reasons.....</b>	<b>10</b>
<b>10. Waiver.....</b>	<b>10</b>

### 1. Introduction

The Local Government (Miscellaneous Provisions) Act 1982 introduced a regime for the control of sex establishments. The regime is adoptive, and Bristol City Council has for many years been able to control the provision of sex shops and sex cinemas within its administrative area. The provisions of the 1982 Act were extended in 2009, to include the control of “sexual entertainment venues”. The Council has adopted the amended

Schedule. This enables applicants to apply for licences for sex establishments.

The Act places a duty on the Council to refuse an application in certain cases (for example if an individual applicant is under the age of 18 years) and confers powers on the Council to refuse to grant or refuse to renew a licence by reference to matters such as the maximum number of sex establishments which the Council considers appropriate for the locality of the premises, the premises that are subject of the application, the character of the locality and the use of the premises within the vicinity.

The legislation may be viewed here:

<http://www.legislation.gov.uk/ukpga/1982/30>

Local Government (Miscellaneous Provisions) Act 1982 Chapter 30

<http://www.legislation.gov.uk/ukpga/2009/26/section/27>

Policing and Crime Act 2009 Part 2 Section 27 - Regulation of lap dancing and other sexual entertainment venues etc.

## 2. Scope of this policy

This policy will guide the Council when determining applications made in connection with sex establishments. It will assist it in achieving the purpose of the legislation in a manner that is consistent with the body of case law that has developed since the regime was first enacted.

This policy applies to every type of sex establishment (as defined in the Act) unless an exemption applies. Reference should be made to the legislation itself for a full understanding of what might fall within the definition and when exemptions may apply, but in summary the types of sex establishment have been detailed below:

### 1. A sexual entertainment venue is:

- (a) **premises** (which includes traditional premises as well as vehicles, vessels, and stalls etc. – but not private dwellings to which the public are not admitted) **at which**
- (b) **relevant entertainment** (i.e. either: (i) a live performance of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of sexually stimulating any member of the audience whether by verbal or other means; or (ii) a live display of nudity of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of sexually stimulating any member of the audience whether by verbal or other means.
- (c) **is provided** (i.e., provided or permitted to be provided by or on behalf of the organiser)
- (d) **before a live audience**
- (e) **for the financial gain of the organiser or entertainer** (this can be direct or indirect)
- (f) **unless an exemption applies** (exemptions are detailed in par 2A of the third schedule – see link above)

### 2. A sex cinema is:

- (a) **premises** (which includes traditional premises as well as vehicles, vessels, and stalls etc. – but not private dwellings to which the public are not admitted) **which**
  - (b) **are used to a significant degree for the exhibition of moving pictures**
  - (c) **which are concerned primarily** with the portrayal of, or primarily deal with or relate to, or are intended to encourage, sexual activity, or acts of force or restraint associated with sexual activity
  - (d) **or are concerned primarily** with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions
3. A sex shop is:
- (a) **premises** (which includes traditional premises as well as vehicles, vessels, and stalls etc. – but not private dwellings to which the public are not admitted) **which**
  - (b) is used for a business which consists to a **significant degree**
  - (c) of **selling, hiring, exchanging, lending, displaying, or demonstrating**
  - (d) **sex articles** (anything made for use in connection with, or for the purpose of stimulating or encouraging sexual activity; or acts of force or restraint which are associated with sexual activity, and any article to be read or looked at, and any recording of vision or sound which includes or is intended to encourage sexual activity; or acts of force or restraint which are associated with sexual activity)
  - (e) **or other things** intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity; or acts of force or restraint which are associated with sexual activity

A glossary of terms is provided at the end of this document

### 3. Decision making responsibility

By law all functions of the local authority concerning this regime, including the making of this policy and determination of applications, are matters that cannot be the responsibility of its Executive. As such the Full Council is the body that controls the way decisions are made. The Full Council exercised its powers to arrange for the Licensing Committee (as constituted for the purposes of the Licensing Act 2003) to also be responsible for the sex establishment licensing functions on behalf of the Council. Determinations in relation to sex establishments are made under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

Applications will normally be referred to a sub-committee for determination.

### 4. Determining applications

This policy is intended to be strictly applied but will not operate inflexibly; the Council will take all relevant factors into consideration when determining applications and each and every case will be decided on its merits.

In exercising its functions under this regime the authority will seek to ensure premises licensed by this Authority under this legislation do not contribute directly or indirectly to crime, disorder (including anti-social behaviour and other behaviour adversely affecting the local environment) or harm to individuals or groups within the community; whilst seeking

also not to be unduly restrictive of the rights of persons seeking to operate well-run premises in appropriate locations or those that work within such premises.

## **5. General obligations that apply to the discharge of all of the Council's powers and duties**

There are a number of general obligations that apply whenever the Council is discharging any of its many functions. Those most likely to be relevant are highlighted in this part of the policy and must be borne in mind when considering any aspect of the regime including all of the things specifically addressed in the following paragraphs. For the avoidance of doubt, the Council has screened this policy statement to ensure it is compatible with those obligations and will, through its information gathering powers, seek to ensure that relevant information may come forward through the application process to enable all of its general obligations to be satisfied in the discharge of the function of determining applications for sex establishment licences. Material that is relevant to the achievement of these obligations will be properly taken into account.

These include:

- its fiduciary duties to the Council Tax and Rate payers of the City (protection of the public purse).
- its obligations to act compatibly with rights conferred under the European Convention of Human Rights. The European Convention on Human Rights makes it unlawful for a public authority to act in a way that is incompatible with a convention right.
  - Article 6 details that in determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;
  - Article 8 details that everyone has the right to respect for his home and private life;
  - Article 1 of the First Protocol details that every person is entitled to the peaceful enjoyment of his or her possessions.
- its general and specific duties under Equalities Law – The Equality Act 2010 states that no one may discriminate, harass, or victimise another in respect of their protected characteristics. The Act itself includes a Public Sector Equality Duty which requires the Council to show “due regard” to:
  - eliminating discrimination, harassment, and victimisation
  - advancing equality of opportunity.
  - fostering good relations between people who share a protected characteristic
  - fostering good relations between those who have a protected characteristic and those who do not.

The Council is aware that the licensing of some types of sex establishments can cause controversy with the potential to polarise views, and these premises must not encourage discrimination against any groups with a protected characteristic. The Council will have due regard to its Public Sector Equality Duty in determining each application. An equality impact assessment has been undertaken in respect of this policy and is published alongside it.

- its obligations under Crime and Disorder legislation - In accordance with section 17 of the Crime and Disorder Act 1998, the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably

can to prevent, crime and disorder in the City.

- The Regulators' Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) requires the Council not to impede economic progress by its regulations, and, particularly to consider their impact on small businesses
- The Provision of Services Regulations 2009 requires the Council to ensure that its exercising of powers are:
  - non-discriminatory;
  - justified by an overriding reason relating to the public interest;
  - proportionate to the public interest objective;
  - clear and unambiguous;
  - objective;
  - made public in advance;
  - transparent and accessible

## **6. Considering applications and representations**

Applications have to be made in writing and must contain the particulars specified in paragraphs 10.2 to 10.5 of the third schedule (see hyperlink above) and such particulars as the appropriate authority may reasonably require in addition. The Council's application form will be designed to elicit information that enables its decision making to be guided by this policy, including information that is relevant to enabling it to meet all of its general obligations such as those referred to in the preceding paragraph.

Public notice must be given of all applications and that notice shall be in the form that the Council may prescribe. The Council has prescribed a form of application that facilitates public representations, including, for example, requiring applicants to identify the brand name under which the premises are intended to operate and other material information.

The council will record that applications have been received on its licensing web pages. In respect of applications for SEVs the council will also display additional notices in the area making use of street furniture and community notice boards. It also intends to notify local councillors about any applications within their wards.

The Council will undertake an Equalities Impact Assessment in respect of each new valid application; the Equalities Impact Assessment will be kept under review and updated at the time of any subsequent application.

Persons objecting to an application for the grant renewal or transfer of a licence must give notice in writing of their objection to the Council, stating in general terms the grounds of the objection not later than 28 days after the date of the application. Providing they comply with the statutory requirements their format of written objections is entirely a matter for the objector.

The Council must give an opportunity of appearing before and being heard by a committee or sub-committee:

- (a) before refusing to grant a licence, to the applicant;
- (b) before refusing to renew a licence, to the holder; and

- (c) before refusing to transfer a licence, to the holder and the person to whom the applicant desires that it shall be transferred.

The Council will normally refer applications to the committee or sub-committee for determination.

The Council will also usually permit objectors to address the Committee or subcommittee in respect of the matters raised in their written objection (but no other matter) and in particular those matters that are relevant to the grounds of refusal. As the Act does not make objectors party to the hearing, this will normally take place at the opening of the meeting.

The Council has arranged for hearings to take place before committees and subcommittees whose members are accustomed to conducting such business in accordance with the rules of natural justice and other relevant obligations. Training has been made available to all Councillors concerned in the conduct of hearings and determination of such matters.

When considering applications the Councillors will usually enhance their existing local knowledge of the vicinity and locality by use of maps and site visits. Applicants are required to provide a location map and plan of the premises. The committee may question parties at the hearing.

## **7. Grounds for refusal**

### **Mandatory grounds**

A licence shall not be granted where one of the mandatory refusal grounds applies, that is:

- (a) to a person under the age of 18; or
- (b) to a person who is for the time being disqualified by virtue of revocation in the previous twelve months;
- (c) to an individual applicant who has not been resident in the UK for the previous six months;
- (d) to a body corporate which is not incorporated in an EEA state;
- (e) to an applicant 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 was reversed on appeal.

If the Council finds any of these grounds apply then it must refuse the application

### **Discretionary grounds for refusal**

A licence may otherwise be refused on one or more of the following grounds.

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

- (b) That if the licence were to be granted, renewed, or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal, or transfer of such a licence if he made the application himself;
- (c) That the number of sex establishments, 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. (Nil may be an appropriate number for these purposes)
- (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

If the Council finds any of these grounds apply then it may refuse the application

### **Factors for consideration**

#### ***Discretionary grounds (a) and (b)***

In considering the suitability of those persons referred to in (a) and (b) above the factors the Council may take into account includes:

- relevant experience;
- relevant criminal convictions;
- whether the person has committed relevant offences;
- relevant observations or findings by public authorities, including licensing authorities, in connection with the conduct of the person or their ability to manage and control premises;
- relevant findings by courts and tribunals in connection with the treatment of protected groups (within the meaning of the Equalities Act 2010)
- information germane to the person's ability to, among other things:
  - ensure the safety and wellbeing of performers;
  - ensure the proper protection of the public;
  - ensure the suitability of employees, performers and others using the venue;
  - prevent performance by or for those who may thereby be harmed, including minors;
  - understand and adhere to conditions imposed on any licence granted and ensure they are observed by others on the premises;
  - engage constructively with the Council and other relevant regulators

#### ***Discretionary ground (c)***

The Council is mindful of its power to determine an appropriate maximum number of sex establishments, in the relevant locality at the time the application is determined. The Council will adopt a consistent approach to this issue when determining applications for a sex establishment. It will not seek to predetermine the localities that are comprised within the City of Bristol or predetermine the appropriate number for each such locality, but will

consider this issue on a case-by-case basis. That is to say, it will decide what the relevant locality is as a matter of fact in each particular application and not by drawing boundaries on a map or some other method.

Having established the relevant locality (see below ground d), in considering the issue in ground 'c' the Council will take into account all relevant considerations including:

- The character of the locality:
  - residential
  - leisure
  - educational establishments
  - culture and tourism
  - parks and outdoor spaces
  - transport infrastructure
- Other key uses in the locality:
  - faith / religious institutions
  - churches, mosques, temples, and other places of worship
  - family friendly facilities and the proximity of residential accommodation
- Impact on future development and regeneration
- Impact on tourism, including considerations of the perception of the City at gateway locations
- Impact on retail attraction
- Risk of crime, disorder, anti-social behaviour, and nuisance
- Whether the locality is subject of stress caused by a cumulative impact of premises authorised to provide licensable activities under the Licensing Act 2003;
- Impact on crime and disorder including levels of crime, disorder and anti-social behaviour, and the likely effects upon crime and disorder.
- Public perception of the safety of the locality and impact on that perception, e.g., typical footfall at material times, level of street lighting, use by lone females
- Existence of social problems in the locality and impact on any initiatives to tackle them, e.g., kerb crawling, prostitution.

The Council will determine the relevant locality and the character of the relevant locality at the time the application is determined. The Council will adopt a consistent approach to this issue when determining application for a sex establishment. To promote consistency the Council will have regard to previous determinations and the policy determinations. However, applicants should be aware that there will be a general presumption for refusal especially where the characteristic of the locality is made up of primarily:

- residential accommodation,
- parks and children's play areas,
- schools, nurseries, children centres, colleges, or university
- religious and communal buildings
- family tourist attractions
- family shopping or leisure areas
- transport infrastructure

On 23<sup>rd</sup> November 2011 the Licensing Committee determined three localities in Bristol and specified the maximum number of Sex Shops, Sex Cinemas and Sexual Entertainment Venue within each locality. Appendix A shall be maintained within this policy to record all decisions made to control the number of sex establishments under this provision. This

policy is maintained as a key guide to the expectations of the Council in these policy localities but does not undermine or detract from the legal responsibility to receive and consider applications nor the considerations of these applications on a case-by-case basis as set out in this policy.

### ***Discretionary grounds (d)***

#### **For d(i)**

Having regard to the character of the locality (see ground (c) above) the Council will consider whether the particular application is appropriate, taking into account:

- The size and appearance of the premises
- Their proximity to places where the public congregate for purposes other than use of the premises, such as bus stops and taxi ranks
- The nature and style of the relevant entertainment that is proposed
- The nature of the clientele it is likely to attract and their number
- The duration of the proposed licence/activity
- The manner in which the relevant entertainment is likely to be managed
- The risk of nuisance to others engaged in legitimate activity
- The proposed hours of operation.

#### **For d(ii)**

Whether premises in the vicinity are put to any of the following uses:

- residential, in particular homes occupied by families
- leisure
- educational establishments
- churches and other places of worship
- family friendly facilities
- other sex-oriented/adult premises (whether or not they are licensed/licensable)
- youth clubs
- women's refuges
- community centres
- parks and other open spaces
- swimming pools
- public transport

#### **For d (iii)**

In considering these factors the council will take into account information concerning:

- whether the premises are fit for the purpose proposed
- their planning status
- the general appearance to others using the locality
- whether premises are self-contained
- means of access and egress, whether shared with other building users (if any)
- accessibility
- sightlines
- 'hidden' areas and other places where effective monitoring may be hampered
- standard of decoration and "fit-out"
- visibility from the street
- facilities for smokers

- facilities for performers (changing, washing, WC, smoking areas etc) and whether they are adequately separated from those provided for customers

The Council recognises that the use of premises in the vicinity and the character of the locality may be subject to change from one year to the next.

## **8. Conditions**

The council has set out standard conditions that will normally be applied to any sex establishment licence granted by it.

The conditions are intended to promote the safety and wellbeing of the public, employees, and customers, as well as reducing the impact of these types of premises by imposing certain restrictions.

An applicant may request to vary or be exempt from any of these conditions and will be afforded the opportunity to provide information as to why a variation or an exemption should be granted in that instance.

## **9. Reasons**

The Council will usually make available the reasons for its Committee and subcommittee decisions on its web pages. Rarely publication of reasons may be deferred where there is good reason (for example where relevant information is sub judice or otherwise reasonably judged to be exempt from publication).

## **10. Waiver**

In circumstances in which the Council reasonably judges that it would be unreasonable or inappropriate to require a licence for the sexual establishment concerned it may waive the requirement for a licence. An applicant for a waiver must submit the information prescribed in the legislation and such other information as the council may reasonably require. There are no advertising or publicity provisions governing waivers.

If an application for waiver is allowed a waiver notice is given which can be for a specific period or open ended. When it is open ended the council, by giving at least 28 days' notice, can bring it to an end.

The Council will consider each waiver application received on its own merits

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