

Wiltshire Council



Where everybody matters

APPENDIX 1

Wiltshire Council

Policy and Regulations

Licensing of Sex Establishments

May 2009

To come into effect 29 June 2009

LICENSING OF SEX ESTABLISHMENTS

Contents

1. Introduction
 2. Definitions
 3. The Application Process
 4. Consideration of the Application
 5. Determination of Applications
 6. Grant of a Licence
 7. Hearing Procedure
- Annex A – Standard Conditions

1. Introduction

Wiltshire is a predominantly rural county in the south-west of England. Covering 325534 hectares, it has a population of 433,000, nearly all of whom live in towns or villages with fewer than 5,000 people. Bigger concentrations of population can be found in the cathedral city of Salisbury, the county town of Trowbridge, and Wiltshire's many market towns. The Armed Forces have a significant presence particularly in the south of the County.

The Policy

This documents states Wiltshire Council's policy on the regulation of Sex Establishments

The Law

The Local Government (Miscellaneous Provisions) Act 1982 introduced a licensing regime to control sex establishments. Wiltshire Council has adopted schedule 3 of the Act by virtue of being as successor authority to the four district councils who adopted the Act. This means that the Council can control and regulate the operation of certain kinds of Sex Establishment within its area. No sex establishment can operate unless it has obtained a licence from the Council. Any such licence will contain conditions that will restrict how that premises may trade.

2. Definitions

In these Regulations the following expressions shall have the meanings:-

- | | |
|-----------------|---|
| “The Act” - | means the Local Government (Miscellaneous Provisions) Act 1982. |
| “The Council” - | means Wiltshire Council |

- “The licensed premises” - means any premises, vehicle, vessel or stall licensed under the Act.
- “Licence holder” - means a person who is the holder of a Sex Establishment licence.
- “Permitted hours” - means the hours during which the licensed premises are permitted under Regulations 2 and 3 hereof to be open to the public.
- “Sex Establishment licence”- means a licence granted pursuant to Schedule 3 of the Act.

In these Regulations the following expressions that is to say “Sex Establishment”, “Sex Shop”, “Sex Cinema”, “Sex Article” and “Vessel” shall have the meanings respectively assigned to them by Schedule 3 of the Act. Included below:

“Sex Establishment” means a “Sex Cinema” or a “Sex Shop”

“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, but does not include a dwelling-house to which the public is not admitted.

“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 are associated with sexual activity.

“Sex Article” means – anything made for use in connection with, or for the purpose of stimulating or encouraging –

- i) sexual activity; or
- ii) acts of force or restraint which are associated with sexual activity; and

(a) anything to which the sub-paragraph below applies.

This sub-paragraph applies –

a) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and

(b) to any recording of vision or sound, which –

i) is concerned primarily with the portrayal of, or primarily deals with 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

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

3. The Application Process

The application form and relevant documentation for the new licence, renewal or transfer must be completed and returned with the appropriate fee as set in the Council's fees and charges.

A copy of the application form and supporting documentation must be forwarded to the Chief Officer of Police within 7 days.

A notice of the application will need to be advertised both on or near the premises and in a newspaper circulating within the area of the premises. The notice must clearly identify the premises to which it relates.

The notice on or near the premises shall be displayed for 21 days beginning with the date of the application and in a place where it can be conveniently read by the public.

The notice in the newspaper shall be published no later than 7 days after the date of the application.

The Council will carry out a consultation process where views are sought from: Wiltshire Police, Wiltshire Fire and Rescue Service, Council Ward Members for the area of the premises, The Council's Planning Department

Objections to the application for the grant, renewal or transfer of a licence shall be given in writing, stating the terms of the objection no later than 28 days after the date of the application.

Where notice of objection is received by the Council they will give notice in writing to the applicant of the general nature of the objection before it is given due consideration.

4. Consideration of the Application

The Council will consider every application on its merits, following the appropriate consultation and in accordance with this policy.

The Act specifies a number of issues that should be considered:

- a) Under the legislation a Council cannot have regard to the morality of sex establishments. Its approval or disapproval of sex establishments is not a matter which can be considered.
- b) Straightforward objections on the grounds that sex establishments should not be allowed, will not be taken into account in assessing applications for such premises.
- c) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason.
- d) That if the licence was to be granted, renewed or transferred, the business to which it relates will be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he/she made the application himself/herself.
- e) That the grant or renewal of the licence would be inappropriate having regard to: The character of the relevant locality, **The existence of other similar businesses within the locality**, or The use to which any premises in the vicinity are put; or The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- f) No new licensed sex shop will be permitted if it will be situated within "Inappropriate proximity" to:
 1. Near to housing.
 2. Near, or near to access routes to and from, schools, play areas, nurseries, children's centres or other similar premises.
 3. In family shopping areas.
 4. Near places of worship
 5. Near a community facility or public building, including but not limited to swimming pools, leisure centres, public parks, youth centre's/club and sheltered housing
 6. Near historic buildings or tourist attractions.

Note: "inappropriate proximity" is defined as a distance of 200m in direct line of sight between the proposed establishment and any locations list above, or 100m distance if there is no direct line of sight.

- g) Fitness of the applicant – an applicant must be a fit and proper person to hold a license. In determining suitability for a new licence or a transfer the Council will take the following into account:
 1. Previous relevant knowledge and experience of the applicant.
 2. Any evidence of the operation of any existing or previous licence held by the applicant, including any licence held in any other council

area

3. Any report about the applicant and management of the premises Received from statutory objectors.

5. Determination of Applications

Each application will be considered on its own merits following the appropriate consultation and in accordance with this policy.

Any sex establishment licence may be granted subject to conditions imposed by the Council; therefore an application should not be refused if conditions could adequately address any area of concern.

All licences will be subject to the Council's Standard Conditions for Sex Establishments as in Annex A.

In event of conflict between standard conditions and special conditions contained in a Sex Establishment licence the special conditions shall prevail.

Licences are generally issued on an annual basis but can be issued for a shorter term if deemed appropriate.

6. Grant of a Licence

All applications for the grant of a new licence will be determined by the Licensing Committee or a Licensing Sub Committee, irrespective of whether objections are received.

Renewal or Transfer of an Existing Licence

Where no valid objections or observations have been received, the application will be considered under officer delegated powers.

If the officer is minded to refuse such an application it will be referred to the Licensing Committee or a Licensing Sub Committee.

Where valid objections or observations are received the application will be determined by a Licensing Committee or a Licensing Sub Committee.

At a Licensing Committee or Licensing Sub Committee hearing the applicants and any objectors/observers will be given an opportunity to address the committee.

7. Hearing Procedure

Where the Council is required to determine an application by reference to a Licensing Committee or a Licensing Sub Committee, the Applicant and objectors/observers will be advised of the date, time and venue of the hearing.

In preparation for the hearing, all parties will receive a copy of the Licensing Officer's report prior to the hearing. The report will contain a summary of the application, representations and any other relevant information.

At the hearing, all parties will have the opportunity to address the Licensing Committee or a Licensing Sub Committee and ask factual questions of other parties. The Licensing Committee or a Licensing Sub Committee may also ask questions of all parties that they feel relevant to determine the application.

The Licensing Committee or a Licensing Sub Committee will communicate their decision at the end of the hearing and all parties will receive written confirmation within 7 days.

Annex A

Standard Conditions Regulations

These regulations are made under the conferred powers of paragraph 13 of the Third Schedule of the Miscellaneous Provisions Act 1982.

- 1) The grant of a licence for a Sex Establishment shall not be deemed to convey any approval or consent which may be required under any enactment bye-law order or regulation other than the Third Schedule of the Miscellaneous Provisions Act 1982 as amended.
- 2) The licensed premises shall be closed throughout Good Friday, Christmas Day and every Sunday, except from 10am – 4pm on the two Sundays preceding Christmas Day. The premises may be open only during the permitted hours prescribed in these regulations.
- 3) The permitted hours of opening, unless varied by special condition, shall be as follows:-

Mondays	9:00 am to 9:00 pm
Tuesdays	9:00 am to 9:00 pm
Wednesdays	9:00 am to 9:00 pm
Thursdays	9:00 am to 9:00 pm
Fridays	9:00 am to 9:00 pm
Saturdays	9:00 am to 9:00 pm

- 4) The licensed premises shall not be used for any purpose other than the business of a sex establishment.
- 5) The licensed premises shall not be open for the purposes for which a sex establishment licence is granted on any occasion when the Council may signify in

writing to the licence holder, occupier or other person having at the time the care and management of the premises, that the same should not be open.

- 6) No person who is or appears to be under the age of 18 or is known by the licence holder or any servant or agent of his/her present on the licensed premises to be under that age shall be admitted to or shall be permitted to remain on the licensed premises.
- 7) The licence holder:-
 - a) shall display on the licensed premises in a conspicuous position, conveniently read, his/her sex establishment licence;
 - b) shall exhibit on those premises such notices in such form and in such position as may be prescribed;
 - c) shall comply with any prescribed restriction with respect to the exhibiting of other written matter or of signs of any description on the licensed premises.
- 8) No facilities shall be provided in a sex shop for:
 - a) seeing any television broadcast or the replaying of any video tape, DVD, film or other like matter, other than a television set for the simultaneous reception and exhibition of television programmes broadcast by the British Broadcasting Corporation or non subscription channels.
 - b) hearing any sound broadcast, record, tape or other like matter e.g. mini-disc, other than facilities for the reception of any radio programmes broadcast by the British Broadcasting Corporation or the Independent Broadcasting Authority.
- 9) No music, dancing or other entertainment whether of a like kind or not shall be provided or permitted, other than as permitted by these Regulations and no refreshment of any kind shall be served on nor shall any facilities for the taking of such refreshment be provided upon the licensed premises, except to staff.
- 10) The licence holder shall exhibit on the exterior of the licensed premises in a position visible to persons outside the premises a notice, in addition to his/her name, in not more than one place, in characters not exceeding three inches in height and consisting only of the words "licensed sex shop" or "licensed sex cinema" (as the case may be) and such indication, if any, as he/she thinks fit to give of the times at which the licensed premises are open. No other notices, unless pursuant to these Regulations, may be exhibited.
- 11) The licence holder shall exhibit in a conspicuous manner and in some conspicuous place inside the licensed premises and at the point of access to the licensed premises a notice stating that persons under the age of eighteen years are not admitted on the premises.

- 12) The licence holder shall not display in any position visible to persons outside the premises any matter which does not comply with the Indecent Displays (Control) Act 1981.
- 13) The licence holder shall not permit any person other than persons employed by him, his servant or agent, statutory undertakers or, if applicable, his landlord to enter upon any part of the premises which are not available to the public in connection with the display, sale, hire, exchange, loan or demonstration of sex articles.
- 14) The licence holder shall not display any advertisement which is visible to persons outside the premises except as permitted by these Regulations or under the Act and no advertisements shall be displayed wherever visible which depict any sex article as defined.
- 15) The licence holder shall ensure that the interior of the sex establishment shall not be visible to persons outside the premises.
- 16) The exterior of the licensed premises shall be of a design and materials approved by the Council. The exterior of the premises shall consist of material and colours of a discreet nature appropriate to the character of the locality and shall be in keeping with the appearance of other premises in the vicinity. Detailed proposals for the external appearance of the premises shall be agreed with the Council's Delegated Officer within 14 days of the notification of the determination of the grant of an application for a new premises licence; the approval shall be subject to ratification by the Council's Licensing Committee or Sub Committee. The interior and exterior of the licensed premises shall be kept in good repair and condition.
- 17) No illuminated signs or exterior lights shall be affixed to the licensed premises unless approved by the Council's Delegated Officer and shall be subject to ratification by the Council's Licensing Committee or Sub Committee.
- 18) The holder of a sex cinema licence shall observe such regulations and conditions as may be approved by the Council from time to time for cinemas having a licence under the Licensing Act 2003.

No Fastenings of any description shall be fitted upon booths set aside for the display of films.

- 19) The licence holder shall not knowingly allow the licensed premises to be the habitual resort or meeting place of a reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution.
- 20) If the Council notifies the licence holder, occupier or other person having at the time the care and management of the premises in writing by delivering notice at the licensed premises that any particular sex article, advertisement or matter shall not be displayed, sold or supplied the same shall be withdrawn from display, sale or supply forthwith.

- 21) No film, video or DVD material shall be kept, sold or supplied at the sex establishment except such film, video or DVD material that bears a reproduction of the Certificate of the British Board of Film Censors/Certification.
- 22) The external doors of the licensed premises shall be fitted with self-closing mechanisms and such mechanisms shall be maintained in good order. Doors and openings, other than exits, which lead to parts of the premises to which the public are not permitted to have access shall be clearly marked "Private".

No access shall be permitted through the premises to any other premises adjoining or adjacent.

No external door shall be fixed in the open position at any time during the permitted hours.
- 23) A police officer or an authorised officer of the Council or the Police may at any reasonable time enter and inspect any premises in respect of which a sex establishment licence is for the time being in force or an application for the grant of a new licence has been served.
- 24) The licence holder or some responsible person, being 21 years of age or over, nominated by him/her in writing shall be in attendance at the premises at all such times as the premises are open to the public and any nomination shall be produced to any police officer or authorised officer of the Council or the police and give the name and address of the person nominated.
- 25) A closed circuit television system shall be installed in the place licensed to the satisfaction of the Council's Licensing Officer. The system shall efficiently record the operation of the place licensed and shall automatically indicate the date and time of the events recorded to a standard that would be acceptable as evidence in the Courts. All closed circuit television recordings shall be securely retained for a minimum of 28 days and shall be made available at the place licensed for inspection by a police officer or an authorised officer of the Council or the police.
- 26) The licensee shall produce and maintain a list of all stock carried at the place licensed and shall make it available to a police officer or authorised officer of the Council or the police on demand.
- 27) All merchandise shall be clearly marked so as to show persons inside the premises the purchase price of each item.