

Guidance notes



Sex Establishment Licences

Updated October 2014

Do you need a Sex Establishment Licence?

All forms of sex establishment in North Devon now require a licence with the council. This brings licensing of lap dancing premises and similar venues in line with other sex establishments (sex shops and sex cinemas). As the licensing authority, we are able to prescribe a wide range of conditions on the licences of sexual entertainment venues 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.

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 within the North Devon Council Sex Establishment Policy.

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 either of the following:

- 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
- 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 where 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 either of the following:

- Sex articles

- 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.

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
- 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 video works 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. It does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.

Relevant entertainment means either a 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 the audience (whether by verbal or other means). An audience includes an audience of one.

A display of nudity means, in the case of a woman, exposure of her nipples, pubic area, genitals or anus. In the case of a man, it means exposure of his pubic area, genitals or anus.

An organiser is any person who is responsible for the organisation or management of the relevant entertainment or the premises.

Exempt premises

The following are not defined as sexual entertainment venues:

- sex cinemas and sex shops
- premises where:
 - (i) there have not been more than eleven occasions on which relevant entertainment has been provided within a 12 month period
 - (ii) no occasion of relevant entertainment has lasted for more than 24 hours
 - (iii) no relevant entertainment has begun within one month from the end of any previous occasion where relevant entertainment was provided

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 application process

If you want to apply for a Sex Establishment Licence, you must:

- be at least 18 years old
- not be disqualified from holding a Sex Establishment Licence
- have been resident of an EEA State at least six months immediately before your application or, if a body corporate, must be incorporated in an EEA State
- 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

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

- a completed application form
- application fee and hearing fee where required
- copy of a scaled plan
- 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
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

If you are applying for a new licence, or a renewal or transfer of a licence, you need to advertise your application in a local newspaper (either the North Devon Journal or North Devon Gazette). This advert must be made no later than seven days after the date of the application and must be published on at least one occasion.

You will also need to display a notice at any premises related to your application for no less than 21 consecutive days, beginning with the date of the application. This notice needs to be displayed on or near the premises and in a place where it can be conveniently read by the public from outside 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 that relates to a vehicle, vessel or stall must specify where it is to be used as a sex establishment.

Duty to notify police

If you apply online for the grant, renewal or transfer of a licence, a copy of your application will be sent by the licensing authority to the Chief Officer of Police. This will be done within seven days of us receiving your application.

If you apply for a licence through the post or by fax, you are responsible for sending a copy of your application to the Chief Officer of Police. Again, this needs to be done within seven days of the date on your application.

Consultation

When we receive your application, a consultation will be carried out with the police, fire authority, the council's Planning and Development Services and Environmental Health and Housing Services.

The consultation may also involve local residents associations, parish councils, local ward members and in some cases neighbouring properties and residents.

This process will usually take around 14 days, depending on the complexity of the application. If queries are raised, then you will be contacted in writing or by telephone and given opportunity to address them.

Objections

Where a person wishes to object to an application for a grant, renewal or transfer of a licence, they can give notice in writing of their objection to the Licensing Manager at North Devon Council, stating the grounds of their objection, no later than 28 days after the date of the application.

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

North Devon Council will not, without the consent of the person making the objection, reveal their name or address to the applicant.

In considering any application for the grant, renewal or transfer of a licence, we will note any observations submitted by the Chief Officer of Police and any objections.

Considerations

All applications for grant, transfer and variation must be heard by the council's Licensing Committee. Renewal applications that receive objections must also be heard by the Licensing Committee.

The refusal of an application for the grant, renewal or transfer of a Sex Establishment Licence may be based on the following criteria:

- The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reasons
- That if the licence were to be granted, renewed or transferred, the business to which it relates would be managed or carried on by a person, other than the applicant, who would otherwise be refused such a licence if they made the application themselves

Additional considerations solely for grants and renewal include:

- that the number of sex establishments in North Devon is equal to or exceeds the number which North Devon Council considers appropriate

- that the grant of the licence would be inappropriate, having regard to either:
 - the character of the locality
 - the use to which any premises in the vicinity are put
 - the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made

Refusal of a licence

Where North Devon Council refuses to grant, renew, or transfer a licence, we will write to you as the applicant, stating the reasons for the decision.

Variation of a licence

As the holder of a licence, you 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

You may apply for renewal of the licence. To enable the licence to continue running 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

You may apply for the transfer of a licence at any time. Again, the process of applying for transfer of a licence is the same as that for applying for an initial grant, with the exception that a plan of the premises is not required.

In the event of the licence holder dying, that licence shall be deemed to have been granted to his personal representatives and shall, unless previously revoked, remain in force for up to three months and shall then expire. However, 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 is satisfied that the extension is necessary for the purpose of winding up the estate and that no other circumstances make it undesirable.

North Devon Council may, at the written request of the holder of a licence, cancel the licence.

How long will it take to process my application?

We will aim to contact you within five working days of receiving your application. If we have not contacted you within this time, please contact us to check that your application was correctly made and received.

Having received all responsible authority comments and public representations and taking into account the standard conditions, your application will be heard by the council's Licensing Committee in all occasions, other than renewals where no objections have been received.

Standard applications with no objections will take a minimum of four weeks to process. If there are objections, this time period is increased and your application is likely to take four to eight weeks to process, depending on the date of the next Licensing Committee meeting.

If an application is not dealt with in the above time periods, your application will not automatically be deemed granted, for reasons of public policy and child protection.

How long does the licence last?

A licence will remain in force for one year, or shorter if specified in the licence, as North Devon Council thinks fit.

On receipt of a suitable application, North Devon Council may, where it thinks fit, transfer that licence to another individual.

If an application has been made for a renewal before a current licence expires, it shall be deemed to remain in force until the withdrawal of the application or its determination by North Devon Council. This is the same for a transfer of licence.

What conditions will be attached to a licence

There are standard conditions attached to a Sex Establishment Licence. These include aspects such as the permitted hours of opening and closing, as well as visibility to passers by. A licence may also be subject to some conditions being expressly excluded or varied.

As the licence holder, you may at any time apply to North Devon Council for a variation of the terms, conditions or restrictions in your licence.

As part of these conditions, you will need to keep on display in a suitable place a copy of the licence and the regulations that set out the conditions.

Rights of entry

Where a warrant is granted by a justice of the peace, a police constable or authorised officer of a local authority may, at any reasonable time, enter and inspect any sex establishment. This is in respect of ascertaining whether there are various offences.

Offences and penalties

It is an offence not to have a copy of your licence and any conditions exhibited at a premises. If you fail to have these on show, you are liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

If, without reasonable excuse, you refuse a constable or authorised office to exercise their power of entry under warrant, you shall for every such refusal be liable on summary conviction to a fine not exceeding level 5 of the standard scale (currently £5,000).

Other offences include a person who:

- knowingly uses, or knowingly causes or permits the use of any premises, vehicle, vessel or stall except under and in accordance with the terms of a licence
- being the holder of a licence for a sex establishment, employs in the business of the establishment any person known to them to be disqualified from holding such a licence
- being the holder of a licence, or the servant or agent of the holder of a licence, without reasonable excuse, knowingly contravenes or permits the contravention of a term, condition or restriction specified in the licence
- in connection with an application for the grant, renewal or transfer of a licence, makes a false statement that they know is false in any material respect or that they do not believe to be true, shall be guilty of an offence
- without reasonable excuse, knowingly permits a person under 18 years old to enter an establishment
- employs a person known to them to be under 18 years old in the business of the establishment

If guilty of these offences, you will be liable on summary conviction to a fine of up to £20,000.

If your licence is revoked, you will be disqualified from holding or obtaining a licence in North Devon for 12 months from the date of revocation.

Offences by bodies corporate

Where an offence by a body corporate is proved to have been committed with consent or connivance of, or attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, they shall be guilty of the offence, as well as the body corporate.

Where the affairs of a body corporate are managed by its members, the above situation shall apply to the acts and defaults to a member in connection with their function of management as if they were a director of the body corporate.

Public register

At present there are no licensed sex shops on the public register in the North Devon area, although there are a small number of unlicensed shops that do sell sex articles.

Right of appeal

If you want to appeal against a refusal to be granted, renewed or transferred a licence, the revocation of your licence, or any terms, conditions or restrictions on a licence, then you can appeal to the magistrates courts. Appeals should be lodged within 21 days of you receiving notice of a licence decision.

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

Complaints

If you are an applicant and you feel we have failed to provide you with good service or are concerned about the progress of your application, please also contact us so that we can try to resolve any concerns you may have.

If you want to make a complaint about anyone operating a licensed sex shop, or for operating as a sex shop without having a licence, please contact us.

We would always advise that in the event of a consumer complaint, the first contact you make is with the trader - preferably in the form a letter, with proof of delivery. If that has not worked, Consumer Direct will give you advice.

Further information

Copies of the Local Government (Miscellaneous Provisions) Act 1982, which covers Sex Establishment Licences, are available from Her Majesty's Stationery Office.