

Sex establishment Guidance Notes



Lewes District Council has adopted amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, and as a result from the 14th April 2011 all forms of sex establishment will now require a licence with the council.

The new provisions bring the licensing of lap dancing premises and similar venues in line with other sex establishments (sex shops and sex cinemas). They allow the Licensing Authority to prescribe a wider range of conditions on the licences of sexual entertainment venues than those available under the Licensing Act 2003, and allow local people to oppose an application for a sex establishment licence if they have legitimate concerns that a sexual entertainment venue would be inappropriate given the character of an area.

In addition they require licences to be renewed at least annually, at which point local people will have the opportunity to raise objections (if any).

What is a sex establishment?

A sex establishment means a sex cinema, sex shop or sexual entertainment venue. Each is defined below and in more detail.

Meaning of sex cinema

A 'sex cinema' is any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which:

- are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage sexual activity; or acts of force or restraint which are associated with sexual activity; or
- are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions.

A sex cinema does not include a dwelling-house to which the public is not admitted.

Meaning of sex shop

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:

- 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.

No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.

A 'sex article' means:

- anything made for use in connection with, or for the purpose of stimulating or encouraging sexual activity; or acts of force or restraint which are associated with sexual activity;
- any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and to any recording of vision or sound which:
- is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

Restricted 18 (R18) films

R18 (classified by the British Board of Film Classification) is a special and legally restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults. Films may only be shown to adults in specially licensed cinemas, and video works may be supplied to adults only in licensed sex shops. 'R18' videoworks may not be supplied by mail order.

Meaning of a sexual entertainment venue

A sexual entertainment venue means:

“any premises at which relevant entertainment is provided before a live audience for financial gain of an organiser. For the purposes of the Act it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.”

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). An audience includes an audience of one.

A display of nudity means:

- (a) In the case of a woman, exposure of her nipples, pubic area, genitals or anus; and
- (b) In the case of a man, exposure of his pubic area, genitals or anus.

An organiser means:

Any person who is responsible for the organisation or management of

- (a) The relevant entertainment; or
- (b) The premises.

Exempt premises

Notwithstanding the above, the following are not defined as sexual entertainment venues:

- (a) sex cinemas and sex shops;
- (b) premises at which the provision of relevant entertainment is such that:
 - (i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months;
 - (ii) no occasion has lasted for more than 24 hours; and
 - (iii) no occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided.

For the purposes of the council's policy, relevant entertainment is provided if, and only if, it is provided, or permitted to be provided, by or on behalf of the organiser before an audience and involves partial or full nudity.

The applicant

An applicant:

- must be at least 18 years old
- must not be disqualified from holding a sex establishment licence
- must have been resident of an EEA State at least six months immediately before the application or, if a body corporate, must be incorporated in an EEA State
- must not have been refused the grant or renewal of a licence for the premises in question within the last 12 months unless the refusal has been reversed on appeal.

The application process (grant, renewal and transfer of licences)

To make an application, you will need to provide us with the following:

- a completed application form
- application fee and hearing fee where required
- copy of a scaled plan (see the requirements for plans below)
- any additional information in support of the application (where applicable).

The legislation requires the application form to be signed. However, the Licensing Team is prepared to accept an application form by email or fax, but you must post in the original application form to us.

Criteria for plans accompanying applications

The plan must show:

1. the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
2. the location of points of access to and egress from the premises;
3. the location of escape routes from the premises;
4. in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;
5. fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
6. in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
7. in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
8. in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
9. the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
10. the location of a kitchen, if any, on the premises.

The plan may include a legend through which the matters mentioned or referred to above are sufficiently illustrated by the use of symbols on the plan.

Advertisement

Applicants for a grant, renewal or transfer of a licence need to advertise their application in a local newspaper. The Council considers that the publication of a notice in the Sussex Express or Argus will satisfy this requirement. This advertisement must be made no later than 7 days after the date of the application and must be published on at least one occasion.

Where the application is in respect of premises it shall also be displayed for no less

than 21 consecutive days beginning with the date of the application on or near the premises and in a place where the notice can be conveniently be read by the public (from the exterior of the premises).

The notice must identify the relevant premises and must be of a size equal to or larger than A4. It must be on pale blue coloured paper, printed in black ink or typed in black in a font size equal to or larger than 16.

Every notice which relates to a vehicle, vessel or stall must specify where it is to be used as a sex establishment.

Duty to notify police

In the case of electronic applications:

A copy of an application for the grant, renewal or transfer of a licence will be sent by the licensing authority to the Chief Officer of Police 7 days of the application having been received.

In any other case:

The applicant shall not later than 7 days after the date of the application send a copy of the application for the grant, renewal or transfer of a licence to the Chief Officer of Police, Bexhill Police Station, Terminus Road, Bexhill on Sea, East Sussex TN39 3NR.

Objections

Where a person wishes to object to an application for a grant, renewal or transfer of a licence shall give notice in writing of his objection to the Licensing Officer at Lewes District Council, stating the general terms of the grounds of the objection not later than 28 days after the date of the application.

Where objections are received, before considering the application, Lewes District Council will give notice in writing of the general terms of the objection to the applicant.

Lewes District Council will not without the consent of the person making the objection reveal his/her name or address to the applicant.

In considering any application for the grant, renewal or transfer of a licence Lewes District Council will have regard to any observations submitted by the Chief Officer of Police, and any objections

Considerations

All applications for grant, transfer and variation where objections are received and not withdrawn and the closing date for submitting objections has passed will be heard by the Council's Licensing Committee.

Refusal of a licence

Where Lewes District Council refuses to grant, renew, or transfer a licence, it will provide in writing to the applicant a statement containing the reasons for its decision.

Variation of a licence

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

The process of applying for a variation is the same as that for applying for an initial grant except that a plan of the premises is not required unless the application involves structural alterations to the premises.

Renewal of a licence

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

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

Transfer and cancellation of licences

A person may apply for the transfer of a licence at any time.

The process of applying for transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required

In the event of the death of the holder of a licence granted that licence shall be deemed to have been granted to his personal representatives and shall, unless previously revoked, remain in force until the end of the period of 3 months beginning with the death and shall then expire; but the appropriate authority may from time to time on the application of those representatives, extend or further extend the period of three months if the authority are satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable.

Lewes District Council may, at the written request of the holder of a licence, cancel the licence.

Fee

The fees for sex establishment licences are as follows:

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| Grant of a licence : | £3250 |
| Renewal of a licence: | £1750 |
| Variation of a licence: | £1750 |

Right of appeal

Subject to various provisions within the Local Government (Miscellaneous Provisions) Act 1982 any person aggrieved by:

- a refusal to be granted, renewed or transferred a licence
- any terms, conditions or restrictions on a licence or the refusal to vary such terms, conditions, or restrictions
- the revocation of a licence.

may appeal to the Magistrates Courts who may give such directions regarding the licence or its conditions as it thinks proper. Appeals should be lodged within 21 days of being notified of the refusal.

However, the right to appeal does not apply where the licence was refused on the grounds that:

- the number of sex establishments in the area exceeds the number which the authority consider is appropriate
- the grant of the licence would be inappropriate considering the character of the area, the nature of other premises in the area, or the premises themselves
- an appeal against a decision made at the Magistrates Court may be appealed at the Crown Court but the decision of the Crown Court is final