

## LICENSING OF SEX ENTERTAINMENT VENUES

<b>Cabinet Member</b>	Councillor Jonathan Bianco
<b>Cabinet Portfolio</b>	Finance, Property & Business Services
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<b>Papers with report</b>	Appendix 1 - Sex Establishment Licensing Policy Appendix 2 - Proposed Fee Table and information Appendix 3 - Proposed Table of Delegations Appendix 4 - Proposed Timetable for implementation Appendix 5 – Consultation responses

### HEADLINE INFORMATION

<b>Summary</b>	This report contains recommendations to adopt and implement the provisions relating to the control of sex establishments in the borough under the Local Government (Miscellaneous Provisions) Act 1982
<b>Contribution to our plans and strategies</b>	A safer borough
<b>Financial Cost</b>	The annual licence fee will generate an estimated £11,500 per annum; this will cover the costs of operating the scheme.
<b>Relevant Policy Overview Committee</b>	Residents' & Environmental Services
<b>Ward(s) affected</b>	All

### RECOMMENDATIONS

That Cabinet:-

1. makes a recommendation to Council to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982;
2. makes a recommendation to Council to approve the draft Sex Establishment Licensing Policy (Appendix 1);
3. makes a recommendation to Council that the terms of reference of the Licensing Committee be extended to include the Local Government (Miscellaneous Provisions) Act 1982;
4. agrees and sets the fee of £2300 in relation to Sex Establishment Licence applications;
5. makes a recommendation to Council to agree the table of delegations as set out in Appendix 3;
6. approves the proposed timetable for implementation (Appendix 4)

## **INFORMATION**

### **Reasons for recommendation**

#### **Recommendation 1.**

The adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 will enable the Council to control the number and location of sex establishments.

The provisions, if adopted, require the Council to have systems in place to receive applications by April 2011. If the authority has not adopted the provisions by 6<sup>th</sup> April 2011, it must consult local people about whether or not it should resolve to adopt. This requirement is included under Schedule 3, para 4 of the Policing and Crime Act 2009.

The legislation requires that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 must be adopted by 06 April 2011. It is likely that adoption will be confirmed or refused at the Council meeting in July 2011. In the event that Recommendation 1 is approved, this will place the Council in a position to comply with the legislation by demonstrating that it is acting as soon as reasonably practicable to resolve the issue of adoption of the legislation.

If control is not introduced in Hillingdon, the Council would be at risk for allowing premises to operate as sex establishments without any ability to regulate, which could potentially see the number of establishments rise.

#### **Recommendation 2 and 3**

A proposed new Policy has been drafted and will address the adoption process, working relationships with our partner/enforcement agencies i.e. Police, Community Safety, Local Safeguarding Children Board etc and the standards that the borough will expect from applicants and operators. The Policy will also set out our reasons for refusals and hearing procedures.

The introduction of a licensing Policy will offer transparency, accountability, consistency and the promotion of good standards in licensing.

If accepted, the policy recommends the Licensing Sub-Committee determine, inter alia, contested applications. In order for the Licensing Sub-Committee to hear these matters, the terms of reference of the Licensing Committee need to be extended to encompass the powers contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

#### **Recommendation 4.**

The Council may recover the cost of implementation and enforcement through the collection of appropriate fees.

Fees may be reviewed at any time.

The fee currently charged by Food Health & Safety Team for a sex establishment in Hillingdon is £1925.50; it is recommended that a fee of £2300 be applied under this new proposed policy. Further background information regards charges levied by other Councils is set out in Appendix 2

#### **Recommendation 5.**

Responsibility for licensing functions may be split between Officers, Committees, Cabinet and Council.

It is proposed that Council delegate to the Deputy Chief Executive & Corporate Director of Planning, Environment, Education & Community Services the authority to exercise powers under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to determine uncontested new/renewal/transfer applications for Sex Establishments. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 does not permit the delegation of these licensing functions to a Local Authority Cabinet or Council.

The reasons are that the proposal is consistent with the current approach applied to similar licenses under other licensing legislation.

It is proposed that the Licensing Sub-Committee determine contested applications. Please see Appendix 3 for a detailed layout of proposed delegations.

A final decision on such delegations can be determined by full Council in July 2011.

#### **Recommendation 6.**

The Act allows for a 12 month transitional period; the first six months for existing operators to apply under the new provisions and the following six months for new operators to apply. All licences will then become effective 12 months after the first appointed day.

The Act requires a notice to be published in the local press for two consecutive weeks giving notice that the Authority has made a resolution to adopt the provisions. The notice shall also specify the first appointed day of the 12 month transitional period. (Timetable contained in Appendix 5)

#### **Alternative options considered / risk management**

By not adopting the provisions by 6<sup>th</sup> April 2011, the authority must carry out a full public consultation about whether it should resolve to adopt or not adopt the provisions.

If control is not introduced in Hillingdon, there is a potential risk that the numbers of premises operating as sex establishments could rise.

#### **Supporting Information**

The borough currently has one licensed sex shop. Approximately five premises will potentially have to apply for a sex establishment licence under the new category 'Sexual Entertainment Venue'. These premises are also currently licensed for the sale of alcohol under the Licensing Act 2003.

Sex shops and sex cinemas are currently licensed under the sex establishment provisions of the Local Government (Miscellaneous Provisions) Act 1982. The Council currently licences 1 premise in this way.

The Policing & Crime Act 2009 amended the definition of 'sex establishments' to include 'sexual entertainment venues' (SEV's). This new type of establishment is intended to include striptease, pole-dancing etc.

The legislation requires that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 must be adopted by 06 April 2011. It is likely that adoption will be confirmed or refused at the Council meeting in July 2011. In the event that Recommendation 1 is approved,

this will place the Council in a position to comply with the legislation by demonstrating that it is acting as soon as reasonably practicable to resolve the issue of adoption of the legislation.

The Licensing Act 2003 allows for premises licences to be issued to regulate the sale of alcohol, regulated entertainment etc but has little scope for control for adult entertainment. The implications of this mean that Authorities have little control of the location of adult entertainment establishments and are restricted to determining alcohol licences in line with the Licensing Act 2003 provisions.

In particular, the new provisions of the new Sex Establishment Licensing Policy will give more control to the Council to decide on the appropriateness of the locations of these premises, for example near schools, retirement homes, places of worship etc. Enforcement powers will also be increased. The Council will also have new powers to decide on the appropriate number of sex establishments in a locality, a power that is not available under the Licensing Act 2003. The proposed policy requires the provision of detailed information from the applicant related to the running of the premises; thus placing officers and Councillors in a better position to determine these applications.

A full public consultation was carried out on the proposed draft Sex Establishment Licensing Policy (Appendix 1). The Council received 3 responses to the consultation, copies in Appendix 5.

### **Financial Implications**

The costs incurred will be for staff time in the administration of the scheme from the licensing team. This will cover the assessment of the application, liaison with authorities, residents and stakeholders, a pre hearing inspection, attendance of the Sub-Committee and license compliance inspection. In addition there are the staff costs for Democratic and Legal services, for compiling and printing of reports and facilitating and attending the Sub-Committee hearing; provision of legal advice and drafting of decision notice. These costs will be recovered through the license fee levied on the business. Accordingly implementation of the report recommendations will be cost neutral.

The licensing of Sex Establishments has the proposed annual fee of £2,300, the estimated income from this will be £11,500 annually based on the expectation that 5 establishments would require the licence.

There is an additional one off up front cost of a public notice for two consecutive weeks, estimated to be £500.

### **EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES**

#### **What will be the effect of the recommendations?**

Improvements in the control of premises are expected as the new provisions will give more power to the Council in determining the location and management of sex establishments. The new rules also give more control to residents by allowing more say over where premises may operate.

## **Consultation Carried Out or Required**

Public consultation has been carried out for the draft Policy. The consultation period ran for 12 weeks between 15<sup>th</sup> October 2010 – 7<sup>th</sup> January 2011. Consultees included trade representatives, stakeholders, residents groups, partner organisations etc.

2 responses were received to the consultation and are contained within Appendix 5.

## **CORPORATE IMPLICATIONS**

### **Corporate Finance**

Corporate Finance has reviewed this report and is satisfied that the set fee of £2,300 in relation to Sex Establishment Licence applications will generate an estimated income of £11,500 per annum, which will cover the costs of operating the scheme. This is based on the expectation that five establishments would require the licence.

### **Legal**

Schedule 3 of the Policing and Crime Act 2009 (“the 2009 Act”) inserts a new category of “sex establishment” called a “sexual entertainment venue” into Schedule 3 to the Local Government (Miscellaneous Provisions) Act, 1982 (the “1982 Act”).

Section 27 of the 2009 Act allows local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of the 1982 Act and gives local authorities powers to control the number and location of lap dancing clubs and similar venues in their area. Where adopted, the provisions of Schedule 3 will allow the Authority the power to refuse an application on potentially wider grounds than is currently permitted under the Licensing Act 2003 and will potentially give residents a greater say over the regulation of lap dancing in pubs and similar venues in their area.

Full Council is required to adopt the legislation and put in place a table of delegations which will form part of the Council’s policy. It is therefore suitable for Council to agree the policy and specifically agree the scheme of delegations at Appendix 3 which forms part of the proposed policy. It is open to Cabinet to determine whether or not to recommend the adoption to full Council.

If the full Council does not make a resolution to adopt Schedule 3 of the 1982 Act within one year of the legislation coming into force (by 06 April 2011), or if the adoption process is not started by 06 April 2011, then a consultation with residents/stakeholders must be held as soon as reasonably practicable about whether the provisions should be adopted.

With regard to the setting of fees, the Council must be mindful of the of the Guidance issued by the Department for Business Innovation and Skills on the EU Services Directive which states;

*‘Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with... Local Authorities will need to bear in mind the threat of legal challenge should a service provider feel that the levels of fee are being used as an economic deterrent or to raise funds for Local Authorities. Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.’*

Further guidance aimed at businesses under Regulation 18 of the Directive states;

*'Fees charged in relation to authorisations must be proportionate to the effective cost of the process e.g. to cover the actual cost of the application process. Fees should not be used as an economic deterrent to certain activities or to raise funds. As now, if you believe the fee to be disproportionate, you can contest it with the authority concerned.'*

## **BACKGROUND PAPERS**

Local Government (Miscellaneous Provisions) Act 1982 – Schedule 3

Policing and Crime Act 2009

Home Office Guidance document for Sexual Entertainment Venues



**HILLINGDON**  
LONDON

**London Borough of Hillingdon**  
**Draft Sex Establishment Licensing Policy**

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## **1. Introduction**

The Policing and Crime Act 2009 introduced provisions to reclassify lap dancing, pole dancing clubs etc. as Sex Establishments under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Following a 12 week consultation period, The Council of the London Borough of Hillingdon adopted the amendment to Schedule 3 on **XXX**

This document sets out the London Borough of Hillingdon's Policy (the "Policy") regarding the regulation of sex establishments. The Policy additionally sets out the procedure for applications for sex establishment licences. Following a 12 week consultation period, this Policy was approved by Full Council on xxxx . This Policy will be reviewed in light of developing practice, guidance and secondary legislation.

This document relates to applications for sex establishment licences for:

- Sex Shops
- Sex Cinemas
- Sexual Entertainment Venues

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).

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.

The Policy outlines:

- the process for making an application, and
- the process the Council will follow in considering and determining an application for a sex establishment.

This Policy is intended to guide the decision making process and will take into consideration all relevant factors in determining an application. Each case will be decided on its merits.

The grant of a licence for a sex establishment does not remove the responsibility of an applicant or premises operator to comply with planning, building control and other relevant legislation including health and safety requirements. Where necessary, this Policy will be amended to ensure compliance with various relevant statutory regimes.

### **1.1 Adoption of the legislation**

After 6 April 2010 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 borough. In the London Borough of Hillingdon, although Schedule 3 to the 1982 Act was adopted on 16 December 1982, a further adoption resolution is necessary in order to ensure that the amendments introduced by Section 27 of the Policing and Crime Act 2009 are also adopted.

The adoption procedure is as follows:

1. 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 Council of the London Borough of Hillingdon may adopt such a resolution. Simultaneously, the Council may also agree a related Policy detailing the manner in which the provisions of the resolution will be administered.
2. The specified day must be more than one month after the day on which the resolution was passed.
3. The local authority shall publish notice that they have passed a resolution adopting the amendments made by section 27) paragraph 2(2) of Schedule 3 to the 2009 Act and the related Policy 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 local authority's area. The notice should state the general effect of Schedule 3.

Note: The new legislation is adoptive, but if not adopted by early April 2011 local authorities must consult on whether or not they should adopt the legislation.

Local authorities may, as a matter of good practice, choose to seek the views of local people and businesses and are encouraged by the Secretary of State to engage with known sex establishments. It is proposed that a public consultation be held on the Policy currently being considered by Members of the Licensing Committee. The public consultation will ensure that the views of residents and businesses are communicated to Cabinet and will help inform any decision on whether to adopt the provisions and/or Policy. It will also ensure that affected businesses are aware of what action they will need to take in order to comply with the new regime.

## **2. Definitions**

### **2.1 Sex Shops**

Licences for sex shops are required where category 18R films/DVD's/moving images are sold and/or where there is a significant degree of sex articles for sale.

Sex articles are defined in Schedule 3 of the 1982 Act as:

*(3) In this schedule, 'Sex Article' means-*

- a) anything made for use in connection with, or for the purpose of stimulating or encouraging;
  - i) sexual activity; or*
  - ii) acts of force or restraint which are associated with sexual activity; and**
- b) anything to which sub-paragraph (4) below applies*

*4) This sub-paragraph applies-*

- a) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and*
- b) to any recording of vision or sound, which
  - i) is concerned primarily with the portrayal of, or primarily deals with and relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or**

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

Significant degree will be determined by considering:

- The ratio of sex articles to other aspects of the business;
- The absolute quantity of sales;
- The character of the remainder of the business
- The nature of displays in the business

## **2.2 Sexual Entertainment Venues**

Licences for sexual entertainment venues are required for any premises at which relevant entertainment is provided for an audience for the financial gain of the organiser or entertainer.

Relevant entertainment is defined in Schedule 3 of the 1982 Act (as amended by the Policing and Crime Act 2009) as ‘any live performance or live display of nudity which is of such 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).’

Relevant entertainment will generally include the following;

- Lap dancing
- Pole dancing
- Table dancing
- Striptease
- Peep shows
- Live sex shows

An audience can be an audience of one person

## **2.3 Sex cinemas**

Licences for sex cinemas are required for any premises used to a significant degree for the exhibition of moving pictures which are concerned primarily with stimulating or encouraging sexual activity.

## **3. Requirement for a licence**

The Act provides that no person shall in any area in which the relevant Schedule is in force, use any premises, vehicle, vessel or stall as a sex establishment except under and in accordance with the terms of a licence granted under the relevant schedule by the Authority.

## **4. Applications**

### **4.1 Who can apply**

Individuals, partnerships, limited companies and other bodies may apply for licences.

Any person over the age of 18 years can apply for a licence provided they;

- Are a resident of the UK and have been resident in the UK throughout the 6 month period preceding the date of the application; and
- Are not disqualified under paragraph 17(3) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982; and
- Have not been refused a grant or renewal application within the 12 month period immediately preceding the date of the application

A body corporate may also apply for a licence provided it was incorporated in a European Economic Area state.

#### 4.2 Suitability of applicant

An applicant must be deemed to be fit and proper in order to be granted a licence. The Council will seek evidence of the applicants suitability by taking into account:-

- Previous knowledge and experience
- Any evidence of the operation of any existing or previous licences held by the applicant, including licences held in other boroughs
- Any reports about the applicant and/or management of the premises received from statutory objectors etc
- Any criminal convictions or cautions of the applicant

#### 4.4 Advertisement & Consultation

Applicants are legally required to give public notice of their application by publishing a legal notice in a newspaper circulating in the area of the proposed premises. The publication shall be no later than 7 days after the date of submission of the application.

The applicant is also required to display a notice at the premises where it can be easily read by passing members of the public. The notice shall be on display for 21 consecutive days starting with the day the application was made to the authority.

The form of notice shall be prescribed by the authority.

The applicant is required to send notice of the application to the Chief Officer of Police c/o The Licensing Sergeant, Northwood Police Station, 2 Murray Road, Northwood, HA6 2YW.

Upon receipt of an application, the Council will consult with relevant responsible authorities and interested parties.

#### 4.5 Form of application

The application shall be made on a form prescribed by the authority.

The application shall include a scale plan of the whole premises showing the public areas, boundary of the premises, points of entry and exit, location of any fixed furniture.

The application shall be accompanied by a fee prescribed by the authority.

The applicant may also be requested to attend an interview with the Licensing Officer.

#### 4.6 Supporting Documentation

The applicant will be expected to provide the following supporting documentation:

- Photographic proof of ID i.e. Passport, Driving Licence etc
- Proof that the applicant has a legal right to occupy and run a business from the premises.
- Management plan detailing plans for the staffing and supervision of the licensed operation including details of nominated responsible persons.

#### 4.7 Variations

The holder of a licence may apply at any time for a variation of the terms, conditions or restrictions on or subject to which the licence is held.

The process of applying for a variation is the same as that for applying for a new licence except that a plan of the premises is not required unless the application involves alterations to the premises.

#### 4.8 Renewals

The holder of a licence may apply for a renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application together with the appropriate fee must be submitted to the Council before the licence expires.

The process of applying for a renewal is the same as that for applying for a new licence except that a plan of the premises is not required.

The Council will take into account the following considerations when deciding on an application to renew:

- Levels of recorded crime and disorder in the area;
- Evidence of past demonstrable impacts of the operation of the premises with regard to crime and/or disorder;
- Whether appropriate measures have been introduced or agreed by the applicant to mitigate any adverse impacts that have arisen from the business operation;
- Whether the licence holder or members of staff have contravened legislation directly related to the operation of the licensed business.

#### 4.9 Transfer of licence

A person may apply for a transfer of licence at any time in the form required by the Authority and accompanied by the required fee.

#### 4.10 Notification of changes to the licence

A notification process will be in effect for minor administrative changes to the licence which do not require an application process i.e.

- Change of name/address of licence holder
- A change of the nominated responsible person
- Change of trading name of the premises

For other changes to the licence including but not limited to, change to the physical layout/size of the premises, alteration of licence conditions, change to the trading hours etc, the Licensing Authority will require the licence holder to make a full variation application.

The Council will charge a fee for such notifications.

## **5. Relevant Locality**

The Council is aware of the powers under Paragraph 12(3)(c) and 12(3)(d) of the Act which allows the authority to refuse licence applications on the basis of locality.

The Authority will assess each application on its individual merits but will also have regard to the appropriateness and suitability of the proposed location of the premises.

Case law (R v Peterborough City Council ex parte Quietlynn 85 L.G.R. 249) has determined that it is inappropriate to treat the whole of the London Borough of Hillingdon as a relevant locality. However, the Council has determined that it is appropriate for the relevant licensing Sub-Committee to determine any questions or concerns raised in a particular application with regard to locality.

The Council may consider that the grant or renewal of a licence would be inappropriate having regard to;

- The character of the relevant locality
- The use of other premises in the vicinity
- The layout, condition, or character of the premises in respect of which the application is made.

In addition, the Council may also decide that it may not be appropriate to grant licences for premises within close proximity to;

- Purely or primarily residential accommodation
- Schools, play areas, youth clubs, childrens centres and similar
- Access routes to and from Schools, play areas, youth clubs, childrens centres and similar
- Places of worship
- Community facilities or public buildings including but not limited to leisure centres, parks, community clubs/centres and sheltered housing
- Proximity to areas with high levels of recorded crime

## **6. Objections**

Objections must be submitted in writing no later than 28 days after the date of the application.

Objections may be accepted from persons, businesses or other associations whom may be affected by the operation of the proposed sex establishment.

Objections may also be submitted by partner authorities and agencies.

Moral representations cannot be considered.

## **7. Consideration of applications**

In any event, the London Borough of Hillingdon shall ensure that a hearing is held within 28 days after the expiry of the period during which objections may be made. The relevant Licensing Sub-Committee shall ensure that a decision is made within 5 working days of the hearing taking place. A written decision shall be sent to all parties to the hearing within 5 working days of such a decision being made.

In considering any application for the grant, renewal, variation or transfer of a licence the Council is obliged to have regard to any observations submitted by the Metropolitan Police and any objections received from members of the public, within the 28 day consultation period, in response to public advertisement of the application.

The Council recognises that Sex Establishment Licensing is controversial and stimulates very emotive arguments. However, the Council does not have the right to, and will not, have regard to the morality of sex establishments. Its approval or disapproval of sex establishments is not a matter that can be considered. Consequently, Straight-forward objections on the grounds that sex establishments should not be allowed on moral grounds will not be taken into account as decision-making criteria at the hearing.

## **8. Hearings**

Applications for new and renewal sex establishment licences, and variations to existing sex establishment licences, will be considered by the Licensing Sub-committee at a public hearing.

Objectors' written representations will be considered by the committee but, they will not normally be afforded a hearing unless the Chairman invites individuals or responsible authorities to verbally clarify their representation for members.

Individuals or responsible authorities will only be afforded a hearing if the Chairman can be satisfied that:

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

Members shall adjourn to private session to discuss the case before making a decision. The Council's legal advisor and the Democratic Services officer will be present at these sessions to offer advice and minute discussions. Neither officer will participate in any other way in the decision-making process.

A verbal decision will normally be given on the day of the hearing with a written decision sent within 5 working days stating the committee's reasons for that decision.

## **9. Decision**

The council after due consideration may decide to:

- a) Grant the Licence; or
- b) Refuse the Licence

Under the provisions in Schedule 3 of the Act, the licensing authority, may grant a licence on such terms and conditions and subject to such restrictions as it may specify.

The Council will also consider relevant representations from responsible authorities and/or interested parties.

The Council will consider each application on its merits in relation to the discretionary grounds for refusal. The Council wish to ensure that only applicants who are suitable will be granted licences and only in relation to suitable premises.

### 9.1 Mandatory grounds for refusal

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

- The applicant is under 18 years of age
- The applicant is for the time being disqualified due to the person having had a previous licence revoked in the area of London Borough of Hillingdon Council within the previous 12 months; or
- The applicant, 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
- The applicant is a body corporate which is not incorporated in an EEA state; or
- The applicant 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 successfully appealed.

### 9.2 Discretionary grounds for refusal

**Discretionary refusal:** – the Council may refuse to grant a licence on one or more of the following grounds:

1. that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
2. that if the licence were to be granted the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant of a licence if he made the application himself;
3. that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority considers is appropriate for that locality;
4. Where the premises have not received the relevant planning permission
5. that the grant of the licence would be inappropriate, having regard to:
  - (i) the character of the locality where the premises are situated;
  - (ii) the use to which any premises in the vicinity are put;
  - (ii) the layout, character or condition of the premises in respect of which the application is made.

## **10. Appeals**

An applicant for the grant of a licence whose application is refused has the right of appeal to the Magistrates' Court within 21 days of receipt of a written notice of decision. However, if refusal was on the grounds specified in paragraphs 3 and 5 above (locality and use etc) above then no right of appeal is available under this legislation.

A person whose application is refused due to these reasons (para 3 and 5) may attempt to invoke a judicial review of the Council's use of its discretion in coming to a decision, if they believe they can show that the Council has, for example, acted improperly, unreasonably or irrationally, has not examined both sides of a case or has shown predetermination or bias.

Those making representation, objecting to or supporting an application, have no right of appeal under this piece of legislation.

## **11. Waivers**

Applications may be made to waive the requirement for a sex establishment licence.

Waivers will be considered where the requirement for a licence would be unreasonable or inappropriate.

## **12. Exemptions**

Premises which provide relevant entertainment on less than 12 occasions per year are exempt from the requirement for a sexual entertainment venue premises licence.

## **13. Licence Conditions and Responsible Operating**

### **13.1 Mandatory Conditions**

The Council will impose mandatory conditions, as listed in the attached schedule, to all premises licences.

### **13.2 Discretionary Conditions**

Additional conditions will be imposed by the Council where necessary to uphold the guiding principles of the Act and the Policy.

### **13.3 Management of licensed premises**

The Council will require as a licence condition, for the licence holder to nominate a responsible person who shall be in charge of day to day operation and management of the premises including supervision of staff and compliance with all licence conditions.

The nominated responsible person will be required to provide a criminal record bureau check at the time of nomination.

The Licensing Service will send copies of all nominations to the Metropolitan Police for consideration.

Where the Metropolitan Police make an objection, the nomination will be rejected. The Licence holder will instead be required to nominate a different responsible person.

## **14. Guiding Principles**

In exercising its functions under the Act, the Council will have regard to the guiding principles detailed in the following paragraphs.

#### 14.1 Crime & Disorder

Under the act, the London Borough of Hillingdon, may grant a sex establishment licence on such terms and conditions and subject to such restrictions as it may specify.

#### 14.2 Protection of children

The holder of a licence for a sex establishment shall be guilty of an offence if he/she knowingly permits a person under 18 years of age to enter the establishment or to be employed in the business of the establishment. Paragraph 20 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 entitles the Court, upon summary conviction, to impose a fine not exceeding £20,000.

Children under the age of 18 cannot be employed or perform in Sex Establishments.

Under the act, the London Borough of Hillingdon, may grant a sex establishment licence on such terms and conditions and subject to such restrictions as it may specify.

#### 14.3 European Convention on Human Rights

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).

The leading case with regard to the rights of existing operators is that of **Belfast City Council v Miss Behavin' Ltd (Northern Ireland 2007)**. As per the decision of the House of Lords, it is 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. It is noteworthy that the House of Lords were agreed that such rights would only be engaged at a lower level in terms of strength of various considerations. Therefore, it is reasonable to conclude 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.

The relevant Licensing Sub-Committee of the London Borough of Hillingdon shall therefore act in line with guidance on Sexual Entertainment Venues provided by the Home Office at paragraph 4.21. The relevant Licensing Sub Committee shall therefore consider whether the 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 and morals, for the protection of the rights and freedoms of others, and, in the case of Article 1, Protocol 1 (that every person is entitled to the peaceful enjoyment of his or her possessions, including, for example, a licence) whether the interference can be justified in the general interest.

#### 14.4 Other legislative considerations

Apart from the legal requirements of the 1982 Act (as amended) the Council will take into account its duties under other legislation (and the subsequent amendments to such legislation) including:

- Section 17 of the Crime and Disorder Act 1998, which places the Council 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 Borough.
- 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 requirements 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.
- The Disability Discrimination Act 1995 makes it unlawful to treat disabled persons less favourably than other people for a reason related to their disability. Since 1999, licensees have had to make reasonable adjustments for disabled persons with regard to access to premises and the manner in which services are provided
- Section 149 of the Equality Act 2010 requires local authorities to exercise its functions having due regard to the need to eliminate discrimination, harassment, victimisation and to advance equality of opportunity between the sexes and to foster good relations between the sexes.

#### 14.5. Enforcement

The Council is responsible for the enforcement of sex establishment licences and will have regard to the Department of Business Enterprise and Regulatory Reform's codes of practice and guidance. The Council will carry out its regulatory functions in a fair, open and consistent manner.

The Council will carry out enforcement in accordance with the Enforcement Concordat and its own enforcement policies.

#### 14.6 Policy Review

The London Borough of Hillingdon will review this Policy as required by the governing legislation.

15. Delegations

<b>MATTER TO BE DEALT WITH</b>	<b>FULL COUNCIL</b>	<b>CABINET</b>	<b>SUB-COMMITTEE</b>	<b>OFFICERS</b>
Adoption of powers	X			
Approval of Sex Entertainment Venues Licensing Policy		X		
Fee Setting - when appropriate	X			
Application for new sex establishment licence			Contested	Un-contested
Application for a variation to a sex establishment licence			Contested	Un-contested
Application for a transfer of a sex establishment licence				X
Application for a renewal of a sex establishment licence			Contested	Un-contested
Review of a premises licence			X	

## **Standard Conditions to be imposed upon Sex Establishment Licences**

### Introduction

1. In these Conditions “The Council” shall mean London Borough of Hillingdon and all enquiries concerning this licence shall be directed to the Licensing Service, London Borough of Hillingdon, Civic Centre, High Street, Uxbridge, UB8 1UW
2. These conditions are imposed by the Council pursuant to its powers under paragraph 13 (1) of Schedule 3 to the above Act as terms, conditions and restrictions on a subject to which a licence is in general to be granted, renewed or transferred by the Council save and insofar as they do not conflict with the provisions of the Act itself.

### Conditions applicable to all Sex Establishments

#### Management of the Premises

1. The Licensee or some responsible person, over the age of 18, nominated by him and approved in writing by the Council for the purpose of managing the sex establishment (“the manager”) with the authority to direct activities within the Premises, shall have personal responsibility for and be present on the Premises at all times when the Premises are open to the public. A form will be provided for this purpose.
2. Where the Licensee is a body corporate or an incorporated body, any change of director, company secretary or other person responsible for the management of the body shall be notified in writing to the Council within 14 days of such change and such written details as the licensing authority may require in respect of the change of personnel shall be furnished within 14 days of a request in writing from the Council.
3. A copy of the licence and any special conditions attached shall at all times be displayed in a conspicuous position on the Premises, so as to be available for inspection by the police, the fire authority, and authorised officers of the Council.
4. The name of the person responsible for the management of the Premises, whether the Licensee or the manager, shall be displayed in a conspicuous position within the Premises throughout the period during which he is responsible for the conduct of the Premises.
5. The Licensee shall retain control over all parts of the Premises and shall not let, licence or part with possession of any part. The Council must be immediately notified in the event that any part of the Premises is affected by the termination of a lease or other event affecting the Licensee’s control of the Premises.
6. The Licensee shall ensure that the public are not admitted to any part of the Premises that has not been licensed, other than toilet facilities where provided for customers.
7. Neither the Licensee nor any employee or agent shall personally solicit custom for the sex establishment outside or in the locality (village, town or city) of the Premises.

8. The Licensee shall ensure that during the hours that the Premises are open for business every employee wears a badge of a type approved by the Council indicating his name and that he is an employee.
9. The Licensee shall maintain a daily register in which shall be recorded the name and address of any person who is to be responsible for managing the Sex Establishment in the Licensee's absence and the names and addresses of those employed in the Sex Establishment. The Register is to be completed each day within thirty minutes of the Sex Establishment being opened for business and is to be available for inspection by the police and by authorised officers of the Council.
10. The Licensee shall take all reasonable precautions for the safety of the public and employees.
11. No person under the age of 18 shall be admitted to the Premises.
12. The Licensee shall adopt a procedure to check the age of customers entering the premises who appear to be younger than 25 in order to ensure that they are not under the age of 18.
13. All persons working in the premises, including Performers, shall be aged not less than 18 years. The Licensee must maintain adequate records of the names, addresses and dates of birth of performers including adequate identity checks.
14. The Licensee shall ensure a closed-circuit television system is installed internally and externally to the satisfaction of the Council. Appropriate notices must be displayed in accordance with the Data Protection Act 1998, advising that CCTV is in operation. In addition the Licensee must ensure that the requirement under that Act regarding registration with the Data Protection Commissioner is complied with.
15. CCTV cameras shall be positioned to record a clear facial image of any person entering the premises via the main entrance/s.
16. The CCTV recordings of each day, shall be stored in a secure location for a period of at least 30 days. The recordings shall be available for inspection on request by authorised officers of the Council and the Metropolitan Police Service.
17. The Licensee shall provide upon request copies of any documents reasonably required by an authorised officer of the Council in relation to compliance with this Licence.

#### State, Condition and Layout of the Premises

18. Notwithstanding the Licensee's duties under the Health and Safety at Work etc Act 1974 and related legislation and his obligations under any lease or other agreement for the use of the Premises, he shall maintain the Premises in good repair and condition.
19. External doors shall be closed at all times other than when persons are entering or leaving the Premises. The external doors shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
20. The Premises shall be fitted with an inner entrance door or screen so that no part of the interior of the Premises or any of the contents of the premises shall be visible when persons are entering or leaving the Premises. Such inner entrance door or screen shall be

fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.

21. No access shall be permitted through the Premises to any other Premises adjoining or adjacent except in the case of emergency.
22. Lighting shall be in operation continuously during the whole of the time that the Sex Establishment is open to the public.
23. Alterations or additions, either internal or external, shall not be made to the Premises without prior written consent from the Council. A variation application will be required in order for consent to be considered.

#### Operation of the Premises

24. No change from a sex shop (including a mail-order shop) to either a sex cinema or sex entertainment venue, sex cinema to either a sex shop or sex entertainment venue, or from a sex entertainment venue to either a sex cinema or a sex shop shall be made without the approval of the Council. This will require consideration of an appropriate application.
25. No 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 shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema or a sexual entertainment venue.

#### Licensed Name

26. a) The Council at the time of granting the licence in respect of the premises shall appoint a name referred to as "The Licensed Name" by which it is intended that the premises shall be known and the licence holder shall ensure that the premises are known solely by that name and by no other, save as provided for by paragraph (b) below. Such name shall have been provided on the application form.
- b) An application in respect of a change of licence name shall be made to the Council in writing not less than 28 days prior to the proposed change and the Council shall have an absolute and unfettered discretion to allow or refuse such change.

## Conditions applicable to Sex Shops & Sex Cinemas

1. The primary use of a sex shop must be for the purpose of the sale of goods by retail.

### Opening hours of the Premises

2. The premises may only be used for the purpose of the licence during the times authorised by the Council.

### External Appearance

3. A notice stating that no person under the age of 18 shall be admitted to the premises must be displayed on the outside of the Premises. The notice must also include a statement that proof of age may be requested.
4. The exterior design of the premises shall be such that the interior of the premises is not visible to passers-by.
5. The windows and openings of the Premises shall be of a material or covered with a material, which will render the interior of the Premises not visible to passers-by.
6. No items should be stored on the premises so that they can be viewed from any external window or door.
7. The windows, doors, fascia board, walls and all external parts of the premises including the roof shall not contain any form of writing, sign or display save for:
  - a. The licensed name of the premises (as explained in paragraph 40 hereof) may be displayed, unless the Council determines that the name is inappropriate or gives other cause for concern.
  - b. The form of warning notice required to be displayed by virtue of the provisions of Section 1(6) of the Indecent Displays (Control) Act 1981.
  - c. A notice stating the opening hours of the establishment.
  - d. The wording "PRIVATE SHOP" or "ADULT SHOP" but no other indication as to the nature of the business carried on at the licensed premises.
8. No other words or signs, or any displays or advertisements, shall be displayed on the outside of the Premises or in the vicinity of the Premises, except those mentioned above, otherwise approved by the Council in writing.
9. Any facilities for previewing films, video recordings or other similar material shall be physically separated from the display area of the shop in such a manner that no material being displayed by way of preview shall be visible or audible outside the preview area.
10. No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Establishment nor shall more than one person (including any employee be present in any such booth or cubicle at any time). Appropriate fastenings are permitted on toilet doors.

### Goods Available in Sex Establishments

11. All Sex Articles as defined in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and other things displayed for sale, hire, exchange or loan within a the shop shall be clearly marked to show to persons who are inside the Sex Shop the respective prices being charged.
12. All printed matter, DVD, video and other formats capable of storing readable/viewable material offered for sale, hire, exchange or loan shall be openly displayed and available for inspection prior to purchase and a notice to this is effect is to be prominently displayed inside the Sex Establishment. (This regulation does not require that films or video films be exhibited (played) to customers).
13. No film, DVD, or video recording (or computer game, or other formats capable of storing readable/viewable material) shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to that effect.

### Information for Customers

14. The Licensee shall make available in the Sex Establishment free counselling and advice literature on matters related to sexual health and issues as may be published by the Family Planning Association, the NHS and or other similar organisations. Such literature should be displayed in a prominent position, preferably adjacent to all points of sale in the Sex Establishment.

## **Conditions applicable to Sexual Entertainment Venues**

1. The Licensee must ensure that a suitable and sufficient number of trained staff are employed to supervise the interior of the Premises (“floor supervisors”) to ensure that conditions of licence are complied with, in particular the no touching conditions, and to ensure the safety of performers.
2. The Licensee must submit a set of “House Rules” to the Licensing Authority as part of the application process; these rules will form part of the licence, and must be complied with. Furthermore they must ensure that all performers are fully conversant with and sign an agreement to adhere to such House Rules.
3. The Licensee shall ensure that neither they nor any person promoting or providing entertainment on the Premises (nor any person acting on behalf of any such person) shall display advertisements promoting the entertainment or the Premises in any unlawful manner.
4. Where the Council have given notice in writing to the Licensee objecting to an advertisement on the grounds that, if displayed, it would offend against good taste or decency or be likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling, that advertisement shall not be displayed.
5. The Licensee shall ensure that no more members of the public shall be present on the Premises at any time whilst relevant entertainment takes place to which this licence relates where the Council has specified a number in writing on the grounds of public safety, public nuisance or crime and disorder.

### **Opening of the Premises**

6. Relevant entertainment may only be provided during the hours permitted by an authorisation under the Licensing Act 2003 unless a specific condition on the Sex Establishment Licence permits otherwise.

### **External Appearance**

7. At no time shall performers or persons working in the premises be visible from outside of the Premises, with the exclusion of Door Supervisors.
8. The Licensee shall not permit the display outside of the Premises of photographs or other images which indicate or suggest that relevant entertainment takes place on the Premises.
9. External advertising of relevant entertainment shall not include any of the following:
  - a) any depiction of full nudity
  - b) any depiction of partial nudity (including the display of breasts, buttocks or genitalia)
  - c) any depiction of overtly sexual or violent images or any other images which may give rise to concerns in respect of public decency or protection of children or vulnerable persons from harm.

## Provision of Relevant Entertainment

10. Performers shall only perform in specified designated areas, to seated customers or in such other areas of the licensed Premises as may be agreed in writing with the Council.
11. The Licensee is to implement a Policy to ensure the safety of the Performers when they leave the Premises after a period of work.
12. Performers may not accept any telephone number, email address, address or contact information from any customer, except in the form of a business card which must be surrendered to the Licensee or their representative before leaving the Premises.
13. Performers may not give any telephone number, email address, address, contact information or business card to any customer or in any way solicit themselves.
14. The Licensee must ensure that during performances of relevant entertainment:
  - i. Customers may not dance at any time except in areas specifically designated by the Council as being separate from areas for sexual entertainment.
  - ii. Customers must remain appropriately clothed at all times.
15. Relevant entertainment will only take place in specified designated areas within the premises, as identified on the plan attached to the licence.
16. Performers will stop immediately and move away from any customer who is offensive, and shall report such behaviour and any other inappropriate behaviour or breach of house rules to the management. If after receiving a warning a customer continues behave inappropriately, the customer must be requested to leave the premises and should be escorted from the premises by appropriately authorised staff only (i.e. SIA registered door supervisors).

## Appendix 2

### Proposed application fee and information

The application fee currently charged for Sex Establishments is **£1925.50**.

Proposed fee for a transfer of Sex Establishment Licence - **£150**

Hillingdon has the joint third highest number of potentially qualifying establishments in London, as it is anticipated that approx 5 adult entertainment premises may have to apply for Sex Establishment Licences under the new provisions, if Cabinet approves their introduction.

Comparison with other London and Local Councils:

RBKC	£23,319.00
Brent	£10,461.00
Barnet	£2,150.00
Camden	£10,452.86
Westminster	£29,102.00
LBHF	£16,688.00
Ealing	£2,500.00
Barking & Dagenham	£22,523.00
Bexley	£22,537.00
Bromley	£9,789.00
Croydon	£5,740.00
Greenwich	£19,900.00
Harrow	£4,500.00
Havering	£2,590.00
Redbridge	£7,457.00
Southwark	£8,144.00
Sutton	£9,654.00
Waltham Forest	£14,472.00
Wandsworth	£2,717.00
South Bucks DC	£2,500.00
Three Rivers	£5,000.00

Fees must be set at a level to ensure cost recovery of the service i.e. the processing of paperwork, site inspections, Sub-Committee Hearing, issuing of licence.

Fees may be reviewed at any time.

## Draft Summary of Delegation of Powers

<b>MATTER TO BE DEALT WITH</b>	<b>FULL COUNCIL</b>	<b>CABINET</b>	<b>SUB-COMMITTEE</b>	<b>OFFICERS</b>
Adoption of powers	X			
Approval of Sex Entertainment Venues Licensing Policy		X		
Fee Setting - when appropriate	X			
Application for new sex establishment licence			Contested	Un-contested
Application for a variation to a sex establishment licence			Contested	Un-contested
Application for a transfer of a sex establishment licence				X
Application for a renewal of a sex establishment licence			Contested	Un-contested
Review of a premises licence			X	

**Proposed Timetable for implementation**

7 <sup>th</sup> July 2011	Council to determine whether to adopt provisions. If not adopted, then statutory public consultation of this decision to take place as soon as possible
If Adopted by Council:	
20 <sup>th</sup> July 2011	First legal notice published in local paper
27 <sup>th</sup> July 2011	Second legal notice published in local paper
20 <sup>th</sup> August 2011	First appointed day
20 <sup>th</sup> February 2012	Second appointed day
20 <sup>th</sup> August 2012	Third appointed day – provisions in force

**Response from Metropolitan Police Service**

**From:** <Ian.J.Meens@met.pnn.police.uk>  
**To:** <SWaterford@Hillingdon.Gov.UK>  
**Date:** 13/12/2010 14:50  
**Subject:** RE: Policy V2

\*Section 17 of the Crime and Disorder Act imposes a duty on Licensing Authorities to exercise their functions to do all that they reasonably can for the prevention of crime and disorder, including anti social behaviour and other behaviours adversely effecting the local environment, the misuse of drugs, alcohol and other substances the Authority will use its powers with due regard to do all it reasonably can to prevent such behaviours.

Many aspects can effect crime, disorder and anti social behaviour. The proposed method of operation, the design of the building and its interior. The level of supervision, both of staff and customers. The hours of operation and the location of the premises and many more. The local authority will take all matters into their consideration in making any judgement.

Under the act, the London Borough of Hillingdon, may grant a sex establishment licence on such terms and conditions and subject to such restrictions as it may specify.

Sgt Ian Meens  
Licensing Sergeant, Hillingdon

The Metropolitan Police Service is here for London - on the streets and in your community, working with you to make our city safer.

*Response from Special Educational Needs Team*

**From:** Deborah Bell  
**To:** licensing@hillington.gov.uk  
**Date:** 27/10/2010 09:41  
**Subject:** Consultation on draft Sex Establishment Licensing Policy

To contribute to the consultation on this Policy, please would it be possible to state explicitly that children under the age of 18 cannot be employed or perform in these establishments.

Many thanks

Deborah Bell  
Service Manager - Special Educational Needs, Behaviour & Attendance  
4E/09 Civic Centre, Uxbridge  
01895 250858