



*Knowsley Council*

## **SEX ESTABLISHMENT POLICY**

### **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 (AS AMENDED)**

#### **1. INTRODUCTION**

This is a policy for the regulation of sex establishments and the procedure relating to applications for sex establishment licences.

- 1.1 Knowsley Borough Council has adopted schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) so that it can regulate sex shops, sex cinemas and sexual entertainment venues in the Borough. In this policy, such premises will be referred to as 'sex establishments'.
- 1.2 This policy relates to any premises wishing to operate a 'sex establishment' in the Borough of Knowsley.
- 1.3 The Council does not take a moral stance through the adoption of this policy. We recognise that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. It is the role of the Council as a Licensing Authority to regulate such premises in accordance with the law.
- 1.4 Notwithstanding matters contained within this policy document, consideration will be given to the provisions of the Human Rights Act 1998 when considering applications for 'sex establishment' licences.

#### **2. MEANING OF SEX ESTABLISHMENT**

- 2.1 'Sex Establishment' means a 'Sex Shop', 'Sex Cinema' or a 'Sexual Entertainment Venue'.
- 2.2 Not all of these premises automatically require a licence. This is due to certain provisions and exemptions within the legislation. The criteria for requiring a licence is laid out below.

- 2.3 'Sex Shop' means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles; or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity; or acts of force or restraint which are associated with sexual activity.
- 2.4 No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.
- 2.5 'Sex Articles' means 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; including any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and to any recording vision or sound, which 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 is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.
- 2.6 '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 are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage sexual activity; or acts of force or restraint which are associated with sexual activity; or 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.
- 2.7 No premises shall be treated as a 'sex cinema' by reason only if they are licensed under Section 1 of the Cinemas Act 1985, of their use or purpose for which a licence under that section is required; or of their use for an exhibition to which Section 6 of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of Section 6(6) of that Act.
- 2.8 '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.
- 2.9 "Relevant Entertainment" means any live performance; or any live display of nudity; which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or

other means). An audience can consist of just one person (e.g. where the entertainment takes place in private booths)

2.10 In deciding whether entertainment is “relevant entertainment” each case will be considered on its merits, however 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
- Topless Bars
- Premises where private entertainment booths are present

This list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should be treated as indicative only. Ultimately, decisions as to whether entertainment is “relevant entertainment” will depend on the content of the entertainment and not the name it is given.

2.11 The following premises are not sexual entertainment venues:

- Sex Shops and Sex Cinemas
- Premises which provide relevant entertainment on an infrequent basis.

These are premises where –

- (a) no relevant entertainment has been provided on no 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 providing relevant entertainment on an infrequent basis will continue to be regulated under the Licensing Act 2003 (the Licensing Act).

2.13 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 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.

“audience” includes an audience of one;

“display of 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;

“the organiser”, in relation to the provision of relevant entertainment at premises, means any person who is responsible for the organisation or management of the relevant entertainment; or the premises;

“premises” includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted; and it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.”

### **3. WAIVERS**

3.1 We may, upon application, waive the requirement for a licence in any case where we consider that to require a licence would be unreasonable or inappropriate.

Waivers may be granted to:

- Book shops, including shops where sale of DVD’s and CD’s are present
  - Sexual Health Clinics
  - Cases where we consider that the requirement for a licence is borderline, where events are minor or temporary, or where clarity or regularisation is required.
  - Educational Establishments as part of a recognised educational curriculum
- 3.2 We will consider each application for a waiver on its individual merits, however, any establishment that would normally require a licence under the provisions of the 1982 Act is unlikely to be granted a waiver other than in exceptional circumstances.
- 3.3 In order for a waiver to be considered, an applicant must provide the basic information included in the application form, and any other information that we may reasonably require in order to make our decision.

- 3.4 A waiver may be for such period as the Licensing Authority thinks fit. Where we grant an application for a waiver, we will give notice to the applicant stating the application has been granted. We may at any time give a person who would require a licence but for a waiver, notice that the waiver is to terminate, on a date not less than 28 days from the date on which we give the notice, or as may be specified in the notice.
- 3.5 The Licensing Authority does not consider it would be appropriate to permit waivers from the requirements to hold a sex establishment licence in respect of Sexual Entertainment Venues, particularly as the legislation allows relevant entertainment on an infrequent basis of no more than eleven occasions within a 12-month period, providing there is at least one month between each period of entertainment which itself does not last for more than 24 hours.

#### **4 APPLICATION PROCESS**

- 4.1 Potential licence applicants should ensure that the appropriate planning permission to operate a premises as a sex establishment is in place prior to submission of an application for a licence.
- 4.2 Applications must be submitted to the Licensing Authority together with the application fee.
- 4.3 The applicant must give a copy of the application to the chief officer of Merseyside Police within 7 days after the date of application
- 4.4 Applicants must, at the time of submission of a new grant or variation application, provide a scheme showing the exterior design for consideration by the Licensing Authority before the premises are opened for business in order to ensure that exterior design of the premises shall be such that the interior of the premises is not visible to passers-by.
- 4.5 Applicants must, at the time of submission of a new grant or variation application, provide a plan showing the interior layout of the premises for consideration by the Licensing Authority. In the case of Sexual Entertainment Venues such plan must outline the area where relevant entertainment will take place.
- 4.6 Applicants for Sexual Entertainment Venues must also submit a copy of their "House Rules" containing the required conduct of performers which shall include matters containing conditions of licence. i.e. no touching, no meeting customers outside of the licensed premises for any purpose, no sex acts, no giving or taking phone numbers (including exchange of business cards).

- 4.7 Such House Rules will form part of the licence (if granted) and may be subject to amendment by the Licensing Authority prior to approval.
- 4.8 Applicants must make provision for all performers to sign documentation to confirm their knowledge of and acceptance to adhere to the House Rules. Such documentation must be retained for the duration of the performers' employment and for a further 6 months from the date they last worked at the premises, whether they are employed directly or freelance.
- 4.9 Applicants (other than applicants for variation of licence) must also give public notice of the application by publishing an advertisement in a local newspaper within 7 days of making the application.
- 4.10 There is an additional requirement for notice of the application to be displayed for 21 days on or near the premises where it can be conveniently read by the public.

## **5 FEES**

- 5.1 The appropriate fees for applications can be found on the Council's website. Application fees must be paid in full at the time of submission of the application. Fees are non-refundable.

## **6 DETERMINATION OF APPLICATIONS**

- 6.1 Section 12 (1) (a-e) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 prohibits the Licensing Authority from granting a licence:
  - (a) to a person under the age of 18; or
  - (b) to a person who is for the time being disqualified from holding a licence following revocation of such a licence; or
  - (c) to a person, other than a body corporate, who is not resident in an EEA state or was not so resident throughout the period of 6 months immediately preceding the date when the application was made; or
  - (d) to a body corporate which is not incorporated in an EEA state;
  - (e) to a person who had, 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.

**Please note there is no right of appeal against refusal on the above grounds.**

6.2 The Licensing Authority may refuse an application for the grant or renewal of a licence on one or more of the following grounds:

- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) that if the licence were to be granted, 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 made (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.

An application for the transfer of a licence can only be refused by virtue of the (a) & (b) above.

6.3 Each application will be decided upon its own merits. The Licensing Authority will not apply a rigid rule to its decision making and will give clear reasons for its decisions.

6.4 When issuing a Sex Establishment Licence the Licensing Authority is permitted to issue it on such terms and conditions and subject to restrictions as specified at the time the licence is issued.

6.5 In addition to this the Licensing Authority has the power to make standard conditions applicable to all licences for sex establishments.

6.6 It is an offence to breach the conditions and the penalty for this is a fine not exceeding £20,000.

## **7 OBJECTIONS**

7.1 Any objections received by the Licensing Authority which do not relate to the grounds set out in the Act must be rejected by the Licensing Service.

7.2 Valid objections will be considered by the Licensing Committee to consider the application.

7.3 Objections must be made in writing (email is acceptable) and should include the following:

- the name and address of the person or organisation making the Objection
- the premises to which the objection relates
- the proximity of the premises to the person making the objection; a sketch map or plan may be helpful to show this
- the reasons for making the objections

## **8 REVOCATION OF LICENCE**

8.1 The Licensing Authority is given jurisdiction to revoke a sex establishment licence by virtue of Schedule 3 paragraph 17(1) of the Local Government (Miscellaneous Provisions) Act 1982.

8.2 The Licensing Authority may call a hearing, without requiring a third party to request such a hearing, and give the licence holder an opportunity to appear before them.

8.3 The Licensing Authority may revoke the licence on any of the mandatory grounds which are detailed at 6.1 (above) or in respect of (a) or (b) detailed at section 6.2 (above), namely that the licence holder is unsuitable or that the manager or beneficiary of the licence is unsuitable.

8.4 Should the Licensing Authority revoke a Sex Establishment licence then full reasons for the revocation would be provided to the licence holder within 7 days of the decision.

8.5 Revocation of a Sex Establishment licence would disqualify the licence holder from holding or obtaining another Sex Establishment licence in the Licensing Authority's area for a period of 12 months. However, this does not prevent the licence holder from holding a licence in another Licensing Authority's area.

## **9 DURATION OF LICENCE**

9.1 The Licensing Authority will, unless there are exceptional reasons otherwise, grant licences for the maximum duration of one year to provide certainty to those operating businesses, unless the licence is revoked during this period.

## **10 RIGHT TO APPEAL A DECISION**

- 10.1 If an application is refused, or revoked, following a hearing, then the applicant will be informed of the decision and whether there is any right of appeal.
- 10.2 Appeals must be made to the local magistrates' court within 21 days, starting from the date the applicant is notified of the Licensing Authority's decision. The notice will advise the address of the appropriate Magistrate's court to which such an appeal should be submitted. It should be noted that a fee may be payable to the magistrates to lodge such an appeal.
- 10.3 Applicants can appeal against the refusal of a grant, renewal, variation or transfer application, or against the decision to revoke a licence. They can also appeal against conditions or restrictions imposed.
- 10.4 Please note that you cannot appeal against the Licensing Authority's decision if the application was refused on the grounds that:
- 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 authority consider is appropriate for that locality; or
  - the grant of the licence would be inappropriate considering the character of the area, the nature of other premises in the area, or the premises themselves.
- 10.5 The Magistrates' court will determine the appeal application. If you do not agree with the decision made by the magistrates' court, you can appeal to the local crown court. The decision made by the crown court will be final.
- 10.6 The Licensing Authority must comply with a decision made by the Magistrates or Crown court.