



BEDFORD
BOROUGH COUNCIL

Policy for the Regulation of Sex Establishments and Sexual Entertainment Venues

April 2013



Governance Group

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1.0 Introduction

- 1.1 This document sets out Bedford Borough Council's policy regarding the regulation of sexual entertainment venue licensing.
- 1.2 The Licensing Authority has and will continue to consider local and regional strategies and policies including crime prevention, equality and disability discrimination law. The Licensing Authority recognises the need to avoid, so far as possible, duplication of existing legislation and other regulatory regimes that place obligations on employers and operators such as the Health and Safety at Work Act 1974, the Environmental Protection Act 1990, Children's Act 2004, Disability Discrimination Act 1995 and the Regulatory Reform (Fire Safety) Order 2005.
- 1.3 The licensing of sexual entertainment venues is governed by Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009.
- 1.4 Bedford Borough Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the 2009 Act) on 20 October 2010.
- 1.5 The adoption of the Act enables the Licensing Authority to control and regulate the operation of sexual entertainment venues within the Bedford Borough and no sexual entertainment venue can operate in the Borough unless it has been granted a licence from the Licensing Authority.
- 1.6 In the making of this policy the Council has had regard to the Home Office Sexual Entertainment Guidance for England and Wales dated March 2010. In taking any decision regarding any application the Council will have regard to the current Home Office or other relevant Government Department Guidance.
- 1.7 Under Section 17 of the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of the exercise of their functions on, and do all that they can, to prevent crime and disorder in their area. This policy has regard to the likely impact of such licences on related crime and disorder in the area.
- 1.8 The policy should be read in conjunction with, and without prejudice to, other existing national and European Union legislation, such as the Human Rights Act 1988 and Equality Act 2010.
- 1.9 The policy sets out the Council's approach for both applicants and operators. It also aims to guide and reassure the general public and other public authorities, ensuring transparency and consistency in

decision-making. When the Council's decision-making powers are engaged, each application will be considered on its own merit.

1.10 Sexual entertainment venue licences will contain conditions to restrict how the premises may trade within Bedford Borough.

1.11 The policy should not be regarded or interpreted as an indication that any requirement of the relevant law may be overridden.

2.0 Consultation

2.1 Consultation on this policy took place with:

- the Chief Officer of Bedfordshire Constabulary;
- one or more persons who appear to Bedford Borough Council to represent the interests of persons carrying on or proposing to carry on the business of a sex establishment in the Bedford Borough;
- one or more persons who appear to the Council to represent the interests of persons to be employed either as performers or otherwise in the business of a sex establishment in the Bedford Borough;
- one or more persons who appear to the Council to represent the interests of persons likely to be affected by or otherwise have an interest in the policy, including the Planning Authority, Fire Authority, Community Safety, Environmental Protection and Child Protection;
- interested parties such as resident associations, trade associations and others as considered appropriate;
- ward councillors;
- town and parish councils.

2.2 The Licensing Authority gave due weight to the views of those consulted and the policy was amended as appropriate. In determining what weight to give particular representations, the factors taken into account included:

- who made the representation and what was their expertise and interest;
- how many other people expressed the same or similar views;
- how the representation related to the matters the Council should include in its policy.

2.3 A full consultee list and comments received and the Council's considerations can be obtained by email at licensing@bedford.gov.uk

2.4 The policy is published via the Council's website on http://www.bedford.gov.uk/business/licences_and_street_trading/sexual_entertainment_venue.aspx

3.0 Definitions

3.1 Sexual Entertainment Venues

- a. A 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’.
- b. The meaning of ‘relevant entertainment’ is ‘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).
- c. The Licensing Authority judges each case on its individual merits, however the Licensing Authority considers that the definition of relevant entertainment would apply to the following forms of entertainment:
 - lap dancing
 - pole dancing
 - table dancing
 - strip shows
 - peep shows
 - live sex shows
 - topless bars
 - premises where private entertainment booths as defined in paragraph (b) are present.
- d. The Licensing Authority does not consider the list to be exhaustive as the nature of premises may vary. Decisions to licence premises as sexual entertainment venues will depend on the content of the entertainment provided and not the name it is given.
- e. Premises not classed as sexual entertainment venues are:
 - sex shops and sex cinemas
 - premises which provide relevant entertainment on an infrequent basis, defined as premises where:
 - no relevant entertainment has been provided on more than 11 occasions within a twelve-month period;
 - no such occasion has taken place within a period of one month beginning with the end of the previous occasion; and
 - no such occasion has lasted longer than 24 hours
 - other premises or types of performances or displays exempted by an order of the Secretary of State.

- f. Premises providing relevant entertainment on an infrequent basis will continue to be regulated under the Licensing Act 2003.
- g. Premises holding a sexual entertainment venue licence will not require a premises licence under the 2003 Act unless the premises is carrying on other licensable activities, e.g. the sale of alcohol or the provision of regulated entertainment.
- h. Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from the definition of regulated entertainment in the 2003 Act.

3.2 The Organiser

This is any person who is responsible for the organisation or management operation of the relevant entertainment on the premises.

3.3 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.

3.4 Relevant Locality

This is the locality where premises are situated or where the vehicle, vessel or stall is going to be used as a sexual entertainment venue. The locality and the area that this covers is a matter for the Licensing Authority to decide at the time it considers the application for the grant, renewal or transfer of a sexual entertainment venue licence.

3.5 Permitted Hours

These are the hours of activity and operation that have been authorised under a sexual entertainment venue licence.

3.6 Appropriate Authority

Bedford Borough Council is the 'appropriate authority' for the purposes of the licensing regime introduced by Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009.

4.0 General Policy Principles

4.1 Specific mandatory grounds for the refusal of a licence are set out in the Act.

A licence cannot be granted to:

- a. any person under 18 years of age;
- b. to any person that has held a licence that has been revoked within the last 12 months (from the date of revocation) and who was disqualified from holding a licence during that period;
- c. to any person who has been refused a new licence or a renewal of a licence within the last 12 months (from the date of making the application);
- d. to an individual who is not resident in the UK or who has not been resident for 6 months prior to the making of the application;
- e. to a company not incorporated in the UK.

4.2 In determining an application relating to a sexual entertainment venue licence the Licensing Authority will assess the application on its individual merits having regard to the content of this policy, the relevant legislation and any relevant guidance that may be issued by central government.

4.3 Where it is necessary for the Licensing Authority to depart substantially from this policy, clear and compelling reasons for doing so will be given.

4.4 Further consideration to grant a licence will be given where a premises, as defined by the 1982 Act, wishes to display a high profile exterior frontage and/or wishes to depict external nude images. Any decision to depart from the Licensing Authority's standard conditions will be referred to the General Licensing (sub-) Committee for final approval.

4.5 An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence, or a transfer of an existing one, the Licensing Authority will take the following into account:

- previous relevant knowledge and experience of the applicant;
- the operation of any existing or previous licence(s) held by the applicant, including any licence held in any other area.
- any report about the applicant and management of the premises received from statutory objectors.

4.6 The Licensing Authority may refuse a licence if the applicant is considered unsuitable to hold a licence, if the applicant has been convicted for an offence or for any other reason. The determination of the suitability of the applicant is a matter for the Licensing Authority to decide at the time the application is made.

4.7 Whilst every application will be considered on its individual merits the Licensing Authority will be unlikely to grant an application from any person, or for the benefit of any person, with unspent criminal convictions.

- 4.8 Applications for a sex establishment licence may be refused where the Licensing Authority is not satisfied that the application has been advertised in accordance with requirements of the Act.
- 4.9 The Licensing Authority may refuse to accept an application where it considers that relevant information has been omitted or an application is incomplete.
- 4.10 Where the Licensing Authority refuses to grant, renew or transfer a licence, a notice of the reasons for the decision will be sent in writing to the applicant within seven days of that decision.

5.0 Relevant Locality

- 5.1 Every application for the grant, renewal or transfer of a sex establishment licence will be considered on its own merits on a case by case basis.
- 5.2 Applications may be refused on grounds relating to an assessment of the 'relevant locality', including the impact on the local amenity. A licence may be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the Licensing Authority considers appropriate for that locality; or that a sex establishment would be inappropriate, having regard to the character of the relevant locality, to the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.
- 5.3 This Licensing Authority considers the 'relevant locality' to mean the area which surrounds the premises specified in the application; and, in accordance with legislation, does not seek to further define any precise boundaries or markings.
- 5.4 The Licensing Authority will take into account representations from the applicant, any person objecting and the Chief Officer of Police. The Licensing Authority shall normally take into account:
- i. the character of the relevant locality;
 - ii. the use to which any premises in the vicinity are put; or
 - iii. the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made;
 - iv. where it can be shown that the business would be managed for the benefit of a third party who would be refused a licence.
- 5.5 The relevant locality will be determined in accordance with where the premises is situated or where the vehicle, vessel or stall is going to be used. The area and extent of the relevant locality is a matter of the Licensing Authority to decide at the time the application is made. Each application will be considered on its own merits.

- 5.6 In determining the character of relevant locality and the appropriate number of sex establishments in the relevant locality, the Licensing Authority will take into account, but not limit its determination to:
- a. the use to which any premises in the vicinity are put;
 - b. the number of existing sex establishments both in total and also in respect of each type, i.e. sex cinemas, sex shops or sexual entertainment venues;
 - c. the number of existing premises engaged in and/or offering entertainment of an adult or sexual nature or entertainment or associated with an adult or sexual nature, e.g. tattooing, piercing, etc;
 - d. the proximity of residents to the premises, including any sheltered housing and accommodation for vulnerable persons;
 - e. the proximity of educational establishments to the premises;
 - f. the proximity of places of worship to the premises;
 - g. access routes to and from schools, play areas, nurseries, children's centres or similar premises;
 - h. the proximity to shopping centres;
 - i. the proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs.
 - j. the potential impact of the licensed activity on crime and disorder and public nuisance;
 - k. the potential cumulative impact of licensed premises in the area taking into account the days and hours of operation of the activity and the character of the locality where the premises is situated;
 - l. the nature and concerns of any objections received from residents and/or establishments objecting to the licence application;
 - m. any evidence of complaints about noise and/or disturbance caused by the premises;
 - n. current planning permission/planning requirements on the premises;
 - o. any current planning policy considerations;
 - p. whether there is planned regeneration of the area;
 - q. any current licensing permission related to the premises in relation to activities, uses and hours.

- 5.7 The Authority has had a long standing policy that predates the Policing and Crime Act 2009 concerning applications to licensed premises providing adult entertainment whereby it would have particular regard to those premises located within 100 metres from the entrance to any location for children's activities: such as schools, youth clubs or nurseries.
- 5.8 From their own knowledge of localities across the Borough of Bedford and supplemented by the express views during the consultation exercise (28 November 2012 – 28 February 2013) Members of the Borough Council's General Licensing Committee on 4 April 2013 concluded that there was no locality in the Borough that was considered appropriate for a Sexual Entertainment Venue.

6.0 Duration of Licence

- 6.1 Sexual Entertainment Venue licences will normally expire on an annual basis, but can be issued for a shorter term if deemed appropriate.

7.0 Enforcement

- 7.1 Prior to pursuing enforcement action the Licensing Authority will have regard to its current Enforcement Policy and consult with any partners as deemed appropriate.
- 7.2 In pursuing the objectives in paragraph 7.1 the Licensing Authority will operate a proportionate and reasonable enforcement regime.

8.0 Conditions

- 8.1. This policy provides for a set of 'standard conditions' to be attached to each licence granted, renewed or transferred by the Licensing Authority unless conditions have been expressly excluded or varied.
- 8.2 Further conditions may be attached to individual licences where the Licensing Authority deems it necessary.
- 8.3 The Licensing Authority will seek to avoid duplicating licence conditions where a premise holds licences under both the Licensing Act 2003 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 8.4 The Licensing Authority will endeavour to avoid imposing conditions on either licence that are contradictory to one another.

SEXUAL ENTERTAINMENT VENUES

**STANDARD LICENCE CONDITIONS
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
CONTROL OF SEX ESTABLISHMENTS as amended by POLICING AND
CRIME ACT 2009**

A. MANAGEMENT OF THE PREMISES

1. The licensee, or some responsible person nominated by them and approved in writing by the licensing authority for the purpose of managing the sexual entertainment venue ('the manager') shall have personal responsibility for and be present on the premises at all times when the premises are open to the public.
2. 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 shall be notified in writing to the Council's Head of Registration and Records within 14 days of such change and such details as the licensing authority may require in respect of the change of personnel shall be furnished within 14 days of a request in writing from the licensing authority.
3. A copy of the licence and any conditions attached shall at all times be displayed in a conspicuous position on the premises, so as to be available for inspection by the police, the fire authority and authorised officers of the licensing authority.
4. The name of the person responsible for the management of the sexual entertainment venue, whether the licensee or manager, shall be displayed in a conspicuous position within the premises throughout the period he/she is responsible for conduct of the premises. A register shall be maintained by the licensee recording the name and address of any person who is responsible for managing the establishment in his/her absence and the respective dates.
5. The licensee shall retain control over all parts of the premises and shall not let, licence or part with possession of any part.
6. The licensee shall ensure that the public are not admitted to any part of the premises that has not been licensed.
7. No person under the age of 21 years shall be admitted to the premises and a Notice to this effect, in accordance with condition 28, shall be displayed on the outside of the premises.

8. Neither the licensee nor any employee or agent shall solicit custom for the sex establishment outside or in the vicinity of the sexual entertainment venue.
9. The licensee shall ensure that during the hours that the premises are open for business every employee wears a badge of a type approved by the licensing authority indicating their name and that they are employed by the establishment.

B. OPENING OF THE PREMISES

10. The premises shall not, without the written consent of the licensing authority, be opened and used for the purposes for which the licence is granted except during the following hours:

Monday to Friday inclusive (Xam to Xpm)
Saturday (Xam to Xpm)
Sunday (Xam to Xpm)

11. The premises shall not be opened and used for the purposes for which the licence is granted on Christmas Day, Boxing Day or Good Friday.

C. CONDUCT OF THE PREMISES

12. No printed matter shall be offered for sale, hire, exchange or loan within a sexual entertainment venue without the express authority of the Licensing Authority (and this Licence does not of itself constitute such authority).
13. No sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a Sexual Entertainment Venue.
14. A code of conduct for dancers will be operated subject to approval by the Licensing Authority and Bedfordshire Police.
15. A code of conduct for customers will be operated subject to approval by the Licensing Authority and Bedfordshire Police.
16. Dancers will perform on a stage area only.
17. There will be a defined segregation area between the audience and performers.
18. No dancer will perform a 'private dance' to customer(s) who are standing up.

19. No photography is allowed in the premises (other than in connection with the operation of the CCTV security system for that purpose only) during the hours the premises is open to the public.
20. There will be no audience participation in dancers' performances.
21. Sex articles will not be used as props during performances by dancers.
22. There will be no contact between performers and the audience. This also applies when the 'performance' has taken place and the dancers are 'off duty' in the premises.
23. There will be a 1 metre gap between the performer and any member of the audience.
24. Access to dressing rooms for dancers must be directly off the stage. Performers must not pass through the audience to access dressing rooms.
25. Performers must re-dress immediately and not enter the audience area in a state of undress.
26. There will be no 'private' booths in the venue.

D. EXTERNAL APPEARANCE

27. The holder of a sexual entertainment venue licence may exhibit on the outside of the premise the name of the business and a notice, capable of being enclosed by a rectangle less than one square metre in area, consisting of the words 'Licensed by Bedford Borough Council as a Sexual Entertainment Venue'.
28. The holder of a sexual entertainment venue licence shall exhibit on the outside of the premises a notice capable of being enclosed by a rectangle less than one square metre in area, the times of opening and the words 'No person under the age of 21 years shall be admitted to the premises'.
29. The shop fascia may bear the trading name. No other words are permitted on the shop fascia.
30. The notices mentioned above, in conditions 27 and 28, shall be affixed to the door of the premises and shall not be displayed in or on the shop window.
31. No other signs or words, or any displays or advertisements, shall be displayed on the outside of the premises or in the vicinity of the premises, except those mentioned in Conditions 27 and 28.

32. Sex aids, toys, magazines, bondage or fetish equipment or clothing shall not be displayed in the premises windows. Nor shall there be advertisement of the same in the premises windows.
33. The backdrop to the windows and openings of the premises shall be of a material or covered with a material that will render the interior of the premises invisible to passers-by.

E. STATE, CONDITION AND LAYOUT OF THE PREMISES

34. External doors shall be closed at all times other than when persons are entering or leaving the premises. The external doors shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.