

AGENDA



For a meeting of the
LICENSING COMMITTEE
to be held on
FRIDAY, 18 MAY 2012
at
10.30 AM
in the
COUNCIL CHAMBER, COUNCIL OFFICES, ST. PETER'S HILL, GRANTHAM NG31 6PZ
Beverly Agass, Chief Executive

Committee Members:	Councillor Mark Ashberry (subject to training), Councillor Pam Bosworth (Chairman), Councillor Robert Broughton, Councillor George Chivers, Councillor Breda Griffin, Councillor Reginald Howard, Councillor Vic Kerr, Councillor Graddon Rowlands, Councillor Bob Russell (Vice-Chairman), Councillor Mrs Jean Taylor and Councillor Frank Turner
Committee Support Officer:	Lucy Bonshor 01476 40 61 20 l.bonshor@southkesteven.gov.uk

Members of the Committee are invited to attend the above meeting to consider the items of business listed below.

- 1. APOLOGIES**
- 2. DECLARATIONS OF INTEREST**
Members are asked to declare an interest in matters for consideration at the meeting.
- 3. MINUTES OF THE MEETING HELD ON 27TH APRIL 2012**

(Enclosure)

EXCLUSION OF THE PUBLIC

It is anticipated that, in accordance with Section 100A(4) of the Local Government Act 1972 (as amended) the public may be excluded from the meeting during consideration of the following item of business because of the likelihood that otherwise exempt information, as described in paragraphs 1 and 2 of the Act (as amended) would be disclosed to the public.

4. APPLICATION FOR A HACKNEY CARRIAGE DRIVER'S LICENCE

Report CSL008 by the Community Safety & Licensing Service Manager.

(Enclosure)

5. APPLICATION FOR A HACKNEY CARRIAGE DRIVER'S LICENCE

Report CSL010 by the Community Safety and Licensing Service Manager.

(Enclosure)

**6. APPLICATION TO RENEW A SEX SHOP LICENCE - PULSE & COCKTAILS
A1 SOUTHBOUND, STOKE ROCHFORD, GRANTHAM.**

Report CSL009 by the Community Safety & Licensing Service Manager.

(Enclosure)

**7. ANY OTHER BUSINESS WHICH THE CHAIRMAN, BY REASON OF
SPECIAL CIRCUMSTANCES, DECIDES IS URGENT.**

MINUTES

LICENSING COMMITTEE
FRIDAY, 27 APRIL 2012



COMMITTEE MEMBERS PRESENT

Councillor Pam Bosworth (Chairman)
Councillor George Chivers
Councillor Breda Griffin
Councillor Reginald Howard
Councillor Vic Kerr

Councillor Bob Russell (Vice-Chairman)
Councillor Susan Sandall
Councillor Mrs Jean Taylor
Councillor Frank Turner

OFFICERS

Licensing Officers (Pam Robinson, Richard Etherton)
Solicitor (Paul Rushworth)
Democratic Officer (Lucy Bonshor)

40. APOLOGIES

Apologies for absence were received from Councillor Broughton and Councillor Rowlands.

41. DECLARATIONS OF INTEREST

None declared.

42. MINUTES OF THE MEETING HELD 23RD MARCH 2012

The minutes of the meeting held on 23rd March were agreed as the correct record of the decisions taken.

EXCLUSION OF THE PUBLIC

In accordance with Section 100A of the Local Government Act 1972, it was resolved that the public be excluded because of the likelihood in view of the nature of the business to be transacted that if members of the public were present there would be disclosure to them of exempt information as defined in paragraphs 1 and 2 of Schedule 12A of the Act.

43. APPEAL RE PENALTY POINTS ISSUED TO A LICENSED HACKNEY CARRIAGE DRIVER

Decision

- 1) That the Committee uphold the driver's appeal and agree to remove the points issued.**
- 2) The issue of congestion on the rank be looked into by the Licensing Officers together with the other partner agencies.**
- 3) Officers are reminded about the administration and accuracy of their reports.**

The Committee wished to place on record a warning to the driver as to his future behaviour and to remind him that any further misconduct could result in him being brought back to the Committee.

The Committee Solicitor introduced those present and confirmed the name of the applicant.

The Licensing Officer then introduced the report and gave Members background information which had led the driver to being issued with penalty points following a reasonable request by a Licensing Officer. She referred to the taxi rank situated on St Peter's Hill and the parking situated outside the doctor's surgery which required members of the public and hackney carriage driver's to carry out u-turns to exit the road. It also led to double parking by the hackney carriage driver's which caused congestion on the road and this was added to by hackney carriage driver's not using the first two spaces on the rank in accordance with the byelaws which governed the rank. When enforcement of the byelaws was being undertaken the traffic congestion was alleviated but as soon as Licensing officers or the police left hackney carriage driver's reverted back to not using the first two spaces. In January 2012 the Council adopted a Hackney Carriage and Private Hire Policy Penalty point scheme to formalise a stepped approach to enforcement. The Licensing Officer then outlined enforcement action that had taken place in February in accordance with the new policy and the issue of the penalty points to the Hackney Carriage Driver before Members today.

In response to the details before the Committee, the Hackney Carriage driver indicated that the dates were wrong and therefore he had no case to answer. It was agreed that a typographical error had occurred and there was still a case to be answered. A Member then asked when enforcement was undertaken, was this daily? The Licensing Officer replied that no, it wasn't daily.

The applicant was then asked to present his case once it had been clarified that he was there because of the penalty points issued to him which he was appealing against regardless of the incorrect dates given.

The applicant then presented his case and referred to both the position of the

rank and its legislation and the Highway Code in relation to the distance from junctions and parking. Clarification was asked about the position of a notice concerning the start of the rank which had been erected to which the Licensing Officer replied. He confirmed that the rank was marked out correctly and had the correct signage, he had consulted with Lincolnshire County Council as Highways Authority and the rank was suitable for usage and in a safe location provided it was used correctly.

The Licensing Officer then gave her closing statement and the options available to the Committee.

(11.34am Licensing Officers and applicant left the meeting)

Members discussed the information they had before them and the representations made by the applicant. Due to the inaccuracy of the reports and the representation made by the applicant it was proposed and seconded to uphold the driver's appeal and remove the points issued. Concern was expressed about the congestion on the St Peter's Hill rank and also about the driver's behaviour which Members felt was "out of order" and a warning should be issued as to his future conduct.

(11.45am Licensing Officers and applicant return to the meeting)

The solicitor to the Committee then read out the decision. The Committee had considered the representations of all parties and they had agreed to uphold the driver's appeal and have the points removed on the basis of the technicality relating to the dates. The Committee did consider the congestion on the taxi rank very important and part of the recommendation was for Officers together with the partnership agencies to go away and do all they can to address the issue of congestion on the rank. The Committee also reminded Officers as to the accuracy of their administrative reports. In concluding the Committee wished to place on record a strong warning to the applicant as to his future behaviour.

44. CLOSE OF MEETING

The meeting closed at 11.45am.

Agenda Item 4

By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

Agenda Item 5

By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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REPORT TO LICENSING COMMITTEE

REPORT OF: Mark Jones, Community Safety & Licensing Manager

REPORT NO: CSL/009

DATE: 18 May 2012

TITLE:	Application to a renew a Sex Shop Licence Pulse & Cocktails A1 southbound, Stoke Rochford, Grantham.	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	N/A	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Councillor Paul Carpenter, Engagement and Corporate Services Portfolio holder.	
CONTACT OFFICER:	Richard Etherton. Licensing Officer r.etherton@southkesteven.gov.uk 01476 406312	
INITIAL IMPACT ASSESSMENT:	Carried out and Referred to in paragraph (7) below N/A	Full impact assessment Required: N/A
Equality and Diversity		
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	SKDC – SEX ESTABLISHMENTS PROCEDURES (Appendix 1)	

1. RECOMMENDATIONS

- 1.1 That the Committee decide whether to approve the renewal application for a Sex Shop Licence in accordance with Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Policing and Crime Act 2009)
- 1.2 When determining the application the Committee shall have regard to:
 - i The authority's sex establishment procedures.
 - ii The Human Rights Act.
 - iii SKDC's regulations prescribing standard conditions. **Appendix 2**
 - iv Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

1.3 The options open to the Committee are:

- To renew the application as applied for.
- To renew the application with modifications and/or additional conditions.
- Refuse the renewal. If, having considered the renewal application the committee decides to refuse it, it must provide the applicant with the reasons for the decision in writing.

2. PURPOSE OF THE REPORT

2.1 To assist the Committee in determining the outcome of the application for a renewal of the existing Sex shop licence for Pulse & Cocktails, A1 Southbound, Stoke Rochford, Grantham.

3. DETAILS OF REPORT

3.1 The Policing and Crime Act 2009 amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to permit the Licensing Authority to license Sex shops.

3.2 A Sex shop means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating –

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 is associated with sexual activity. This includes adult films and magazines.

3.3 Each application will be determined on its own merits. However, applications may only be refused on certain defined mandatory or discretionary grounds. These are:

Mandatory grounds

The Council must refuse an application if:-

- the applicant is under 18 years of age; or
- the applicant is for the time being disqualified from holding a licence under Schedule 3 Paragraph 17 (3) of the Act following revocation of a previous licence; or
- the person applying is not resident in the United Kingdom, or was not so resident during period of six months immediately preceding the date when the application was made; or
- where a body corporate is the applicant - it is not incorporated in the United Kingdom; or

- the applicant has been refused the grant or renewal of a licence for the same premises within a period of 12 months immediately preceding the date when the application was made, unless the refusal has been reversed on appeal.

Discretionary grounds

The Council may refuse an application for the grant or renewal of a licence if:-

- the applicant is unsuitable to hold the licence by reason of conviction of an offence or for any other reason;
- the business would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- the number of sex establishments or sex establishments of a particular type in the relevant locality at the time the application is made is equal to or exceeds the number which the Council consider is appropriate for that locality;
- “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
(ii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.”

3.4 The applicant has run a sex shop under the Local Government (Miscellaneous Provisions) Act 1982 from April 2009 up to 28 March 2012; no complaints about these premises had been received by this authority from responsible authorities, members of the public or nearby businesses.

3.5 On 26 March 2012 we received the renewal application for Pulse & Cocktails to hold a Sex Shop Licence. **Appendix 3.**

3.6 The current days and times the premises are open on the existing licence are:

Mon – Sat	09.00 to 2100hrs
Sunday	11.00 to 17.00hrs
Bank Holidays	08.00 to 22.00hrs

3.7 The applicant has applied to open the Sex Shop on:

Monday – Sunday 09.00 to 22.00hrs
(Including Bank Holidays)

4. OTHER OPTIONS CONSIDERED

N/A

5. RESOURCE IMPLICATIONS

5.1 The cost of a sex establishment licence at the time of application was £1,380.00 this has since increased to £1,420.00 from 1 April 2012. The cost of renewal is the same as application but this is under review.

6. RISK AND MITIGATION

N/A

7. ISSUES ARISING FROM EQUALITY IMPACT ASSESSMENT

N/A

8. CRIME AND DISORDER IMPLICATIONS

N/A

9. COMMENTS OF FINANCIAL SERVICES

9.1 If a licence is granted the appropriate licence fee as outlined in the report will need to be levied upon the establishment. The only other potential financial impact is in the event of an applicant making an appeal against a decision which was then subsequently upheld, the Council may incur additional legal costs.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

10.1 The grant, renewal and transfer of licences for sex establishments are governed by the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing & Crime Act 2009. The Committee should consider any representations from the Chief Officer of Police or any other person who objects to the application and has submitted a representation in writing. The proper grounds for considering the application are found within the body of the report. The decision to grant or refuse the licence must be reasonable and proportionate and made in accordance with the attached sex establishment procedures. Any refusal must be supported by evidence that the statutory grounds for refusal are met and full reasons must be given to the applicant.

11. COMMENTS OF OTHER RELEVANT SERVICES

None received.

12. APPENDICES:

Appendix 1 – SKDC sex establishments procedures

Appendix 2 – SKDC regulations

Appendix 3 – Application form



SEX ESTABLISHMENTS
SOUTH KESTEVEN DISTRICT COUNCIL
PROCEDURES

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1. INTRODUCTION AND DEFINITIONS

1.1 Introduction

South Kesteven is one of the biggest and most widespread districts in the UK, covering 365 square miles of some of England's finest countryside. Our four traditional market towns: Grantham, Stamford, Bourne and The Deepings, together with over 80 villages, are home to over 132 000 residents.

For more information about South Kesteven go to www.southkesteven.gov.uk.

1.2 Definitions

In this document the following phrases bear the following meanings:-

'Act'

The Local Government (Miscellaneous Provisions) Act 1982 (as amended).

'Committee'

Alcohol, Entertainment and Late Night Refreshment Committee (South Kesteven District Council)

'Council'

South Kesteven District Council.

'Display of nudity'

This 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.

'Licensed Premises'

The premises, vessel, vehicle or stall licensed by the Council as a Sex Establishment.

'Licensing Act'

The Licensing Act 2003

'Licensing Officer'

The Council's licensing officer located at Council Offices, St Peters Hill, Grantham, Lincolnshire. NG31 6PZ

‘Organiser’

Any person who is responsible for the organisation or management of the relevant entertainment or the licensed premises.

‘Permitted Hours’

These are the hours of activity and operation that have been authorised under a Sex Establishment Licence.

‘Procedures’

This document.

‘Relevant Entertainment’

Relevant entertainment as defined by Schedule 3, Paragraph 2A (2) of the Act.

‘Relevant Locality’

The locality where premises are situated or where the vehicle, vessel or stall is going to be used. The locality and the area that this covers is a matter for the Council to decide and will be determined on a case by case basis for the purpose of decision making.

‘Sex Article’

A sex article as defined by Schedule 3, Paragraph 4 (3) of the Act.

‘Sex Cinema’

A sex cinema as defined by Schedule 3, Paragraph 3 (1) of the Act.

‘Sexual Entertainment Venue (SEV)’

An SEV as defined by Schedule 3, Paragraph 2A (1) of the Act.

‘Sex Establishment’

A sex establishment as defined by Schedule 3, Paragraph 2 of the Act.

‘Sex Shop’

A sex shop as defined by Schedule 3, Paragraph 4 (1) of the Act.

‘Transitional Order’

The Policing and Crime Act 2009 (Commencement No. 1 and Transitional and Saving Provisions) Order 2010.

2. BACKGROUND

Origins of the legislation

- 2.1 In 1982 the Act introduced a discretionary licensing regime for sex shops and sex cinemas. These provisions were adopted by South Kesteven District Council on 1st February 1983.

- 2.2 In 2005 the Licensing Act introduced a new licensing regime which amalgamated several pieces of old legislation under the heading "Provision of regulated entertainment". Entertainment of an adult nature such as lap dancing, pole dancing and striptease etc. fell under this heading. However, the power for the community to object to such applications was restricted, as any objection needed to relate to the four specified licensing objectives. This made it difficult for local communities to have any control on the number and/or location of these types of venues.
- 2.3 In order to address these concerns the Policing and Crime Act 2009 introduced provisions creating a new category of Sex Establishment known as a Sexual Entertainment Venue (SEV) to enable local authorities to require venues such as lap dancing establishments to be licensed as Sex Establishments. These provisions are also discretionary but the Council adopted them with effect from 8 April 2011. Special transitional provisions have effect for SEVs from 8 April 2011 (first appointed date) to 8th April 2012 (third appointed date) and these are outlined in Appendix 1.

Sex Establishments

- 2.4 The definitions contained within the Act are complex defining three types of sex establishments licensable by this Council:
- Sex Shop;
 - Sex Cinema;
 - SEV.
- 2.5 In general -
- "sex shop means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating –
 - (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 is associated with sexual activity." This includes adult films and magazines.
 - "sex cinema means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which –
 - (a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage –
 - (i) sexual activity; or

- (ii) acts of force or restraint which are associated with sexual activity; or
 - (b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions;" (e.g. pornographic movies). However, dwelling houses and cinemas showing films covered by the Licensing Act (e.g. a film rated by the British Board of Film Classification) are excluded from this definition.
- SEV "means 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
 - (a) any live performance; or
 - (b) any live display of nudity;
 which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)." Nudity is not a necessary element of such a performance and an audience can comprise one person. The term 'SEV' is therefore likely to cover lap dancing, pole dancing, table dancing, strip shows, peep shows, live sex shows and potentially burlesque.

2.6 These procedures apply to all forms of sex establishments unless otherwise stated. Whilst the Act allows applicants to apply to the Council for the requirement for a licence to be waived, the presumption is that such applications will be refused. Waivers will only be granted where applicants can establish that exceptional circumstances exist making it unreasonable or inappropriate for the premises to be licensed as a sex establishment.

3 MAKING AN APPLICATION

3.1 All applications relating to sex establishments **must**:-

- be made on the Council's prescribed form which is available from the Licensing Section at the Council or via the website at www.southkesteven.gov.uk; and
- must be accompanied by a layout plan (for premises) and the relevant fee. Full details of the fees can be obtained from the Licensing Section or the Council's website.

3.2 Applicants **must**:-

1. Serve a copy of their application on the Police at the address stated within the application form.

2. Give public notice of the application, in the form prescribed by the Council. A copy of this form is available from the Licensing Section. Notice of the application must be given by publishing an advertisement in a local newspaper circulating in South Kesteven not later than 7 days after the date of the application.
 3. Where the application relates to premises - display a copy of the notice for 21 days beginning with the date of the application, on or near the premises and in a place where the notice can be conveniently read by the public.
 4. Provide a copy of the site notice, the relevant page of the newspaper containing the advertisement, and a certificate confirming that the application has been publicised and served in compliance with the legislation to the Licensing Officer.
- 3.3 **Any failure to comply with the requirements of paragraphs 3.1 and 3.2 above may result in the application being deemed invalid and being rejected.**
- 3.4 Whilst applicants for variation are not legally obliged to advertise their applications and serve a copy on the Police, it is the Council's directive that they should comply with paragraph 3.2 above.
- 3.5 Once an application has been received the Licensing Officer will consult other relevant officers of the Council, local Councillors and other relevant partners and stakeholders, so as to gather appropriate information to be placed in the report to the Committee regarding the character of the relevant locality, the use to which any premises in the vicinity are put, and details as to the layout, character, and condition of the premises.
- 3.6 Any person wishing to object to an application must do so in writing within 28 days of the date of the application stating the general terms of the objection. Objections received after this date may only be considered at the discretion of the Council if it feels that they are relevant.¹ In determining whether to exercise the discretion to take late representations into account, the Council will have regard to the following:-
- how late the objection is.
 - whether there is a good reason for the objection being late or whether the lateness was intentional.
 - whether it introduces new grounds of objection or information or whether it merely repeats other objections which were made in time.

¹ Belfast City Council v Miss Behavin' Ltd Northern Ireland [2007] UKHL 19 [2007] LLR 312

- whether consideration of the late objection would result in unfairness to the applicant or disrupt the Committee's procedures.

In appropriate circumstances the Council may defer determination of an application to allow the applicant time to respond to any late objections.

- 3.7 Applicants will be given notice of any objections that are received, though the names and addresses of objectors will not be disclosed unless the objector gives the Council permission to do so.
- 3.8 With the exception of uncontested transfer applications, all applications relating to sex establishments will be heard by a meeting of the Committee, and both applicants and objectors will be invited to attend. The hearing procedure is outlined in Section 5.

4. DETERMINATION OF APPLICATIONS

- 4.1 Each application will be determined on its own merits. However applications may only be refused on certain defined mandatory or discretionary grounds.

4.2 Mandatory grounds

The Council must refuse an application if:-

- the applicant is under 18 years of age; or
- the applicant is for the time being disqualified from holding a licence under Schedule 3 Paragraph 17 (3) of the Act following revocation of a previous licence; or
- the person applying is not resident in the United Kingdom, or was not so resident during period of six months immediately preceding the date when the application was made; or
- where a body corporate is the applicant - it is not incorporated in the United Kingdom; or
- the applicant has been refused the grant or renewal of a licence for the same premises within a period of 12 months immediately preceding the date when the application was made, unless the refusal has been reversed on appeal.

4.3 Discretionary grounds

The Council may refuse an application for the grant or renewal of a licence if:-

- the applicant is unsuitable to hold the licence by reason of conviction of an offence or for any other reason;
- the business would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- the number of sex establishments or sex establishments of a particular type in the relevant locality at the time the application is made is equal to or exceeds the number which the Council consider is appropriate for that locality;
- "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
 - (ii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made."

The Council has a wide discretion with regard to variation applications and may refuse the application if it thinks fit. Transfer applications can only be refused if :-

- the applicant is unsuitable to hold the licence by reason of conviction of an offence or for any other reason; or
- the business would be managed or carried on for the benefit of a person other than the applicant, who would be refused the licence if they made the application themselves.

4.4 Suitability of the Applicant

The applicant will be required to demonstrate that he is a suitable person to hold a licence. In determining suitability, the Council will normally take into account:

- previous knowledge and experience of the applicant;
- information relating to the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area;
- information about the applicant and their management of the premises received from objectors, Council Officers or the Police including any known criminal convictions or cautions the applicant or officers of any corporate applicants may have;

- any other relevant information.

The above factors are not an exhaustive list of considerations but are merely indicative of the types of factors which may be considered in dealing with an application. Similar considerations may also apply to persons whom it is alleged would benefit from the grant of the application but would be unsuitable to hold the licence themselves - in such cases the Council will also have regard to any evidence to show that the business would in fact be carried on for their benefit.

4.5 Character of the relevant locality and use of other premises in the vicinity

The Council will not grant or renew a licence for a sex establishment if, in the Council's opinion, it would be inappropriate to do so with regard to the character of the relevant locality or if the appropriate number of sex establishments, or of a particular type of sex establishment, in that locality would be exceeded. Whilst not intended to be an exclusive list, the Council will have particular regard to the following matters:-

- the proximity of residential premises, including any sheltered housing and accommodation for vulnerable people;
- the proximity of educational establishments;
- the proximity of places of worship;
- access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises;
- the proximity to shopping centres;
- the proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs, etc.;
- any planned or proposed regeneration of the area;
- any relevant planning considerations such as whether the premises are in a conservation area or areas designated as primarily residential or prime retail frontage;
- any complaints or reports of nuisance, disturbance, crime and /or disorder caused by or associated with the premises;
- the proximity of other sex establishments.

Many of these issues will also be relevant when considering the uses to which other premises within the vicinity are put.

4.6 Layout, character and condition

The Council will not grant or renew a licence for a sex establishment if, in the Council's opinion, it would be inappropriate having regard to the layout, character and condition of the proposed sex establishment.

Whilst not intended to be an exclusive list the Council will have particular regard to the following:-

- the type of activity to which the application relates;
- the days and hours of operation of the activity;
- the layout and condition of the premises with particular concern for public safety, health and safety and the prevention of crime and disorder.

4.7 Disability Access

Applicants are reminded of their duties under Equality Act 2010 and should provide such facilities so as to enable the admission of disabled people.

4.8 All sexual establishment licences

Any licence granted by the Council, may be subject to conditions which the Council imposes.

5. HEARINGS

- 5.1 With the exception of uncontested transfer applications, all applications relating to sex establishments will be heard by a meeting of the Committee. It will be the general practice of the Council to invite the Police and/or others who have lodged objections to appear and be heard at any hearings in addition to the applicant. However, the Council has a discretion and can, as a result, decide not to invite the Police and/or other objectors to hearings. In deciding whether to exercise the discretion the Council will consider the facts surrounding each particular application and will aim to act fairly at all times.
- 5.2 Officers will notify the applicant, Police and objectors of the date and time of the hearing. These parties shall give notice to the Council stating:-
- a. whether they will attend the hearing; and
 - b. the names and addresses of any witnesses that they intend to call; and
 - c. a time estimate for their representations to the Committee.
- 5.3 An agenda will be circulated prior to the hearing. This will include a copy of the application, a copy of any representations made by the Police and a summary, in general terms, of any objections received. The identity of the objector(s) will not be made known without their prior consent (although information as to the general vicinity in which the objector(s) live may be included).

- 5.4 Whilst additional material in support of the application or representation may be taken into account at the hearing, such material should be provided to the Council as soon as possible and at least 5 working days before the hearing.
- 5.5 Where there has been a failure to adhere to paragraph 5.4 above, or where additional material is produced at the hearing, this will only be admitted at the discretion of the Committee. This will usually be allowed only in exceptional circumstances and if the late production does not prejudice any other party in being able to respond fully.
- 5.6 Late objections/representations will be dealt with in accordance with paragraph 3.6 above.
- 5.7 Where a party does not attend the hearing and is not represented the Council may either adjourn the hearing or may continue with the hearing in the party's absence. If the latter option is followed the Committee will still consider any application, representation or notice submitted by the absent party in so far as it is relevant.
- 5.8 The hearing will concentrate on matters which are relevant to one or more of the grounds upon which a licence may be refused under Schedule 3 of the Act. (See Section 4 above.)
- 5.9 The hearing will be inquisitorial and not adversarial. The procedure outlined in Appendix 3 will normally be followed.

6 APPEALS

- 6.1 Appeals against decisions of the Council are generally made to the Magistrates' Court and appeals against decisions of the Magistrates may be made to the Crown Court. However, not all decisions carry a right of appeal.
- 6.2 The only persons entitled to appeal are:
- i) an applicant for the grant, renewal or transfer of a licence whose application has been refused; or
 - ii) an applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application for variation is refused; or
 - iii) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or
 - iv) a holder of any such licence whose licence is revoked.

However, even these persons do not have a right of appeal in every case.

6.3 There is no right of appeal for the following:-

- objectors;
- an applicant who has been refused the grant/renewal or transfer of a licence on any one of the mandatory grounds, unless he seeks to show that the grounds for refusal does not apply to him;
- an applicant who is refused a licence on the grounds:-
 - i) that there are sufficient sex establishments in the locality, or
 - ii) that to grant the licence would be inappropriate having regard to the relevant locality, use to which premises in the vicinity are put, or the layout, character, or condition of the establishment.

The only means of challenge available for such persons is by way of Judicial Review.

6.4 Any application for an appeal must be lodged within 21 days from the date that the applicant was notified in writing of the decision against which he is appealing. A fee will be payable and the relevant Court will advise as to the amount.

7 ENFORCEMENT

7.1 All decisions, determinations, inspections and enforcement action taken by the Council will have regard to the relevant provisions of the Act, and the enforcement policy of the Council.

8 MONITORING AND REVIEW OF THESE PROCEDURES

8.1 These procedures will be reviewed as and when appropriate. In preparing any succeeding procedures regard will be had to data and information collated over the operating period of the current procedures.

9 EQUALITY AND DIVERSITY

9.1 Delivery of this licensing regime will be in accordance with the Corporate Equality Scheme. The use of an Impact Needs Assessment process will inform service delivery and will be subject to ongoing monitoring and customer/stakeholder consultation during the life of this procedure with the framework of the regime. Relevant matters that come to light as a result of monitoring and consultation may result in changes to service delivery and where necessary may result in changes to these procedures.

9.2 Advice and guidance will be made available in English which is the most common language of customers and stakeholders. Guidance documents issued by the Licensing Section will include advice about translation and access to information about services, however it is recognised that local

communities will normally have access to alternative translation and advice services. The Council will also signpost customers to other providers of guidance and information relevant to the regime but is not responsible for the accuracy of such information.

CONTACT DETAILS & FURTHER INFORMATION AVAILABLE FROM:

Our website: www.southkesteven.gov.uk

Email: licensing@southkesteven.gov.uk

APPENDIX 1 - SEV'S AND THE TRANSITIONARY PROVISIONS

Schedule 7 of the Policing and Crime Act 2009 amended Schedule 1, Part 2 of the Licensing Act to ensure that premises do not also require a Premises Licence, Club Premises Certificate or Temporary Event Notice in order to provide Regulated Entertainment at premises where:-

- a sexual entertainment licence is required;
- the requirement of a sexual entertainment licence is waived;
- a sexual entertainment licence has been granted, even if the premises are operating within the frequency exemption.

As a result the premises will not necessarily be required to be authorised under the Licensing Act for live or recorded music (or the provision of entertainment facilities for such purposes) if such activities are only associated with the sexual entertainment taking place.

However, the premises will need to be authorised under the Licensing Act if:

- it sells alcohol or late night refreshment or provides other forms of entertainment;
- it offers sexual entertainment without a sexual entertainment licence and within the frequency exemption.

The provisions relating to SEVs came into effect on 8th April 2011. This is known as the first appointed day. The Transitional Provisions Order directs that the second appointed day shall be 6 months after this date (8th October 2011) and the third appointed day shall be 12 months after this date (8th April 2012).

EXISTING OPERATORS

Any existing operators who, immediately before 8 April 2011, held a premises licence or club premises certificate under which it was lawful to provide relevant entertainment under the Licensing Act, and who lawfully used the premises as an SEV under that licence, (or were undertaking preparatory work to use the venue in that way), will be allowed to continue to provide relevant entertainment until 8 April 2012 or the determination of any application they have submitted before that time (including any appeal against the refusal to grant a licence), whichever is later.

"Preparatory work" refers to work carried out by an operator, such as a refurbishment or refit, in order that they can use the premises as an SEV in the future. The operator will have been granted an authorisation under the Licensing Act before 8th April 2011, but will not have used the premises as an SEV by that date.

NEW APPLICANTS

As of the 8th April 2011, applicants who do not already have an authorization under the Licensing Act, or do have such an authorization but have not taken any steps towards operating as such, will not be able to operate as an SEV after 8th April 2011 until they have been granted an SEV licence. If they do so they will commit a criminal offence for each day that they operate, for which the maximum penalty is a fine of £20,000 for each offence.

APPLICATIONS RECEIVED ON OR BEFORE 8th October 2011

Applicants may submit their application for an SEV from 8th April 2011 onwards. Applications made on or after 8th April 2011 but on or before 8th October 2011 must be considered together. This is to ensure that applicants have sufficient time to submit their application and that all applications received on or before 8th October 2011 are considered on their individual merit and not on a first come first served basis.

No applications shall be determined before 8th October 2011. After 8th April 2011 the Council shall decide which, if any, licences to grant. If a new applicant is granted a licence it will take effect immediately, however, if an existing operator is granted a licence it will not take effect until 8th October 2011, up to which point they will be allowed to continue to operate under their existing Licensing Act licence.

APPLICATIONS RECEIVED AFTER 8th October 2011

These applications shall be considered when they are made, but only once all applications made on or before that date have been determined (reference to determination here does not include references to determination of any appeal against the refusal of a licence).

Again, licences granted to new applicants shall take effect immediately and licences granted to existing operators shall take effect from 8th April 2012 or, if later, the date the application is determined.

OUTSTANDING APPLICATIONS

The Council should attempt where possible to determine outstanding applications made under the Licensing Act, which include an application for the provision of Relevant Entertainment, before 8th April 2011. Where it has not been possible to determine an application before 8th April 2011, the Council should advise the applicant that they will need to submit an application for a sex establishment licence if they wish to provide relevant entertainment. From 8 April 2011 onwards, applicants shall be dealt with as though they are new applicants.

EXISTING LICENCE CONDITIONS

Licences granted under the Licensing Act to existing operators will contain conditions that relate expressly and exclusively to the provision of relevant entertainment. In such cases, to avoid duplication, where conditions on a Licensing Act licence relate only to the provision of relevant entertainment, they shall be read as if they were deleted from 8th April 2012 onwards.

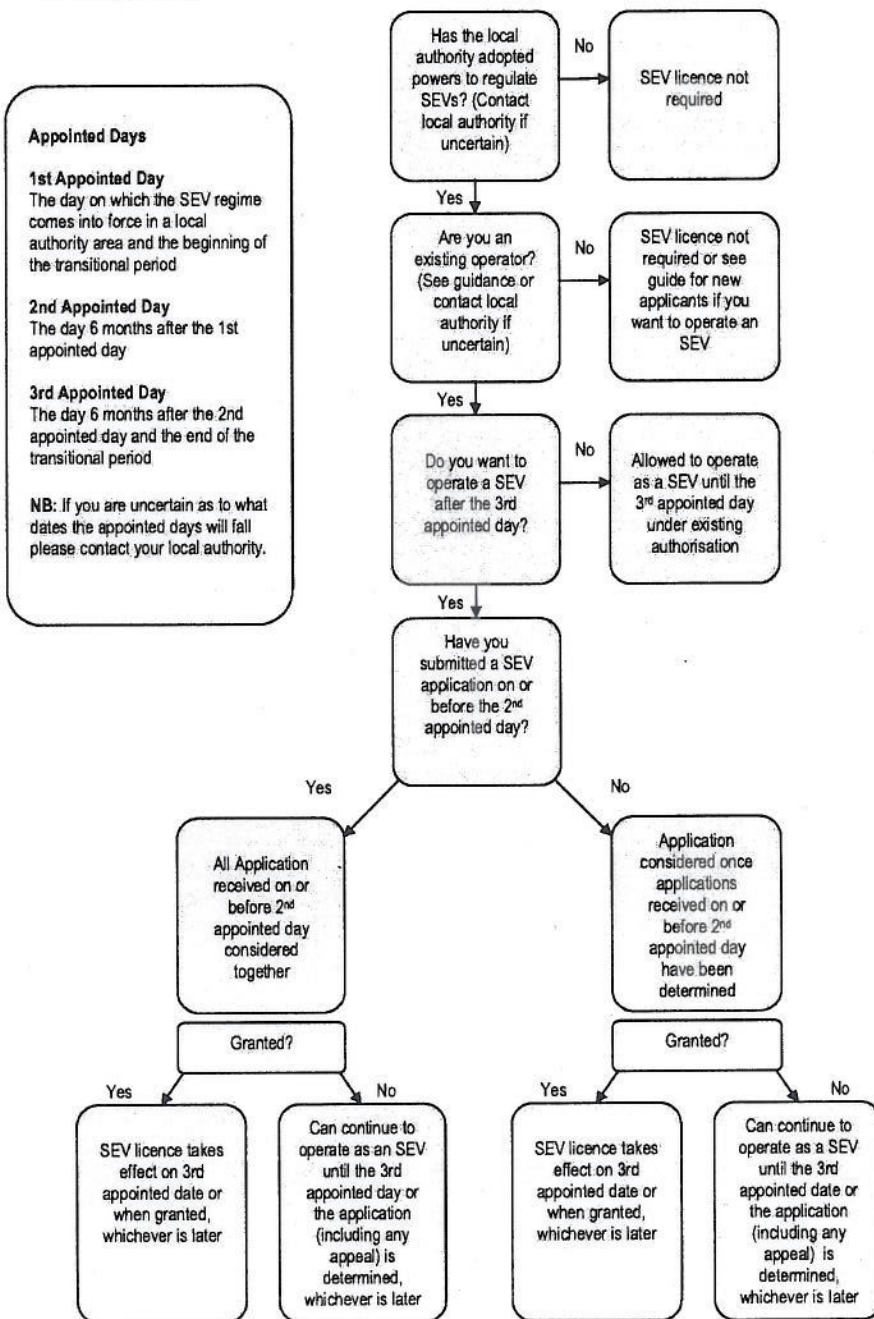
In cases where conditions on a Licensing Act licence are inconsistent with, and less onerous than, the conditions in the licence granted under the Act they shall be treated as though they have been deleted.

Where granting a Sex Establishment licence to an existing operator who is subject to conditions on their existing Licensing Act permission that relate expressly to the provision of Relevant Entertainment the Council may replicate the existing conditions on the new sex establishment licence if they believe that the existing conditions are sufficient. However, the Council could equally decide to impose new conditions consistent with Schedule 3 of the Act if they believe that new or additional conditions are necessary.

The Transitional Order does not require redundant conditions to be physically removed from the Licensing Act. However, operators and the Council may agree that this is desirable in order to clarify the operator's legal obligations. Such changes can be made via the minor variations procedure under section 41A of the Licensing Act.

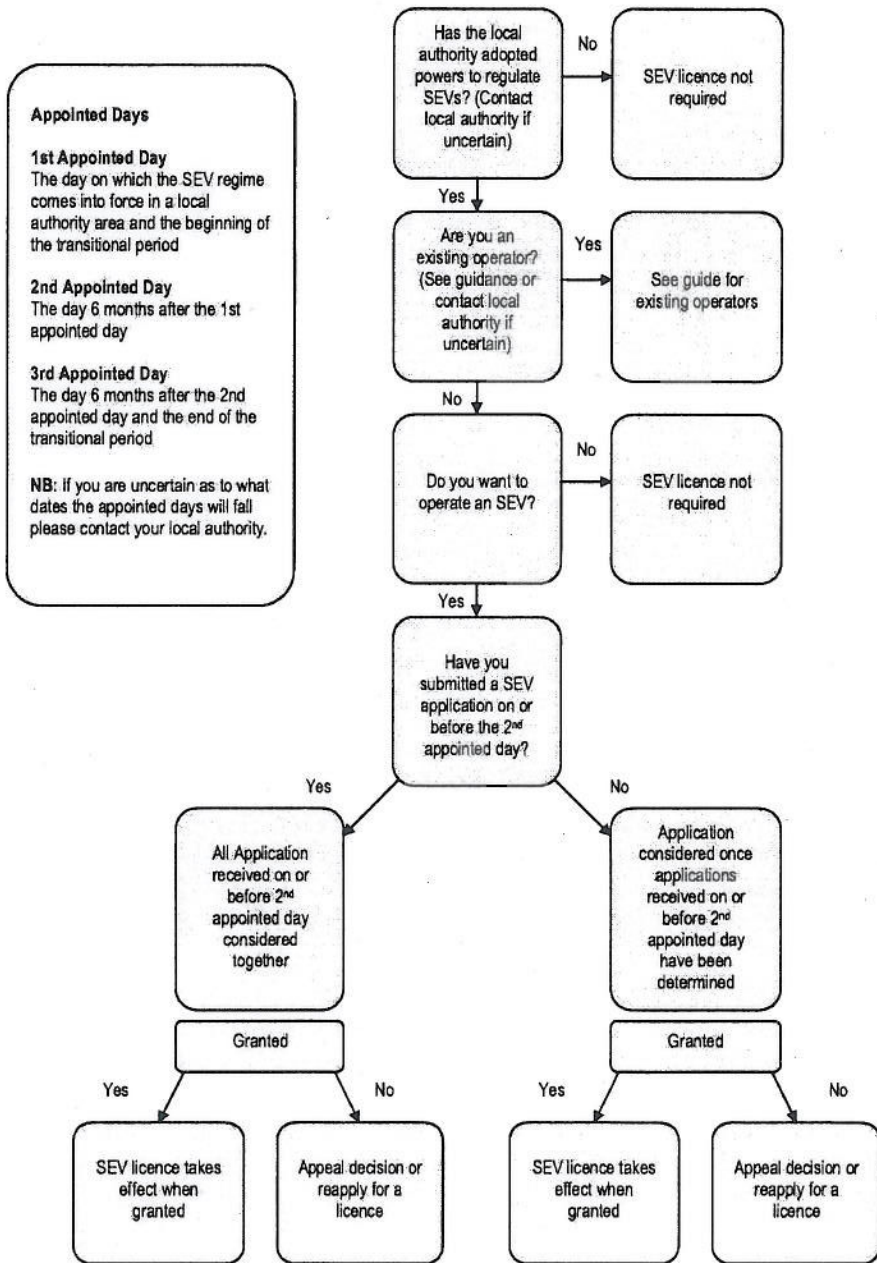
APPENDIX 2 - TRANSITIONAL GUIDANCE FOR EXISTING OPERATORS

ANNEX A: GUIDE TO TRANSITIONAL PERIOD AND EXISTING OPERATORS



APPENDIX 3 - TRANSITIONAL GUIDE FOR NEW OPERATORS

ANNEX B: GUIDE TO TRANSITIONAL PERIOD AND NEW APPLICANTS



APPENDIX 4 - HEARINGS PROCEDURE

1. The following procedure will ordinarily be followed at the Committee hearing:
 - i) The Chair will introduce him/herself, the other Committee Members and officers attending. The applicant, then the Police and objector(s) (if invited and present) will introduce themselves and their witnesses. The Chair will outline the procedure to be followed and explain any time limits imposed on representations.
 - ii) The applicant will present his case and ask his witnesses to give their evidence. The applicant and each witness after giving their evidence may, at the discretion of the Chair, be asked questions by the Police, the objector(s), the Committee Members, and the Legal Adviser.
 - iii) The Police and objector(s) (if invited and present), in turn, will then be asked to make their representations following which they will be asked questions by the applicant, the Committee and the Legal Adviser.
 - iv) Once all parties have given their evidence and all questions have been asked, each party will be asked to sum up their case. The order of summing up will be the Police and the objector(s) (if present), and finally the applicant.
 - v) Hearings will normally be conducted in public; however the Committee does have powers of exclusion which cover the public, the press, and even applicants, objectors and their representatives in appropriate circumstances.
2. Whilst it will only hear representations which are relevant, the Committee is not restricted to considering any objections raised. In coming to a decision it will consider all relevant information, including observations by Council Officers, the Police and objectors (whether or not these parties are invited to speak at the hearing), representations by the parties at the hearing, as well as the local knowledge of the Committee Members.
3. Due to time constraints, applications for adjournments will only be granted when absolutely necessary, taking into account the following:
 - i) Once a hearing date has been set it is for the parties to ensure that they can attend or are represented. Hearings may proceed in the absence of a party and their representations will be taken into account.

- ii) If it is not possible for a party or their witnesses to attend the hearing then the Council's preference will be for the hearing to proceed and the representation to be given by way of written evidence.
 - iii) Any party who wishes to make an application for an adjournment should seek the consent of all other parties to the application and notify the Council as soon as possible that an adjournment is being sought. If all parties agree the matter may be adjourned administratively.
 - iv) If an adjournment is not agreed administratively prior to the hearing, then the matter will remain listed and the application for the adjournment will be heard and the Committee will decide whether to allow the adjournment or to proceed on written evidence.
 - v) The Council may adjourn proceedings of its own motion where it considers it necessary for its consideration of any application or objection.
 - vi) Where an adjournment is granted all parties will be notified as soon as possible and notified of the new hearing date.
4. In coming to a decision the Committee will have regard to any rights the applicant may have under the Human Rights Act 1998, Part I Article 10 (Freedom Of Expression) and Part II Article 1 (Protection Of Property), as qualified, and will weigh them in the balance.
5. At the end of the hearing the Committee will retire to make their decision. In all cases the Committee will try to make their decision and to communicate this, with reasons, within a reasonable time of retiring. Where this is not possible the committee may:
- i) announce their decision on the day with reasons to follow; or
 - ii) delay their decision and reasons for a set period.
6. However the decision is delivered, it will always be followed up with written notification of the decision to all parties, including full reasons, and information, where relevant, about the appeals process.



APPENDIX 2

SOUTH KESTEVEN DISTRICT COUNCIL

REGULATIONS PRESCRIBING STANDARD CONDITIONS APPLICABLE TO LICENCES FOR SEX ESTABLISHMENTS

Definition

1. In these Regulations save when the context otherwise requires the following expressions shall have the following meanings:-
 - (i) "Sex Entertainment Venue" "Sex Cinema" "Sex Shop" and "Sex Article" shall have the meanings ascribed to them in the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.
 - (ii) "Premises" (includes vessels, vehicles and stalls) means a building or part of a building and any forecourt yard or place of storage used in connection with a building or part of a building which is the subject of a licence for a Sex Establishment granted under the said Third Schedule.
 - (iii) "Approval of the Council" or "Consent of the Council" means the approval or consent of the Council in writing.
 - (iv) "Approved" means approved by the Council in writing.
 - (v) "The Council" means South Kesteven District Council.
 - (vi) "He" means he or she and "his" means his or her.

General

2. In the event of a conflict between these Regulations and any special conditions contained in a licence relating to a Sex Establishment the special conditions shall prevail.
3. The grant of a licence for Sex Establishment shall not be deemed to convey any approval or consent which may be required under any enactment by law, order or regulation other than the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.

Times of Opening

4. Except with the previous consent of the Council a Sex Establishment shall only be open between _ am and _ pm Monday to Saturday inclusive.
5. Except with the previous consent of the Council a Sex Establishment shall not be open on Sundays or any Bank holidays or any public holidays.

Conduct and Management of Sex Establishments

6. Where the Licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager are to be furnished within 14 days of a request in writing from the Council.
7. The Licensee or some responsible person nominated by him in writing for the purpose of managing the Sex Establishment in his absence and of whom details have been supplied to and approved in writing for the purpose of managing the Sex Establishment in his absence and of whom details have been supplied to and approved in writing by the Council shall be in charge of and upon the Premises during the whole time they are open to the public.
8. The name of the person responsible for the management of a Sex Establishment (the Licensee or a manager approved by the Council) shall be prominently displayed within the Sex Establishment throughout the period during which he is responsible for its conduct.
9. The Licensee shall retain control over all portions of the Premises and shall not let, licence or part with possession of any part of the premises.
10. The Licensee shall maintain good order in the Premises.
11. The Licensee shall ensure that there is no nuisance or annoyance to neighbouring residents or commercial occupiers arising from noise emanating from the premises.
12. No person under the age of 18 shall be admitted to the Premises or employed in the business of the Sex Establishment.
13. The Licensee shall ensure that the public are not admitted to any part or parts of the Premises other than those which have been approved by the Council.

14. No part of the Premises shall be used by prostitutes (male or female) for the purposes of solicitation or of otherwise exercising their calling.
15. Neither the Licensee nor any employee or other person shall seek to obtain custom for the Sex Establishment by means of personal solicitation outside or in the vicinity of the Premises.
16. The Licensee shall comply with all statutory provisions and any regulations made thereunder.
17. A copy of the licence and of these Regulations must to be exhibited in accordance with paragraph 14(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to the same scale as those issued by the Council. The copy of the licence required to be displayed as aforesaid shall be suitably framed and the copy of these Regulations shall be retained in a clean and legible condition.
18. A Sex Shop shall be conducted primarily for the purpose of the sale of goods by retail.

User

19. No change of use of any portion of the Premises from that approved by the Council shall be made until the consent of the Council has been obtained thereto.
20. No change from a Sex Cinema to a Sex Shop or from a Sex Shop to a Sex Cinema shall be effected without the consent of the Council.
21. Neither Sex Articles nor other things intended for use in connection with, or 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.

Goods available in Sex Establishments

22. All Sex Articles and other things displayed for sale, hire, exchange or loan within a Sex Shop shall be clearly marked to show to persons who are inside the Sex Shop the respective prices being charged.
23. All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to this effect is to be prominently displayed within the Sex Establishment.
24. The Licensee shall without charge display and make available in the Sex Establishment such free literature on counselling on matters related to sexual problems as may be published by the Family Planning Association and by such other similar organisations as may be specified by the Council.

Such literature is to be displayed in a prominent position approved by the Council adjacent to all cash collection points in the Sex Establishment.

External Appearance

25. The licence holder shall comply with any requirements relating to the external appearance of the licensed premises as the Council may consider reasonably necessary for the preservation of public amenity.
26. Without prejudice to the generality of Regulation 19 above, no advertisement shall be displayed outside or on the exterior of the licensed premises or inside the licensed premises so as to be visible from outside such premises without the consent of the Council except:-
 - (i) as required by law or regulation; or
 - (ii) the name of the business carried on at the licensed premises, in not more than one place, in characters not exceeding 15 inches in height.
27. The licence holder shall ensure that the interior of the licensed premises shall not be visible to persons outside the premises.

State, Condition and Layout of the Premises

28. The Premises shall be maintained in good repair and condition.
29. Lighting in all parts of the Premises as approved by the Council shall be in operation continuously during the whole of the time that the Sex Establishment is open to the public.
30. There shall be exhibited on the licensed premises:-
 - (i) A warning complying with the provisions of Section 1 of the Indecent Displays (Control) Act 1981 in cases where that section applies; or
 - (ii) in any case where the section does not apply a warning notice containing the following words and no others:-

"WARNING"

NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE

- (a) the word "WARNING" must appear as a heading;
- (b) no pictures or other matter shall appear on the notice;

- (c) The notice must be so situated that no one could reasonably gain access to the licensed premises or any part of such premises without being aware of the notice and it must be easily legible by any person gaining such access.
31. The number, size and position of all doors or openings provided for the purposes of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements:-
- (i) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "exit".
 - (ii) Doors and openings which lead to parts of the Premises to which the public are not permitted to have access shall have notices placed over them marked "private".
 - (iii) Save in the case of emergency no access shall be permitted through the Premises to any unlicensed premises adjoining or adjacent.
32. The external doors of the licensed premises shall be fitted with self closing door mechanisms and such mechanism shall be maintained in good working order. No external door shall be fixed in the open position at any time during which the premises are open for the serving of customers. A partition shall be erected inside the premises in such a position so that the interior of the premises and the contents cannot be seen when the front door of the premises is opened.
33. The Licensee shall make provision in the means of access both to and within the Sex Establishment for the needs of members of the public visiting the Sex Establishment who are disabled.
34. Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the Premises shall not be made except with the prior approval of the Council.
35. All parts of the Premises shall be kept in a clean and wholesome condition to the satisfaction of the Council.
36. The Licensee shall provide and maintain satisfactory sanitary conveniences and personal washing facilities for any staff employed by him.

Safety

37. The Licensee shall take all reasonable precautions for the safety of the public and employees.

38. The Licensee shall comply with any fire prevention and safety measures that may be required of him by the Council or the Fire Prevention Officer.
39. The Premises shall be provided with fire appliances suitable to the fire risks of the Premises and such fire appliances shall be maintained in proper working order and shall be available for instant use, in accordance with the requirements of the Fire Prevention Officer.

By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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