

APPENDIX D
Draft Policy for Consultation

Draft Sex Establishment Policy

Incorporating Sexual Entertainment Venues, Sex Shops and Sex Cinemas

Licensing Service

Document Control

Version	Date	Comments
V.01	5/4/19	DOCUMENT SENT FOR CONSULTATION
<u>V.02</u>	<u>5/11/19</u>	<u>Updates following end of consultation</u>
<u>V.03</u>	<u>17/02/2020</u>	<u>Inclusion of categories & update to sex shop numbers</u>
<u>V.04</u>	<u>24/02/2020</u>	<u>Updates following end of consultation – Stage 2</u>

Part 1 -	Introduction	#
Part 2 -	Overview	#
Part 3	Categorisation of Sex Establishments	#
Part 4 -	Consultation on this Policy	#
Part 5-	Integration with other Statutes	#
	Equality Act 2010	#
	Human Rights Act 1998	#
	Provision of Services Regulations 2009	#
	Crime & Disorder Act 1998	#
Part 6 -	The process of applying for a Licence	#
	Making an Application	#
	Objecting to Applications	#
	Determination of Applications	#
	Mandatory grounds for refusal	#
	Discretionary grounds for refusal	#
	Appeals	#
Part 7 -	<u>POLICY IN RELATION TO DISCRETIONARY GROUNDS</u>	#
	Discretionary Grounds a & b:	#
	Suitability of the Applicant, Manager & Beneficiary Policy	#
	Discretionary Ground c:	#
	Number of Sex Establishments	#
	Discretionary Ground d:	#
	Location	#
	Conditions	#
	Representations	#
	Waivers	#
Part 8 -	<u>POLICY IN RELATION TO SAFEGUARDING</u>	#
Part 9 -	Enforcement	#
	Better Regulation Delivery Office: Regulators' Code 2014	#
	Complaints	#
	Data Sharing	#
Part 9 -	Parallel Consent Schemes	#
	The Licensing Act 2003 (the 2003 Act)	#
	Planning and Building Regulation Control	#
Part 10 -	Definitions	#
<u>Appendix A</u>	<u>Checklist for Regulatory & Welfare Visits to Sex Establishments</u>	

Part 1 – INTRODUCTION

~~Licensed sex establishments in Sheffield contribute to the recreation, entertainment and night-time economy and provide an additional appeal to residents, tourists, visitors and the students that attend the two universities.~~

~~To promote a vibrant city the Licensing Authority regulates the scale, diversity and concentration of all licensed entertainment in an open, fair and legal manner.~~

This policy provides the Council's approach to the regulation and licensing of sex establishments which incorporates sexual entertainment venues, sex shops and sex cinemas, as set out in the Local Government (Miscellaneous Provisions Act) 1982 as amended by the Policing and Crime Act 2009, within the City of Sheffield.

~~The policy provides a framework to assist applicants and decision makers in making and considering applications and ensuring all relevant factors are given proper attention.~~

Part 2 – OVERVIEW

The Council's Sex Establishment Policy ("the Policy") sets out the Council's approach to the regulation of all types of sex establishment and the procedure relating to applications for sex establishment licences.

The sex establishments this policy applies to are:

- sexual entertainment venues
- sex cinemas
- sex shops

The Council is committed to applying the law and policy to promote:

- High management standards at licensed sex establishments;
- Public safety of staff, performers and patrons at sex establishments;
- Safeguarding of staff, performers and patrons at sex establishments; and
- Safeguarding vulnerable ~~persons~~ adults working in the establishments, visiting as customers or in the locality of sex establishments.

The aim of this policy is to provide guidance for prospective applicants, existing licence holders, those who may wish to object to an application, South Yorkshire Police and members of the Licensing Committee when determining an application.

This policy will be kept under review and revised where necessary.

Each application will be dealt with on its own merits on a case-by-case basis.

~~Consideration~~ The Council will ~~be given~~ adhere to the Equality Act 2010, the Human Rights Act 1998, the Provision of Services Regulations 2009 and the Crime and Disorder Act 1998 and the Home Office Guidance for England and Wales on Sexual Entertainment Venues (March 2010).

The Council does not take a moral stance in adopting this policy. The Council recognises that Parliament has made it lawful to operate sex establishments ~~and that such businesses are a legitimate part of the retail and leisure industries.~~ and it is the Council's role as the Licensing Authority to regulate such premises in accordance with the law.

Part 3 – CATEGORISATION OF SEX ESTABLISHMENTS

Categorisation of sex establishments

“**Sex shop**” means any premises, vehicle, vessel or stall used for a business consisting to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:

- (a) sex articles; or
- (b) other things intended 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.

“**Sex cinema**” means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures related to, or intended to stimulate or encourage, sexual activity, acts of force or restraint associated with sexual activity, or concerned primarily with the portrayal of or primarily deal with, or relate to, genital organs or excretory or urinary functions, but does not include a dwelling house to which the public is not admitted.

“**Sexual entertainment venue**” is defined as “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.”

“Relevant entertainment” means any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means). An audience can consist of just one person (e.g. where the entertainment takes place in private booths).

This definition would apply to the following forms of entertainment [as they are commonly known]: lap dancing; pole dancing; table dancing; strip shows; peep shows and live sex shows. This list is not exhaustive and should only be treated as indicative.

The decision to licence premises as sexual entertainment venues shall depend on the content of the relevant entertainment and not the name given to it. An applicant will be expected to set out the exact nature, extent and scope of the relevant entertainment.

For the purpose of fees and conditions, this policy categorises sexual entertainment venues as follows:

- **Performance Establishments:**

Open to the general public, subject to an entry fee, these venues will likely exhibit the following forms of entertainment:

- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
- } This list is not exhaustive.

The licence holder and performer will benefit financially.

- **Members Clubs**

Open only to private members that have applied and been accepted as members subject to a charge, these venues will likely involve a person paying an admission fee to enter the venue for the purpose of engaging in sexual activities with another person who has entered the venue on the same terms and who did not receive any form of payment or reward, whether directly or indirectly, for engaging in sexual activities.

The licence holder will benefit financially.

Ultimately, decisions to licence premises as sexual entertainment venues shall depend on the content of the entertainment provided and not the name it is given by the applicant.

Part 4 – CONSULTATION ON THIS POLICY

This policy was subject to a 12 week consultation.

It is now subject to a further 4 week consultation.

Part 5 – INTEGRATION WITH OTHER STATUTES

There are a number of statutory provisions which apply to every action the Council takes as a public authority. These include, but are not limited to:

- the Equality Act 2010;
- the Human Rights Act 1998;
- the Provision of Services Regulations 2009; and
- the Crime & Disorder Act 1998.

Equality Act 2010

This Act legally protects people from discrimination in the workplace and wider society. This includes the Public Sector Equality Duty (PSED), which means that the Council must thoroughly consider, in the discharge of its licensing functions, the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This applies for this policy and to the consideration and determination of applications for sex establishments.

This policy includes a clear and unequivocal commitment to meeting the PSED in the exercise of all of the functions under the Act. The policy and the documentation flowing from it are intended to be a key means of facilitating compliance with all of the Council's obligations. Great care has been taken in developing a policy that is fit for purpose in this regard but it is only when it is tested in action that it will be possible to evaluate its effectiveness. This assessment will be kept under regular review, particularly in the early period of implementation, so that any shortcomings identified in the document itself and/or the way it has been implemented can be addressed.

Licensing Committee Members have undertaken equality and diversity training and will be reviewing their learning on a regular basis to ensure their knowledge and understanding of all matters concerning equality and diversity are at the highest standard to allow them to make decisions.

Equality Impact Assessment

A detailed Equality Impact Assessment (EIA [556](#)) has been undertaken and kept under review throughout the drafting of this policy, the consultation process and then finalised on publication of the attached to the policy document when it was submitted to the Licensing Committee for approval. Further EIA's will be conducted where necessary.

~~It is not considered likely that the equalities obligations are at risk as there is no perceivable risk of unequal access to the services between different equality groups, save for those under 18.~~

The EIA considers those working in and visiting sex establishments as well as any other person that could potentially be impacted – the general public.

~~The EIA It has informed the development of the policy to mitigate outcomes considered to be potentially harmful.~~

Human Rights Act 1998

Incorporates the European Convention on Human Rights and makes it unlawful for a Local Authority to act in a way which is incompatible with a convention right. The Council will have particular regards to the following relevant provisions of the European Convention on Human Rights:-

- Article 1 of the first protocol: Everyone is entitled to the peaceful enjoyment of his or her possessions. It should be noted that the Courts have held that a licence is a person's possession;
- Article 6, in relation to the 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: Everyone has the right to respect for one's home and private life, including, for example, the right to a "good night's sleep".
- Article 10: Freedom of expression.

Provision of Services Regulations 2009

These Regulations require that applications are processed as quickly as possible and, in any event, within a reasonable period. The Regulations also specify that in the event of failure to process the application within the period or as extended in accordance with the provisions of these Regulations, the authorisation is deemed to be granted (tacit approval) by the Council, unless different arrangements are in place.

The Council considers that it would not be in the public interest, for reasons of public safety, for tacit approval to apply with regards to applications for sex establishments.

The Regulations also state that any charges (fees) provided for by a competent authority, which applicants may incur under an authorisation scheme, must be reasonable and proportionate to the cost of the procedures and formalities under the scheme, and must not exceed the cost of these procedures and formalities.

The Regulations suggest that all fees within the scope of the Directive be separable in two parts.

Firstly, the pre-application costs; mainly the administrative costs incurred when dealing with the application from when it is first received up until it being determined (issued/refused).

Secondly, the on-going costs; monitoring and enforcing the terms and conditions of that licence. This is to show clearly which part of the fee is repayable should an application (applicant) be unsuccessful.

Crime & Disorder Act 1998

Under this Act, Local Authorities must have regard to the likely effect of the exercise of their functions, and do all that they can to prevent crime & disorder in their area. This policy will have regard to the likely impact that the granting of licences may have on related crime and disorder in the city.

Part 6 – THE PROCESS OF APPLYING FOR A LICENCE

Making an Application

The Act provides a maximum licence period of one year. The Authority may grant a shorter licence if it sees fit. A shorter period may be granted for example, where a licensee wants a licence for a limited period for a trade exhibition or a show.

An application for the **grant, variation, renewal** or **transfer** of a licence must be made in writing to the Licensing Authority together with the application fee in accordance with the requirements set out below.

There are three separate notice requirements:

[1] The applicant must, within seven days after the date of the application, publish an advertisement in a local newspaper circulating in the local authority's area. A suggested form of advertisement is available on request from the Licensing Section.

[2] Where the application is in respect of a premises, the applicant must display a notice of the application on or near the premises where it can be conveniently read by the public. The notice must be displayed for 21 days starting with the date of application. Again a suggested form of notice is available on request.

[3] The applicant must send a copy of the application to the Chief Officer of Police no later than seven days after the date of the application. Where the application is made electronically it is for the local authority itself to send the copy within seven days of receipt of the application.

The application form can be used for grant, variation, transfer and renewal applications. Applicants must provide their name, address, age (where the applicant is an individual), the premises address and the proposed licensed name of the premises.

Applicants must, at the time of submission of a new grant, renewal 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.
- details as to the exact nature, extent and scope of the business for consideration by the Licensing Authority.
- a plan showing the interior layout of the premises and where relevant entertainment will take place for consideration by the Licensing Authority (SEV's only). [This should detail the location of all CCTV cameras.](#)
- a copy of the codes of practice for performers, the rules for customers and the policy of welfare for performers (SEV's only). Such documents will form part of the licence (if granted) and may be subject to amendment by the Licensing Authority prior to approval.

[Please refer to Part 7 – Policy in Relation to Safeguarding for information on resources available in designing such codes of practice, rules and welfare policies.](#)

Officers of the Licensing Authority may, as part of the application process, visit the relevant locality of the premises to establish whether there are any characteristics of the locality which may require consideration by the Licensing Committee.

Objecting to Applications

The Act permits a wide range of persons to raise objections about the **grant, renewal, variation** or **transfer** of a licence. Objectors can include residents, resident associations, trade associations, businesses, Councillors or local MPs. South Yorkshire Police are a statutory consultee for all applications.

Objections must be made in writing (email is acceptable) no later than 28 days after the date of the application to the Licensing Authority and should include the following:

- the name and address of the person or organisation making the objection; and
- 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.~~

Objectors should limit their objection to matters which are relevant to the statutory grounds for refusal as set out in the Act. The relevant grounds of objection are:

- That the applicant is unsuitable to hold a licence;
- That the licence, if granted, would be carried on for the benefit of person/s who would be refused a licence if they had applied themselves;
- That the layout, character or condition of the premises are inappropriate for the proposed establishment;
- That the use of the premises as a sex establishment would be inappropriate due to the use of premises in the vicinity;
- That the use of the premises as a sex establishment would be inappropriate due to the character of the relevant locality; and / or
- That the number of sex establishments or sex establishments of a particular type is inappropriate in the relevant locality.

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

Objections will be considered by the Licensing Sub-Committee determining the application.

Each objection will be presented in full as part of the report to the licensing Sub Committee. ~~With the objector's personal details such as name, email address, address and telephone number will be removed.~~

The applicant will be informed of any objections received in respect of their application and the objection(s) will become public documents.

Any organisation, MP or councillor objecting in their capacity as such will not have their organisation's name/name redacted.

A copy of the hearing procedure will be sent to the applicant and any objectors prior to the hearing.

Determination of Applications

All applications for the grant of a sex establishment licence will be determined by the Licensing Sub-Committee.

~~Valid objections to any application will be considered by the Licensing Committee or delegated to a Licensing Sub-Committee at the hearing to consider the application. Applicants and objectors will be given an equal opportunity to state their case in accordance with the Licensing Committee's procedure for hearings, which is available from the Licensing Service.~~

The Act provides five mandatory grounds and four discretionary grounds for refusal of a licence. Each application will be decided upon its own merits and the Licensing Authority will give clear reasons for its decisions. Any decision to refuse a licence MUST be relevant to one or more of the following grounds:

MANDATORY GROUNDS FOR REFUSAL

Specific mandatory grounds for refusal of a licence are set out in paragraph 12(1)(a to e) of Schedule 3 in the 1982 Act. A licence cannot be granted:

- (a) to any person under the age of 18 years;
- (b) to any person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- (c) to any person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- (d) to a body corporate which is not incorporated in an EEA State; or
- (e) to any person who has, within a period of 12 months immediately preceding that date when the application was made, been refused that 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.

DISCRETIONARY GROUNDS FOR REFUSAL

The only discretionary grounds upon which the Council may refuse an application for the grant or renewal of a licence on one or more of the grounds specified in Schedule 3 paragraph 12(3) are that:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reasons;
- (b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he/she made the application himself/herself;
- (c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for the locality;
- (d) 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.

Licensing Sub-Committee Application Determination Hearings

Valid objections to any application will be considered by the Licensing Committee or delegated to a Licensing Sub Committee at the hearing to consider the application.

Applicants and objectors will be given an equal opportunity to state their case in accordance with the Licensing Committee's procedure for hearings, which is available from the Licensing Service.

A Licensing Committee Hearing report will be prepared and will include the application papers and any and all details of objections received during the consultation period.

Information identifying objectors will be redacted from the report.

The hearing report will be circulated to all parties to the hearing as soon as practicably possible and at the latest, 21 days before the date of the hearing.

Should the applicant wish to submit evidence to the committee following receipt of the report, they must ensure it is submitted as soon as practicably possible and at the latest, 14 days before the hearing and be made available to all interested parties with any sensitive material redacted.

Following the hearing, a written determination will be sent to all parties notifying of the decision and the reasons.

Appeals

There is a right of appeal to the Magistrates' Court against decisions for the refusal to grant, renew, vary or transfer of a licence, the imposition of conditions and revocations may also be appealed.

Appeals must be made to the Magistrates Court within 21 days, starting from the date the applicant is notified of the Licensing Authority's decision.

It is important to note that appeals only lie against the mandatory refusals on the basis that the mandatory ground does not apply to the applicant/licence holder. Further, no appeal lies against the Licensing Authority's decision made on the discretionary grounds namely:

- that it is inappropriate to grant or renew a licence on the grounds of the character of the locality or the number of premises in it; or
- the use of premises in the vicinity or the layout, character or condition of the premises.

The only discretionary grounds against which an appeal lies are those relating to the suitability of the applicant, the manager and/or the beneficiary of the operation.

There is no right of appeal to the Magistrates' Court for the police or objectors.

Part 7 — POLICY IN RELATION TO DISCRETIONARY GROUNDS

Discretionary Grounds a & b: SUITABILITY OF THE APPLICANT, MANAGER & BENEFICIARY

The Licensing Authority needs to be satisfied of the suitability of the following persons relevant to the application:

- (a) the applicant;
- (b) each of the partners (if a partnership);
- (c) each of the directors, secretary or other persons (if applicant is a company);
- (d) each of the managers;
- (e) each person the business will benefit. This includes third parties such as funders and suppliers where the arrangements are not on normal arm's length commercial terms or any persons who may share in the profits.

The provision of a management structure as part of the application will assist the Authority in determining suitability.

In order for the Licensing Authority to be satisfied that the relevant individuals are suitable to operate a sex establishment, a “basic “Disclosure and Barring Service Disclosure Scotland” (DBS) certificate that is dated no earlier than 5 weeks prior to the application being submitted should accompany the application.

Where the relevant individuals have convictions for:

- (a) dishonesty;
- (b) violence, including civil orders for domestic abuse as well as convictions for violence (including domestic violence) stalking, harassment, coercive control and other offences against women that may be passed in future legislation;
- (c) sexual offences;
- (d) drugs;
- (e) public order; or
- (f) people trafficking;

~~it is unlikely that a licence will be granted~~ the licence will not be granted.

Further,

- if the applicant has previously been involved in running an unlicensed sex establishment; or
- if the licence were to be granted, the business to which it relates would be managed by or run for the benefit of a person other than the applicant who would be refused the grant of such a licence if they made it themselves;

~~the application will likely be refused~~ not be granted.

The Licensing Authority needs to be satisfied that those applying for a licence for a sex establishment (individuals detailed above) are suitable to operate the business by ensuring:

- (a) that the operator is honest;
- (b) that the operator is qualified by experience to run the type of establishment in question;
- (c) that the operator fully understands the licence conditions;
- (d) that the operator is proposing a management structure which will deliver compliance with licence conditions;
 - i. managerial competence;
 - ii. attendance at the premises;
 - iii. a credible management structure;
 - iv. enforcement of business rules (internal) through training and monitoring;
 - v. a viable business plan (e.g. sufficient to employ door staff and install CCTV (SEV only)); and
 - vi. existing policies in place for the welfare of staff, performers and patrons (SEV only)
- (e) that the operator will act in the best interests of the staff and performers, in how they are remunerated, the facilities they enjoy, how they are protected and how and by whom their physical and psychological welfare is monitored (SEV only).

It is anticipated that the above expectations will be demonstrated by the operator through their completed application form, accompanying documentation, and disclosure certificates as part of the application process.

Reports of unsuitability of a licence holder made during the term of a licence

Where reports are received by the Licensing Authority during the term of a licence that evidence harm to women in or around sexual entertainment venues, the licence will be referred to the Licensing Sub-Committee to determine whether the licence holder, manager or beneficiary remain suitable to hold the licence.

Discretionary Ground c) NUMBER OF SEX ESTABLISHMENTS

The Act allows local authorities to impose numerical control on the number of sex establishments within a particular location; this can be to the number overall and the number of each kind and allows that the appropriate number may be nil.

The Council's ~~proposes position is~~ that the appropriate number of sex establishments for the Sheffield City Centre¹ is nil.

~~There shall therefore be a rebuttable presumption that a~~ Any new application for any type of sex establishment licence shall be refused.

The number of licensed establishments in Sheffield at the time of writing this policy is:

<u>Sexual Entertainment Venue</u>	<u>Sex Shop</u>	<u>Sex Cinema</u>
<u>2</u>	<u>1</u>	<u>0</u>

Existing establishments are exceptions to this number, however applications for renewal receiving objections will be placed before Licensing Sub-Committee for determination.

Should any operator that currently holds a sex establishment licence, surrender their licence or have it revoked, the licence will not be replaced.

Any application will be considered on its merits at the time the application is determined by the local authority.

Discretionary Ground d) LOCATION

The Act permits applications to be refused:

- i. where the grant would be inappropriate having regard to the character of the relevant locality;
- ii. where the grant would be inappropriate having regard to other premises in the vicinity;
- iii. on the basis of the layout, character or condition of the premises.

i) Character of the relevant locality

The Licensing Authority will have regard to, but not limited to, the following:

- (a) the fact that the premises are sited in a residential area;
- (b) the premises are sited near shops used by or directed to families or children, or on frontages frequently passed by the same;
- (c) the premises are sited near properties which are sensitive for religious purposes e.g. synagogues, churches, mosques, temples;
- (d) the premises are sited near premises or areas which are sensitive because they are frequented by children, young persons or families, including but not limited to educational establishments, leisure facilities such as parks, libraries or swimming pools, markets and covered markets;
- (e) the premises are sited near places and or buildings of historical/cultural interest and other tourist attractions.
- (f) the premises are sited near civic buildings.

The Council will consider the extent of the relevant locality on a case by case basis taking into account the particular circumstances of each case. However, the Council will not seek to define locality as the whole of the Council's administrative area or on a ward by ward basis.

ii) Use of other premises in the vicinity

The Licensing Authority will have regard to, but not limited to, the following:

- (a) schools, nurseries or other premises substantially used by or for children under 18 years of age;
- (b) parks or other recreational areas designed for use by or for children under 18 years of age;
- (c) places primarily used for religious worship;
- (d) hospitals, mental health or disability centres, substance misuse treatment centres, sexual exploitation services, sexual abuse centres or similar premises;
- (e) any central gateway to the city or other city landmark, historic building or tourist attraction;
- (f) predominately residential areas; and
- (g) The Cultural Hub (Millennium Galleries, Tudor Square, theatres and library).

Whether a premises is in close proximity to the above will be a matter of fact in each individual case and cannot be determined by reference to a fixed distance. What constitutes a city landmark, historic building, tourist attraction or cultural area will be determined by the Licensing Authority on a case-by-case basis, after hearing from the parties.

The nature of the premises and the opening hours of the premises will also be considered in relation to the above.

In the case of renewal applications, the fact of whether development has occurred since the premises have been in operation will be considered. Applicants are advised to be aware of new developments occurring in the area of their premises and detail in renewal applications how negative impact on new developments may be mitigated.

Licences will be refused if the Licensing Authority perceives a venue will have negative impacts on members of the public or vulnerable persons living, working or engaged in normal activity in the area.

The Licensing Authority will also consider the following factors when deciding if an application is appropriate:

- (a) any cumulative adverse impact of existing sex establishment related activities in the vicinity of the proposed premises;
- (b) proximity to areas with high levels of crime;
- (c) whether the premises has met the relevant planning requirements;
- (d) the design of the premises frontage (signage/images etc.);
- (e) any relevant representation to the application; and/or
- (f) the proposed operating hours.

iii) Suitability of the Premises

The Council expects:

- when an application for a licence at a permanent commercial property is made, the applicant will be able to demonstrate that the layout, character and / or condition of the premises is appropriate to the relevant entertainment proposed at the premises.
- when an application for a licence at a permanent commercial property is made, that property should have the appropriate planning and building regulation consents.
- the applicant to consider and detail in any application, the visible and physical impact of the premises including any external signage, advertising or displays.

CONDITIONS

The Licensing Authority recognises that all applications should be considered on an individual basis and any condition attached to a licence should be necessary, proportionate and tailored to the individual premises.

The Licensing Authority is permitted under The Act to make regulations prescribing standard conditions.

The standard conditions that may be attached on an individual basis to a sex establishment licence are available from the Licensing Service.

Management of sex establishments ~~are expected to~~ must ensure that all members of staff working in a licensed premises are fully aware of the conditions.

This should involve providing each member of staff with a copy of the conditions when they begin working for the business and providing clear and consistent training on how to comply with the conditions as well as details of the consequences and procedures for when the licence conditions are deemed to have been breached.

The Licensing Authority reserves the right to grant and/or renew a licence on such terms and conditions, and subject to such restrictions as may be so specified in each individual case/application.

Any applicant not wishing to be bound by the standard conditions will need to state so in the application and provide justification as to why they should not apply.

REPRESENTATIONS

The Act allows any person to submit representations about the application of a sex establishment licence.

WAIVERS

Schedule 3 of The Act makes provision for the Council to grant a waiver from the requirement to hold a sex establishment licence in any case where it considers that to require a licence would be unreasonable or inappropriate.

A waiver may be for such a period as the Council thinks fit.

Each application will be considered on its own merits by the Licensing Committee.

In light of the exemption in relation to the provision of relevant entertainment on an infrequent basis, the Council takes the view that waivers are unlikely to arise in relation to relevant entertainment and would only be considered in exceptional circumstances.

Part 8 – POLICY IN RELATION TO SAFEGUARDING

The Council is committed to minimising the risk of harm to employees of sex establishments, vulnerable customers and members of the general public that could be impacted by such establishments.

This section provides applicants and licence holders with details of training and resources available to recognise and respond to areas of vulnerability as well as measures that are expected to be in place.

Licence holders ~~are expected to~~ must notify and make information easily available to staff and the Licensing Authority recommend the inclusion of materials and information referred to in this section in an employee induction pack at the point of recruitment.

Safeguarding visits will be made periodically to sex establishments and licence holders/managers ~~are expected to~~ must ensure records are kept up to date in order to demonstrate due diligence.

By way of assistance, a checklist has been drafted by Public Health, Safeguarding and Licensing that could form the basis on which to design/strengthen codes of practice, rules, and welfare policies (see Appendix A).

Public Health would welcome the opportunity to review drafts produced by applicants/licence holders and provide evidence-based feedback to consider. Further information is available on (see Appendix A).

Policies & Procedures

Appropriate procedures should be in place and information available to allow staff to understand what to do if they have a problem at work.

Policies/procedures should be in place in relation to:

- the welfare of staff, performers and patrons (SEV only);
- code of conduct for staff and performers;
- social media policy for all staff and performers;
- the disciplinary procedure to address an employee's conduct;
- the grievance and appeal procedure to deal with a problem or complaint that an employee raises; and
- the health and safety policy measures in place that reduce the risk of violence to staff.

These should be in writing, communicated and easily available to all staff.

Records should be maintained that staff have read and understood the above.

A whistleblowing system is in place for sex establishment workers to contact the Licensing Department in confidence to report any work related matters of concern. Staff should be aware of this system and contact details of our department should be provided in the employee induction pack.

Support Services

Holders of SEV licences must make information available on public health support services to workers.

An induction pack containing welfare information from a recognised body should be available to all staff.

Management of SEV's are expected to undertake a "Safeguarding & Welfare Awareness Session" provided by SWWOP (Sheffield Working Women's Opportunities Project), either on an annual basis or sooner where there has been a change to the management of the premises. There will be a charge for the training - please contact sali@swwop.org for further details.

An appropriate member of the premises management must be assigned to act as the Safeguarding Coordinator. This person should act in accordance with the guidance and training provided by the local safeguarding children/adults boards.

SEV licence holders should consider having a trained occupational health first aider present at all times that the venue is operating. This will provide a first point of contact for workers experiencing health (including mental health) issues and can signpost to more comprehensive support services.

Information on peer to peer education resources such as 'Dancers Info' (www.dancersinfo.co.uk) and You My Sister (www.youmysister.org.uk) should be promoted as should dedicated Trade Union information for the industry which supports staff welfare, health and safety. For example, literature could be displayed in changing and staff rooms.

Exit support can be accessed through You My Sister for performers wishing to exit the industry.

Training

The licence holder should ensure that all members of management and staff attend relevant safeguarding training as well as having access to up to date educational resources available.

Training should be designed to support management and staff (including door staff, bar staff, DJ staff and performers) to recognise and respond to vulnerability in adults who are employees, voluntary workers, self-employees, performers, or customers.

Training should include: mental health, substance misuse/addiction disorders; mental capacity, learning disabilities and unacceptable sexual behaviour.

Staff training records must be maintained and signed by the trainee.

Age Checks

The local recognised age verification scheme that is supported by staff training must be implemented. Staff training and refusals records must be maintained and signage prominently displayed.

A policy should be in place to ensure that identity and age checks are undertaken and authenticated on all employees, voluntary workers, self-employees, performers and a legible record of authenticating documentation, including photo identification, must be maintained.

Literature and Signposting

Holders of sex establishment licences must display and make available, without charge, literature on matters relating to:

- information about local health services as may be supplied to them by relevant local bodies;
- mental health;
- sexual health,
- substance misuse;
- financial management and debt;
- safeguarding concerns; and
- sexual or domestic abuse services.

This information should be made available to patrons, employees and performers, for example, leaflets/posters in toilets

Licence holders must have health and safety policy measures in place that reduce the risk of violence to staff.

Part 9 - ENFORCEMENT

Licensing Service Principles of Enforcement:

- **Open:** The Licensing Authority will provide information in plain language and will be transparent in the activities it undertakes. It will also be clear with customers on how the service operates.
- **Helpful:** The Licensing Authority will work with licensees to advise and assist with compliance. A courteous and efficient service will be provided by all staff, and licensees will have a single point of contact and telephone number for further dealings. Applications will be dealt with promptly and where possible, enforcement services will operate effectively to minimise overlaps and time delays.
- **Proportionate:** The Licensing Authority will minimise the costs of compliance for licensees by ensuring any action taken is proportionate to the risks involved; an account of the circumstances and attitude of licensee will be considered at all times.
- **Consistent:** The Licensing Authority will carry out all duties in a fair, equitable and consistent manner. Licensing officers will exercise judgment in all cases and arrangements will be put in place to promote consistency.

The Licensing Authority will also provide a well-publicised, effective and timely complaints procedure that is easily accessible to licensees and members of the public alike.

Advice given by licensing officers on behalf of the Licensing Authority will be put clearly and simply at all times and confirmed in writing.

The Licensing Authority will also ensure that before action is taken as a result of enforcement or compliance checks, an opportunity to discuss the circumstances will be provided in order to resolve the points of difference. However, in circumstances where immediate action is necessary, such as health and safety or preventing evidence being destroyed, the Licensing Authority will be required to take a more formal approach. An explanation as to why such action was required will be given at the time and confirmed in writing, in most cases within five working days and, in all cases, within 10 working days.

Better Regulation Delivery Office: Regulators' Code 2014

In undertaking enforcement duties, the Licensing Authority will pay particular attention to the Regulators' Code. This sets out the standards that the Licensing Authority should follow when undertaking compliance and enforcement checks. Therefore the Licensing Authority will:

- carry out their activities in a way that supports those they regulate to comply;
- provide simple and straightforward ways to engage with those they regulate and hear their views;
- base their regulatory framework activities on risk;
- share information about compliance and risk;
- ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply; and
- ensure that their approach to their regulatory activities is transparent.

The Licensing Authority will work very closely with South Yorkshire Police and the Planning Service and look to establish task teams to deal with problem premises.

Complaints

The Licensing Authority does understand the difficulty for some residents to follow up issues with particular premises due to concerns for their safety. In these circumstances, residents should contact the Licensing Service, their local Councillor or South Yorkshire Police who may assist them in these matters.

The Licensing Authority and South Yorkshire Police will work closely in order to ensure consistency, transparency and proportionality in their enforcement activities. They will continue to investigate complaints

and conduct proactive enforcement exercises to ensure that licences and the conditions attached to the authorisations are complied with and that unlicensed activity is dealt with as appropriate to ensure the highest standards of licensees and premises in the city of Sheffield.

The Licensing Authority will investigate general complaints regarding premises. This will allow us to give an early warning to licence holders of any concerns identified at their premises and the need for improvement.

They may call on other relevant authorities to assist in the investigation of complaints or in formulating action plans for improvement.

Data Sharing

Subject to the provisions of the Data Protection Act 2018 [and the General Data Protection Regulation \(EU\) 2016/679 \(GDPR\)](#), the Licensing Authority and police will share information about licensees, licensed premises and activities associated with them. Further open access to data will be given to those police officers and Licensing Authority officers discharging their functions under this Act.

Part 10 - PARALLEL CONSENT SCHEMES

The Licensing Act 2003 (the 2003 Act)

If a sex establishment wishes to also carry on other licensable activities under the 2003 Act, i.e. the sale of alcohol, the provision of regulated entertainment or the provision of late night refreshment, they will also require a premises licence, club premises certificate or temporary events notice.

In practice, most sexual entertainment venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a premises licence for the sale of alcohol or provision of regulated entertainment.

Applicants and interested parties are advised to read Sheffield City Council's current Statement of Licensing Policy in conjunction with this policy.

Planning and Building Regulation Control

Applicants must ensure that they have the appropriate planning permission in place to operate their business.

The Council's licensing functions will be discharged separately from its functions as the "Local Planning Authority". However, the Licensing Authority recognises the need for the two services to work in partnership.

Therefore, the Licensing Authority requires that applicants for a premises licence and/or variations under this legislation to have already obtained any necessary planning consent. This helps to avoid unnecessary confusion within the local community.

Applicants should also be aware that Building Regulations may apply where the proposal involves building work or where the use of the building is changed. You are advised to contact Building Control for further guidance.

Part 11 - Definitions

“the Act”

refers to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009.

“the Council”

means Sheffield City Council.

“the Policy”

refers to the Sheffield City Council Sex Establishment Policy.

“sex establishment”

the collective term for sex shops, sex cinemas and sexual entertainment venues.

“relevant locality”

means the locality in which the premises, vehicle, vessel or stall are situated. For the purposes of this policy, each application will be determined on a case-by-case basis. In individual cases, if it is necessary to decide the precise boundaries of the relevant locality, this will be done on the facts of the individual case.

“character of the relevant locality”

means the character or characteristics of the locality in which the premises, vehicle, vessel or stall are situated. In determining the character of the area, the Council will consider what the primary use premises in the locality are put to, any additional uses of premises in that locality, and any purposes that may require persons to use that locality, for example transport hubs, cultural hubs, etc.

“the premises”

means the premises, vehicle, vessel or stall that are the subject of the sex establishment licence or of the application for a sex establishment licence.

“sex articles”

include written or visual material such as sex magazines or books, or visual or audio recordings concerned with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage, sexual activity or acts of force and restraint associated with sexual activity, or which are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions.

“relevant entertainment”

means any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means). An audience can consist of just one person (e.g. where the entertainment takes place in private booths). This definition would apply to the following forms of entertainment [as they are commonly known]: lap dancing; pole dancing; table dancing; strip shows; peep shows and live sex shows. This list is not exhaustive and should only be treated as indicative. The decision to licence premises as sexual entertainment venues shall depend on the content of the relevant entertainment and not the name given to it. An applicant will be expected to set out the exact nature, extent and scope of the relevant entertainment.

“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”

means any person involved in the organisation or management of relevant entertainment.

“significant degree”

in the context of sex shops, shall be considered by the Council on a case-by-case basis. In considering significant degree, the Council will consider, among other things:

- the amount of shelf space devoted to relevant articles
- the annual turnover in relation to relevant articles and other things
- the way the business is marketed and advertised and
- the primary intention of the majority of customers in visiting the shop.

“permitted hours”

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

**Checklist for Regulatory & Welfare Visits
to Sex Establishments**

This checklist has been developed by Public Health, Safeguarding and Licensing to provide assurance about the health, safety, and welfare of staff and customers in licensed sexual entertainment venues.

The checklist can be completed by venue management and/or staff representatives as a self-assessment to identify areas where improvements could be made to increase the health, safety, and welfare of staff.

It may be used by partners offering welfare visits into venues such as South Yorkshire Police and Sheffield sexual health services.

The checklist does not provide a “quality mark” or endorsement of your premises.

Sheffield City Council would welcome feedback on the checklist: DPHOffice@sheffield.gov.uk

<u>Name of person completing checklist:</u>				
<u>Organisation of person completing checklist:</u>				
<u>Venue Self-assessment? (+/√)</u>				
<u>Date of visit:</u>				
<u>Time of visit:</u>				
<u>Venue name:</u>				
<u>Venue manager:</u>				
	<u>Not evidenced (+/√)</u>	<u>Partially evidenced (+/√)</u>	<u>Evidenced (+/√)</u>	<u>Comments</u>
<u>Age verification (ID)</u>				
<u>Staff records include 2 forms of ID for age verification, one photo ID passport or driving license, one with current address e.g. driving license, utility bill to be kept on file for 12 months confidentially and securely.</u>				
<u>Customer age verification is taken at the door using photo ID</u>				
<u>Customer membership includes 2 forms of ID for age verification, one photo ID passport or driving license, one with current address e.g. driving license, utility bill to be kept confidentially and securely for the period of membership.</u>				
<u>Staff notice boards</u>				
<u>Welfare information is displayed in staff areas (e.g. sexual health, sexual violence/abuse, mental health, drug and alcohol use, debt, immigration, domestic abuse)</u>				
<u>Under 25s – welfare information regarding young people, including college and university welfare services, is displayed in staff areas.</u>				
<u>In-reach visit times/dates from welfare organisations are visually displayed (including on staff timetables so that staff can attend) e.g. Sexual Health STI testing</u>				

<u>Dancers info and UK Network of Sex Work Projects information is displayed in staff areas http://www.dancersinfo.co.uk https://uknswp.org/um/safety/</u>				
<u>Trade Union and/or peer support information is available in staff areas.</u>				
<u>Occupational health contact information is displayed in staff areas.</u>				
<u>Venue welfare and/or safeguarding contact person information is displayed in staff/customer areas.</u>				
<u>Information is displayed regarding complaints of abusive staff/customers and how these will be managed/contact person.</u>				
<u>Information – names, description, photographs – of barred/banned or otherwise risky customers (“Ugly Mugs”) from the local area is displayed in staff areas.</u>				
<u>Staff changing areas</u>				
<u>Staff changing areas are adequately heated and ventilated.</u>				
<u>Staff changing areas are of adequate size for the number of staff.</u>				
<u>Staff changing areas have locked storage (e.g. lockers) for staff personal belongings.</u>				
<u>Staff changing areas are smokefree.</u>				
<u>Staff changing areas have access to free drinking water and facilities to make hot, cold drinks and prepare basic snacks.</u>				
<u>Staff changing areas are private with no customer access e.g. doorcode key pad.</u>				
<u>Stocked First aid kits (including plasters) are available in staff areas.</u>				
<u>Staff health, safety and welfare</u>				
<u>Private or more secluded areas of the premises have appropriate measures in place for protection of staff/customers e.g. line of sight from venue management, panic buttons, mirrors, CCTV.</u>				
<u>Staff/customer toilets have condom machines in working order.</u>				
<u>The venue participates in condom distribution scheme and condoms are visible and accessible to staff and customers</u>				
<u>Sexual health self-testing kits are available to staff and customers.</u>				
<u>Licensed taxi firm numbers displayed for staff transport in late evening.</u>				
<u>Employee records include emergency contact information and health needs/medication</u>				
<u>Staff sign in/sign out is in operation for safety of staff</u>				
<u>A code of conduct for expectations of customer behaviour towards staff is clearly displayed in staff and customer areas.</u>				
<u>Venues have policy and procedures for safeguarding vulnerable adults (staff and customers)</u>				
<u>Receipts are provided for house fees and fines.</u>				

This page is intentionally left blank