



# **SEX ESTABLISHMENTS**

## **Licensing Policy**

### **Environmental Health and Housing Services**

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Authors	K Nicholls (NDDC) A R Nicholls (TDC)	Next Review Date	4 January 2025

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## Foreword

This Licensing Policy sets out this Authority's licensing framework for premises which need to be licensed as sex establishments within the meaning of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009. This legislation is collectively referred to in this document as 'the Act'.

This Authority resolved to apply Schedule 3 of the Act with effect from the 1<sup>st</sup> February 1983 (with the additional provisions in relation to Section 27 being adopted on the 25 August 2010). The adoption of Schedule 3 allows the Authority to set terms and conditions and fees for the grant, renewal, variation and transfer of such licences and the number of licences that may be issued in the area.

Section 27 of the Policing and Crime Act 2009 was introduced in order to give licensing authorities greater control over premises such as lap dancing clubs which were previously regulated under the Licensing Act 2003. This is an important reform which gives local people greater influence over this type of sex establishment which has grown in popularity in recent years.

The Authority does not take a moral standpoint in publishing this Policy. The Authority recognises that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. The Council's role as the Licensing Authority is to regulate licensed premises in accordance with the law and Government guidance.

The Authority is not required by law to consult on this Policy but we recognise that applications for sex establishments – by their very nature – are often controversial and raise legitimate concerns among local residents and businesses in the community. For this reason we are keen to seek the views of relevant individuals and organisations within the community. Your views are important and we will take your comments into consideration when finalising our Policy.

A handwritten signature in black ink, appearing to read 'Frederick Tucker', written over a horizontal line.

**Councillor Frederick Tucker**  
**Chair, Licensing & Community Safety Committee**

## 1. Introduction

*NB. This Policy is intended to provide general guidance only. It does not constitute a definitive statement of law. Applicants who require legal advice on a specific topic are advised to consult a licensing solicitor. Text in the shaded boxes is advisory or explanatory and intended only to give assistance to applicants, statutory authorities, residents and businesses.*

- 1.1 This Statement of Licensing Policy (“the Policy”) draws its authority from the Local Government (Miscellaneous Provisions) Act 1982 (“the Act”) as amended by section 27 of The Policing and Crime Act 2009 and has been prepared in accordance with guidance issued by the Home Office in March 2010.

The Policy has four main purposes:

- to assist the Licensing Authority in determining licence applications in a consistent and equitable manner,
- to inform and advise applicants,
- to inform and advise residents and businesses, and
- to inform a court at appeal.

- 1.2 North Devon District Council (“the Authority”) resolved to adopt Schedule 3 (as amended by Section 27 of the Policing and Crime Act 2009 to allow for the licensing of sexual entertainment venues) on 25 August 2010 in order to regulate sex establishments.<sup>1</sup>

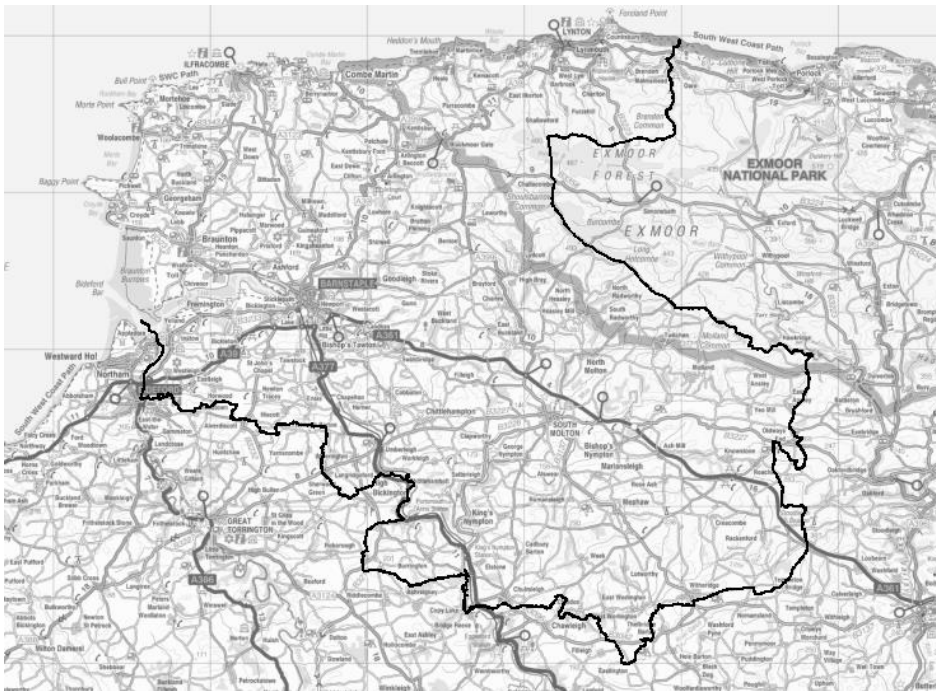
*Section 27 gives local authorities more powers to control the number and location of lap dancing clubs and similar venues in their area. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the Licensing Act 2003 and will give local people a greater say over the regulation of such premises in their area. (Home Office Guidance 1.3)*

- 1.3 This Statement of Licensing Policy sets out the Authority’s requirements for premises to be licensed as sex establishments within the meaning of the Act. The information contained in the appendices and referred to within this policy should be read as an inclusive part of this policy document. The Policy was formally adopted by Strategy and Resources Committee on TBC.
- 1.4 This Policy will be reviewed every five years. The Authority may review the Policy earlier at its discretion or if required by any legislative changes.
- 1.5 The Authority does not take a moral standpoint in publishing this Policy. The Authority recognises that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. The Authority’s role as the licensing authority is to regulate licensed premises in accordance with the law and Government guidance.
- 1.6 The Authority may depart from the guidelines set out in this Policy but will only do so in exceptional circumstances where there are compelling and justifiable reasons. The Authority will give a full explanation for any such departure from policy.
- 1.7 The Authority may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the police and other partners to fulfil its statutory objective of preventing and reducing crime in the area.

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<sup>1</sup> See Glossary for definition

## 2. The Geographical Area



- 2.1 In being largely rural in character, and an area of outstanding natural beauty, North Devon, in common with other parts of Devon, has much to offer its residents and visitors. The holiday and entertainment industries, therefore, are major contributors to the economy of the district, with 50,000 visitors being accommodated in the area at peak times.
- 2.2 North Devon is 108,590 hectares (419 square miles) in size, and has an estimated resident population of 95,400<sup>1</sup>, comprised of 45,766<sup>2</sup> households. Of those residents 46,800<sup>(1)</sup> are male and 48,600<sup>(1)</sup> are female. With individuals aged 16 to 64 estimated to number 55,200<sup>(1)</sup>.
- 2.3 Almost half of the population lives in, or close to, Barnstaple, whilst there are smaller concentrations of population at Braunton, Ilfracombe and South Molton. Holiday locations such as Croyde and Woolacombe have national and international renown.
- 2.4 Despite the popularity and benefits of the area, however, the median gross annual pay for employees in full or part time employment (not including self-employed) in North Devon for 2016 is £17,565<sup>(3)</sup> some £5,519<sup>(3)</sup> below the median for all employees in the UK. The rate of unemployment is 2.3%<sup>(4)</sup> , which is 2%<sup>(4)</sup> lower than the national average. .

## 3. Consultation

- 3.1 Consultation on this draft Policy took place between 01/05/2014 and 26/06/2014. Consultation was conducted with statutory authorities, local residents and other relevant organisations.

*The Act is not prescriptive about how the local authority should consult local people. Consultation should be fair and meaningful and local authorities should seek to make any relevant information available to local people in order to inform their understanding (Home Office Guidance 2.20).*

### Data Sources

1. 2017 Population estimates published by Office for National Statistics
2. NDC Figure 09.09.2018
3. 2017 Office for National Statistics population estimate
4. April 2017 to March 2018 Office for National Statistics annual population survey

## 4 Licensing Objectives

- 4.1 The Act does not prescribe any licensing objectives. However, this Authority believes it is desirable, in the interests of clarity and transparency, to define the key objectives which will underpin the regulation of sex establishments in its District. The objectives are:
- to prevent sex establishments from causing crime, harm or nuisance to the public;
  - to ensure that sex establishments are located in areas where they will not have an adverse impact on the local community and amenities;
  - to protect performers;
  - to promote equality in sex establishment licensing.
- 4.2 The Authority will attach the greatest importance to the promotion of the licensing objectives when determining applications and regulating licensed premises.

## 5 Integration with other Policies

- 5.1 The Authority will endeavour to apply this Policy in a way which is consistent with other relevant policies/strategies.
- 5.2 Whilst this Policy stands alone, sex establishments may often require other consents in order to provide other facilities. In particular, applicants wishing to sell alcohol and/or provide regulated entertainment or late night refreshment are advised to have regard to this Authority's *Statement of Licensing Policy* which sets out licensing requirements for those activities. The Policy can be viewed at [www.northdevon.gov.uk/licensing](http://www.northdevon.gov.uk/licensing)

## 6. The Licensing Function

- 6.1 This Policy sets out the general principles the Authority will apply when determining applications for licences for sex establishments. It explains the application process and provides information on what is expected of applicants. It also explains the procedure for making objections to licence applications.
- 6.2 In discharging its licensing function, the Authority will have regard to:
- The Local Government (Miscellaneous Provisions) Act 1982
  - Crime and Disorder Act 1998 (in particular s.17)
  - The Licensing Act 2003
  - The Human Rights Act 1998
  - The Policing and Crime Act 2009 (s.27)
  - the Provision of Services Regulations 2009
  - the Regulators' Compliance Code
  - the current Safer North Devon Community Safety Strategy
  - the Authority's Corporate Plan
  - the Authority's Licensing Enforcement Policy
  - Home Office Guidance: *Sexual Entertainment Venues (March 2010)*

*(Reference to legislation shall include any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them).*

- 6.3 At the time of drafting this policy, this Authority has no licensed sex establishments and no premises likely to fall within the definition of a sexual entertainment venue.

## **7. Number and Location of Licensed Premises**

- 7.1 The Authority recognises that, by virtue of s.12 (4) of Schedule 3 to the Act, it can limit the number of sex establishments in any locality within its District. That number may be nil. The Authority has not chosen not to set a limit and will therefore determine each application on its merits having regard to the likely impact on any given locality.
- 7.2 Whilst the Authority has not imposed a limit on the number of premises that may be licensed in any locality, the Authority will not license premises in proximity to:
- (a) a residential area;
  - (b) premises, areas (or access routes to premises or areas) which are designed for or attract children or families, such as leisure centres, schools, play areas, parks, children's centres, youth clubs, nurseries or other similar establishments;
  - (c) a place of public religious worship;
  - (d) historic buildings;
  - (e) cultural facilities (e.g. museums, art galleries, libraries);
  - (f) educational establishments;
  - (g) any premises which caters for, or is used by vulnerable children or adults
  - (h) community facilities and public buildings (including hospitals and medical centres);
  - (i) any area which is focus for tourist activity;
  - (j) an area designated for social or economic regeneration;
  - (k) an area with a history of significant crime or social difficulties.

## **8. Exempt Premises**

- 8.1 The following are not sexual entertainment venues for the purposes of this Policy:
- sex cinemas and sex shops<sup>2</sup>;
  - premises at which the provision of relevant entertainment<sup>3</sup> 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.
- 8.2 For the purposes of this policy, relevant entertainment is provided if, and only if, it is provided, or permitted to be provided, by or on behalf of the organiser<sup>4</sup> before an audience and involves partial or full nudity<sup>5</sup>.

## **9. The Licensing Process**

### **9.1 Making an Application**

- 9.1.1 Whilst not a legal requirement, the Authority will normally expect that applications for licences for permanent commercial premises should be from businesses with planning consent for the property concerned.
- 9.1.2 The Authority expects that applicants will consult local residents, businesses and/or community groups in the vicinity of the premises so far as is reasonably practicable prior to submitting a formal application.

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<sup>2</sup> See Glossary for definitions

<sup>3</sup> See Glossary for definition

<sup>4</sup> See Glossary for definition

<sup>5</sup> See Glossary for definition

- 9.1.3 Applicants are advised to have regard to the Authority's standard licence conditions for sex establishments in order to ascertain the operational standards expected and the types of controls typically required (see Appendix B).
- 9.1.4 Applications must state the full address of the premises to be licensed. Applications in respect of a vehicle, vessel or stall must also state where it is to be used as a sex establishment.
- 9.1.5 Applications should be made in accordance with the procedures set out at Appendix C. Application forms can be downloaded from the Authority's web-site, completed online or are available upon request to the Licensing Team.
- 9.1.6 An application form and relevant documentation for the new licence, renewal, variation or transfer must be completed and returned with the appropriate fee as prescribed in the Authority's Schedule of Fees and Charges.

## **9.2 Objections to Applications**

- 9.2.1 Any person may make an objection to an application for a sex establishment licence. Objectors do not have to live in the vicinity of the premises and may include residents, residents'/tenants' associations, community associations, and trade associations. Councillors and MPs may also raise objections. Elected councillors of this Authority may represent interested parties, provided they do not also sit on the Licensing Sub-Committee determining the application in question. The police are a statutory consultee for all applications.
- 9.2.2 Persons objecting to an application must state the grounds on which the objection is made. Objections should:
- be made in writing;
  - indicate the name and address of the person or organisation making the representation;
  - indicate the premises to which the objection relates;
  - indicate the proximity of the premises to the person making the representation.
- 9.2.3 Objections may only be made within the period of 28 days following the date on which the application was given to the Licensing Authority.
- 9.2.4 The Licensing Authority will not normally consider any objection that does not contain the name and address of the person making it. However, names and addresses of persons making representations will not be disclosed except with their written permission.
- 9.2.5 Objections that are repetitious, frivolous or vexatious will be disregarded. A frivolous objection is generally taken to be one that is lacking in seriousness. A vexatious objection is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice.
- 9.2.6 The Authority will not accept objections made on moral grounds.
- 9.2.7 Where objections are made and accepted, the Licensing Authority will provide copies to the applicant.

## **9.3 Determination of Applications**

- 9.3.1 The powers of the Licensing Authority under the Act may be carried out by the Licensing and Community Safety Committee or by a sub-Committee of the Licensing and Community Safety Committee.



- 9.3.2 When determining a licence application, the overriding principle adopted by this Authority will be that each application will be determined on its merits. The Authority will have regard to the relevant legislation, supporting regulations, guidance issued by the Home Office and this Statement of Licensing Policy.
- 9.3.3 When determining applications, the Licensing Authority will take account of any comments made by the Chief Officer of Police and any relevant objections.
- 9.3.4 Where no objections are received, the application will be granted on the terms applied for, subject to any conditions imposed by the Licensing Authority. Where relevant objections are received and not withdrawn, the application will be determined at a hearing<sup>6</sup> before a Licensing sub-Committee. This will normally be held within 20 working days of the end of the period during which objections may be made. The sub-Committee will give clear reasons for its decision. The Authority has established its own hearing procedures as provided for under the Licensing Act regulations and these are included at Appendix D.
- 9.3.5 The names and addresses of objectors will not be disclosed to applicants or published in public reports without the objector's consent. Such details will only be made available to Councillors sitting on the Licensing Sub-Committee.
- 9.3.6 The grant of a licence does not exempt applicants from obtaining permissions or authorisations required under any legislation, byelaw, order or regulation other than Schedule 3 of the Act.

#### **9.4 Licence Conditions**

- 9.4.1 The Authority has the power to make regulations prescribing standard conditions which may be applied to a licence for a sex establishment. The standard conditions which this Authority will attach to a licence are shown at Appendix B. Where it is reasonable and necessary, the Authority may modify these conditions or attach additional conditions to a licence.
- 9.4.2 Conditions will generally relate to matters falling within the control of the licence holder and may include:
- the opening and closing hours of the premises
  - displays or advertisements on or in the premises
  - the visibility of the interior of sex establishments to passers-by
  - any change of a sex cinema to a sex shop or a sex shop to a sex cinema

together with any other matters which the Authority considers relevant to the application.

- 9.4.3 Conditions will be appropriate, reasonable and proportionate and will be tailored to individual premises having regard to the need to promote the Authority's licensing objectives.

#### **9.5 Refusal of Licences**

- 9.5.1 Except where the Authority are prohibited from granting, renewing, varying or transferring a licence, the Authority will not refuse a licence without first:
- Notifying the applicant or holder of the licence in writing of the reasons;
  - Giving the applicant or holder of the licence the opportunity of appearing and making representations before a Licensing Sub Committee.

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<sup>6</sup> See Glossary

### 9.5.2 Mandatory Grounds for Refusal (s.12(1))

The Act requires the Authority to refuse to grant or transfer a licence to:

- (a) A person under the age of 18;
- (b) A person who is for the time being disqualified from holding a licence;
- (c) A person who is not resident in an EU state or was not so resident throughout the period of 6 months immediately preceding the date upon which the application was made;
- (d) A body corporate which is not incorporated in an EU state; or
- (e) A person who has, within the period of 12 months immediately preceding the date upon which the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

### 9.5.3 Discretionary Grounds for Refusal (s.12(2 & 3))

An application for grant or renewal of a licence may be refused on one or more of the following grounds:

- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason (see 9.5.5);
- (b) that if the licence were to be granted, renewed or transferred the business to which it relates 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;
- (c) that the number of sex establishments in the relevant locality that the application is made is equal to or exceeds the number which the Authority considers is appropriate for that locality (nil may be an appropriate number for these purposes).
- (d) that the grant or renewal of the licence would be inappropriate having regard to:
  - the character of the relevant locality<sup>7</sup>;
  - 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.

9.5.4 When considering discretionary grounds for refusal under s.12(3)(d) of the Act, the Authority may take into consideration the following factors:

- the type of activity and the proposed hours of operation
- the likelihood of any adverse impact arising as a result of a licence being granted for a premises in a locality where there are already existing sex establishments
- crime and disorder issues
- the likelihood of any noise or disturbance being caused by the premises
- the type and character of other businesses in the locality
- the physical structure, condition and appearance of the premises (see Appendix B).

### 9.5.5 Suitability of Applicant

When determining whether an applicant is a suitable person to hold a licence, the Authority may take into consideration the following factors:

- the honesty and integrity of the applicant
- any convictions, cautions or offences<sup>8</sup>

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<sup>7</sup> See glossary

➤ <sup>8</sup> The Authority will require applicants and any company directors and/or manager of the premises to provide a Basic Criminal Disclosure or the results of a Subject Access Request with their application (see Appendix C).

- the operation of existing or previous licences held by the applicant and their track record of compliance
- the experience and knowledge of the type of sex establishment the applicant intends to operate
- the applicant's ability to comply with the Authority's licensing requirements and to minimise the impact of the business on local residents and businesses
- any reports about the applicant received from the police or any other reputable source
- the managerial competence of the applicant
- evidence of robust management structure, policies and procedures clearly setting out how the premises will be operated to promote the Authority's licensing objectives
- policies for the protection and welfare of performers
- evidence that the applicant has appropriate measures in place to protect the public (e.g. transparent charging, freedom from solicitation etc.)

## **9.6 Revocation of Licences**

9.6.1 The Authority may revoke a licence:

- on any of the mandatory grounds specified in paragraph 9.5.2; and
- on either of the discretionary grounds specified in paragraph 9.5.3 (a) and (b).

9.6.2 The Authority will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before a Licensing Sub Committee.

## **9.7 Duration of Licences**

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

9.7.2 Where the Authority is satisfied that it is necessary for the purposes of winding up the estate of a deceased licence holder, it may extend the term of the licence (normally for three months or such other period the Authority considers appropriate).

## **9.8 Cancellation of Licences**

9.8.1 The licence-holder may surrender the licence at any time and may request the Authority in writing to cancel the licence.

9.8.2 In the event of the death of the licence-holder, the licence will be deemed to have been granted to his personal representatives and will remain in force for three months from the date of death, unless previously revoked.

## **9.9 Appeals**

9.9.1 Section 27 of the Act provides for appeals against the decisions of the Authority. An appeal must be made to the local magistrates' court within 21 days of the date of the Licensing Authority's decision.

9.9.2 An appeal may be made in the following circumstances:

- refusal of an application for the grant, renewal or transfer of a licence.
- refusal of an application to vary terms, conditions, or restrictions on or subject to which any licence is held.
- a grievance relating to any term, condition or restriction on or subject to which a licence is held.

- revocation of a licence.

9.9.3 There is no right of appeal for objectors. There is a right of appeal against refusal on mandatory grounds, only where the appellant alleges the ground did not apply to them. There is no right of appeal against refusal on the grounds that there are sufficient sex establishments in the locality or that the grant of a licence would be inappropriate having regard to the character of the locality, use of premises in the vicinity and the layout, character, condition and location of the premises.

9.9.4 A person wishing to appeal against a decision of the Authority about a sex establishment is strongly advised to seek legal advice prior to commencing any action in a court of law.

## **10. Waiver**

10.1 Section 7(4) of the Act allows the Authority to waive the requirement for a licence where it considers this would be unreasonable or inappropriate.

10.2 The test of what might be considered 'unreasonable' or 'inappropriate' will be made on the facts of each individual case but may include:

- minor or temporary events (e.g. sale of sex articles at a trade show or exhibition);
- events where the provision of sex articles is incidental or ancillary to the event itself;
- a one-off screening of an erotic or sexually explicit film at a cinema (subject to BBFC film classification criteria).

10.3 The Authority may grant a waiver for such period as it sees fit and may terminate the waiver by giving 28 days notice in writing.

## **11 Enforcement and Complaints**

11.1 Where possible, the Authority will give early warning to licence holders of any concerns about problems at a particular premises and of the steps required for improvement.

11.2 The Authority will have regard to the Regulators' Compliance Code and the Better Regulation Delivery Office's five Principles of Good Regulation. The Authority will carry out its regulatory functions in a fair, open and consistent manner.

11.3 Enforcement will also be carried out in accordance with the Authority's Licensing Enforcement Policy which sets out clear standards and procedures. Enforcement will be:

- proportionate - action will be commensurate with the offence
- accountable - action will be justifiable and subject to public scrutiny
- consistent - action will be fairly and equitably applied
- transparent - the reasons for action will be clearly explained
- targeted - action will be based on risk

11.4 Where possible and appropriate the Authority will give early warning to licence holders of any concerns about problems identified at premises and of the need for improvement

11.5 The Authority recognises the interests of both residents and businesses and will work closely with partners, to assist licence holders to comply with the law and any conditions attached to the licence. However, action will be taken against those who commit serious offences, persistently break the law or fail to comply with conditions of the licence.

- 11.6 Complaints about licensed premises should be made in writing and addressed to: Lead Officer Licensing, Environmental Health and Housing, North Devon Council, Lynton House, Commercial Road, Barnstaple, Devon, EX31 1DG or e-mailed to [licensing@northdevon.gov.uk](mailto:licensing@northdevon.gov.uk)

## **12 Equality and Human Rights Issues**

- 12.1 In developing this policy, the Authority recognises its responsibilities under the Equality Act 2010, to consider the need to eliminate unlawful discrimination and to promote equal opportunities. The Policy therefore supports and is supported by North Devon and Torridge District Council's Joint Inclusive Equality Scheme and any equality issues will be addressed in an Equality Impact and Needs Assessment.
- 12.2 The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way that is incompatible with a convention right. The Authority will have regard to the Human Rights Act when exercising its licensing functions.
- 12.3 Conditions relating to disabled access will not be attached to licences, as this would duplicate existing statutory requirements. The Authority therefore takes this opportunity to remind applicants and licensees of their duties under the Equality Act 2010 and encourages individuals to provide adequate and appropriate facilities to enable the admission of disabled people.

## APPENDIX A – Glossary of Definitions

- ‘Hearing’ – quasi-judicial arrangement for determination of applications before a Licensing sub-Committee. This will consist of a ‘bench’ of three councillors drawn from the Council’s Licensing and Community Safety Committee. The hearing will normally take place in public in accordance with the Authority’s established procedures (see Appendix D)
- ‘Nudity’ - in the case of a woman, exposure of her nipples, pubic area, genitals or anus; in the case of a man, exposure of his pubic area, genitals or anus.
- ‘Organiser’ - person who is responsible for the organisation or management of the relevant entertainment or the premises.
- ‘Relevant entertainment’ - 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 the audience (whether by verbal or other means). An audience includes an audience of one.
- ‘Relevant locality’ – the Act does not define relevant locality but, for the purposes of this policy, the Authority, when determining relevant locality, may consider the following matters:
  - any area with a statutorily defined boundary (e.g. a parish or ward)
  - an area with a natural boundary such as a river or major road
  - a clearly defined area of a town such as a recognised retail/shopping centre
  - a clearly defined residential area or housing development
  - a business park or industrial estate

Each case will be considered individually.

- ‘Sex Establishment’ is defined under the Act as a ‘sex shop’, a ‘sex cinema’ or a ‘sexual entertainment venue’. It includes any premises, vehicle, vessel or stall used as a sex establishment but does not include a private dwelling to which the public are not admitted.
- ‘Sex Shop’ - 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 sexual activity; or acts of force or restraint which are associated with sexual activity.
- ‘Sex Article’ - anything made for use in connection with, or for the purpose of stimulating or encouraging:
  - a. sexual activity; or
  - b. acts of force or restraint which are associated with sexual activity;

or any of the following:

- a) 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) 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;

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

- 'Sex Cinema' - 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;
  - (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.
- 'Sexual entertainment venue' - 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.
- 'Vessel' includes any ship, boat, raft or other apparatus constructed or adapted for floating on the water.

## **APPENDIX B**

### **STANDARD CONDITIONS APPLICABLE TO LICENCES FOR SEX ESTABLISHMENTS**

These Conditions are made by North Devon District Council under paragraph 13(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and come into effect on 03/02/2015

The Conditions are divided into five parts as follows:

Part 1	Definitions and Interpretation
Part 2	Conditions applying to all premises
Part 3	Conditions applying to Sex Shops
Part 4	Conditions applying to Sex Cinemas
Part 5	Conditions applying to Sexual Entertainment Venues

#### **PART I DEFINITIONS AND INTERPRETATION**

- 1.1 In these Regulations the following expressions shall have the following meanings:
- i) "Act" means the Local Government (Miscellaneous Provisions Act) 1982.
  - ii) "Approval or consent of the Council" means approval or consent of the Council in writing.
  - iii) "Authorised Officer" means an officer of the Council authorised in writing to undertake duties under the provisions of the Local Government (Miscellaneous Provisions) Act 1982.
  - iv) "Premises" 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 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
  - v) "Relevant Entertainment" means 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).
  - vi) "Sex establishment", "Sex Cinema", "Sex Shop", "Sex Article" and "Sexual Entertainment Venue" have the meanings ascribed to them in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
  - vii) "The Council" means North Devon District Council.
- 1.2 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 other legislation, order or regulation other than Schedule 3 of the Act.
- 1.3 The Council reserves the right to add to, modify or dispense with these conditions.



- 1.4 All applications for modification or dispensation of these conditions shall be made in writing and shall state the reasons why it is desired to modify or dispense with these conditions.
- 1.5 Premises licensed as a Sex Shop, Sex Cinema or Sexual Entertainment Venue shall be used only for the purposes for which the licence was granted and shall not be used, wholly or in part, for any other purposes specified in Schedule 3 of the Act.

## **PART 2 CONDITIONS APPLYING TO ALL PREMISES**

### **2.1 Exhibition of Licence**

- 2.1.1 A copy of the licence and these conditions will be displayed in a prominent place on the premises where they can easily be seen and read by the public.

### **2.2 Times of Opening**

- 2.2.1 A sex establishment will only be open to the public on the days and hours specified in the licence.
- 2.2.2 The premises shall not open on Sundays or any Bank Holidays or any public holidays without the prior consent of the Council.

### **2.3 Condition, Layout and External Appearance of the Premises**

- 2.3.1 The premises must be maintained in accordance with the plan submitted with the application and approved by the Council. Alterations to the premises will not be permitted without the prior consent of the Council and may require an application to vary the licence under s.18 of the Act.
- 2.3.2 All parts of the premises shall be kept in good repair and in a clean condition to the satisfaction of the Council.
- 2.3.3 The number, size and position of all doors, openings or means of access shall comply with the following requirements:
- (i) All such doors or openings shall be clearly indicated on the inside by the word "exit"/graphic type.
  - (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 adjacent premises.
- 2.3.4 The external doors to the premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
- 2.3.5 No sign, notice, advertisement, display or image or anything of a similar nature must be displayed outside the premises without the prior approval of the Council.
- 2.3.6 The entrances to the premises shall be constructed in such a way and of a material or covered with a material which will prevent passers by from seeing the interior of the premises.
- 2.3.7 Windows and openings to the premises other than entrances shall be of a material or covered with a material which will prevent passers by from seeing the interior of the premises.

### **2.4 Alterations, Additions and Change of Use**

- 2.4.1 No change of use of any part of the premises from that approved by the Council shall be made without the prior consent of the Council and Devon and Cornwall Constabulary.
- 2.4.2 No change of use of the premises for any purpose specified in Schedule 3 of the Act will be permitted without the prior consent of the Council and Devon and Cornwall Constabulary.
- 2.4.3 Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the premises must not be made without the prior consent of the Council.

## **2.5 Closed Circuit Television (CCTV)**

- 2.5.1 A CCTV system shall be installed and maintained to the satisfaction of Devon and Cornwall Constabulary and the Council.
- 2.5.2 The CCTV shall cover all entrances and exits to the premises and all internal areas open to the public. The system must be installed and fully operational before the premises opens to the public.
- 2.5.3 All cameras shall continually record whilst the premises are open to the public and all recordings shall be retained for at least 30 days and made available on request by the police or by an authorised officer.

## **2.6 Management of the Premises**

- 2.6.1 The licence holder and all staff at the premises must be fully aware of and conversant with the conditions of the licence.
- 2.6.2 The licence holder shall maintain good order in the premises at all times when it is open to the public.
- 2.6.3 The licence holder shall take all reasonable precautions for the safety of the public and employees and must retain effective control over all parts of the premises.
- 2.6.4 The licence holder (or a responsible person aged 18 years or over nominated by him in writing in his absence) shall be in charge of and remain on the premises during the whole time they are open to the public. Such nomination shall be made available for inspection on request by the police or by an authorised officer. The person in charge shall not be engaged on any duties which will prevent him from exercising general supervision of the premises and he/she shall be assisted as necessary by suitable adult persons.
- 2.6.5 The licence holder or the responsible person shall maintain a daily register to be kept on the premises in which there shall be recorded the names and addresses of those employed in the sex establishment. The register is to be completed each day prior to the sex establishment opening for business and must be made available for inspection on request by the police or by an authorised officer.
- 2.6.6 The licence holder shall ensure that during the hours the sex establishment is open for business every employee (with the exception of performers whilst performing relevant entertainment) wears a badge of a type to be approved by the Council bearing the photograph of the employee and indicating his name and that she/he is an employee.
- 2.6.7 A notice showing the name of the person responsible for the management of the sex establishment must be prominently displayed within the premises throughout the period during which he/she is responsible for its management.

- 2.6.8 Where the licence holder 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 7 days of such change.
- 2.6.9 The licence holder shall ensure that no part of the premises is used by prostitutes (male or female) for the purposes of soliciting or any other immoral purposes. 'Soliciting' includes the distribution of leaflets.
- 2.6.10 The licence holder, employee or any other person shall not seek to obtain custom by means of personal solicitation outside or in the vicinity of the premises.
- 2.6.11 The licence holder 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 and are so designated on the plan of the premises.

## **2.7 Admission to the Premises**

- 2.7.1 No person under the age of 18 shall be admitted to the premises, employed in the business of the sex establishment, or permitted to work in the premises on a self-employed basis.
- 2.7.2 At each entrance to the premises there shall be prominently displayed a notice prohibiting entry to all persons under 18 years of age. A notice must also be prominently displayed at the entrance stating that any person suspected of being under 25 years of age will be required to produce valid photographic identification that they are over 18 years of age.
- 2.7.3 The licence holder or responsible person shall ensure that all persons employed on the premises are aware of the age restriction on clients and that they exclude or remove from the premises any person attempting to evade the restriction.
- 2.7.4 The licence holder must maintain a Refusals Log to record any occasion when a person is refused entry to the premises. The Log will be made available on request by the police or by an authorised officer.
- 2.7.5 Any person who appears to be drunk/intoxicated or under the influence of illegal drugs must not be admitted to the premises.
- 2.7.6 Police officers, authorised officers and officers of other authorised agencies shall be admitted immediately at all reasonable times and at any time the premises are open for business.

## **PART 3 CONDITIONS APPLYING TO SEX SHOPS**

- 3.1 All sex articles and other things displayed for sale, hire, exchange or loan within a sex shop shall be clearly marked to show the price charged.
- 3.2 All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase, hire, exchange or loan and a notice to this effect is to be prominently displayed within the premises.
- 3.3 No film shall be sold or supplied unless it has (a) been passed by the British Board of Film Classification and bears a certificate to that effect or (b) approved by the Council and is a reproduction authorised by the owner of the copyright of the film so certified.
- 3.4 No moving picture or display or recorded sound of any description however provided shall be permitted on the premises except for a period necessary to check a recording for fault by the licence holder or for a period of not more than one minute for the sole purpose of demonstrating it to a prospective purchaser or hirer of the article in question and such display shall be in a booth to which there shall only be permitted the prospective purchaser or hirer and any one person employed by the licence holder to sell or hire such articles. The licence

holder must not make any charge or permit any charge to be made for such a display as mentioned in this condition.

- 3.5 All refuse produced on the premises and materials, goods or articles discarded for any reason shall be securely stored within the premises and delivered in sealed containers to the designated refuse collection point.
- 3.6 The licence holder shall make such provision for the reception of goods and articles for sale, hire or display on the premises so that they are received directly into the premises and not subject to storage for any period of time outside the premises on any pavement, footpath, forecourt or yard.

#### **Part 4 CONDITIONS APPLYING TO SEX CINEMAS**

##### **4.1 Film Categories**

The categories U, PG, 12, 15, 18 and RESTRICTED 18 have the following effect:

U	Universal.- Suitable for all
PG	Parental Guidance. Some scenes may be unsuitable for young children.
12	Passed only for persons of 12 years and over.
15	Passed only for persons of 15 years and over.
18	Passed only for persons of 18 years and over.
RESTRICTED (18)	The 'R18' category 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' videos may not be supplied by mail order.

##### **4.2 Exhibition of Films**

- 4.2.1 No film shall be exhibited at the premises unless it has been passed by the British Board of Film Classification as a U, PG, 12, 15, 18 or RESTRICTED 18 film and no notice of objection to its exhibition has been given by the Council; or it has been passed by the Council as a U, PG, 12, 15, 18 (North Devon) film.
- 4.2.2 A representation or written statement of the terms of any certificates given by the British Board of Film Classification shall be shown on the screen immediately before the showing of any film to which it relates and the representation or statement shall be shown for long enough and in form large enough for it to be read from any seat in the auditorium.
- 4.2.3 Where the Council has given notice in writing to the licence holder of the premises prohibiting the exhibition of a film on the ground that it contains material which, if exhibited, would offend against good taste or decency or would be likely to encourage or incite to crime or to lead to

disorder or to be offensive to public feeling, that film shall not be exhibited in the premises except with the prior consent in writing of the Council.

4.2.4 No film in the 'RESTRICTED 18' category may be exhibited in a multi-screen complex whilst persons under 18 are being admitted to any other performance in the complex.

4.2.5 When the programme includes a film in 'RESTRICTED 18, category the Licence holder shall display in a conspicuous position at each entrance to the premises a notice in clear letters in the following terms:

"PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA FOR ANY PART OF THE PROGRAMME".

4.2.6 The licence holder shall display at each entrance to the premises in a prominent position where it can be easily seen and read a timetable of the films on exhibition. In case of a multi-screen complex, where consent has been granted, the notice shall specify the particular part of the premises in which films in the 'RESTRICTED 18' category are being exhibited.

4.2.7 When exhibiting a 'RESTRICTED 18' film, the timetable of films must include the following addition to the category shown:

'RESTRICTED 18': "PASSED ONLY FOR PERSONS OF 18 YEARS AND OVER. THIS FILM IS LIKELY TO CONTAIN EXPLICIT WORKS OF CONSENTING SEX OR STRONG FETISH MATERIAL INVOLVING ADULTS."

4.2.8 All individuals wishing to view a film in the 'RESTRICTED 18' category shall provide proof of age. The only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or ID card bearing the PASS hologram.

### **4.3 Advertisements**

4.3.1 No advertisement displayed at the premises of a film to be exhibited at the premises shall depict any scene or incident which is not included in the film as certified by the British Board of Film Classification or approved for exhibition by the Council.

4.3.2 Where the Council has given notice in writing to the licence holder of the premises objecting to an advertisement on the ground, that, if displayed, it would offend against good taste or decency or be likely to encourage or incite to crime to lead to disorder or to be offensive to public feeling, that advertisement shall not be displayed at the premises except with the prior consent of the Council.

### **4.4 Sale of Sex Articles**

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 sex cinema.

## **PART 5 CONDITIONS APPLYING TO SEXUAL ENTERTAINMENT VENUES**

### **5.1 Performances of Relevant Entertainment**

5.1.1 Relevant entertainment shall take place only in the areas approved by the Council and so designated on the approved plan.

- 5.1.2 There shall be no private booths or performing areas provided on the premises.
- 5.1.3 There shall be a written code of conduct for performers. All performers must comply with the code and a record, signed by the performers, must be kept on the premises and be made available on request by the police or by an authorised officer. The code shall include the following:
- No performances shall include or simulate any sexual act, including any sex act with any other performer, the performer themselves, or persons in the audience or with the use of any object.
  - Performers must not use any inappropriate, lewd, suggestive or sexually graphic language.
  - Performers must not touch the breasts or genitalia of another performer, at any time as part of a performance.
  - There shall be no use of sex articles (as defined by paragraph 4(3) of Schedule 3 of the Act) at any time.
  - There shall be no physical contact between a performer and a customer except as permitted by the House Rules (see 5.2.1).
  - Performers must not climb onto furniture provided for customers.
  - Performers must not remain in a state of undress in any public area when they have completed their act.
  - No performer must appear outside the premises in a nude or scantily-clad condition.
  - At all times performers must keep a minimum distance of one metre away from customers.

## **5.2 House Rules**

- 5.2.1 Prior to the opening of the premises, the licence holder must provide a copy of the premises' House Rules to the Council and to Devon and Cornwall Constabulary for approval. The House Rules must include, as a minimum, the following:
- No person under the age of 18 shall be permitted to view relevant entertainment.
  - Physical contact with performers is not permitted. At all times customers will keep a minimum distance of one metre away from performers.
  - No member of the audience shall throw money or otherwise give gratuities to the performers except as permitted above.
  - No customer shall accept from or give to any performer or member of staff any telephone number or business card or note.
  - Customers and staff will not be permitted to photograph, record, film or electronically transmit any performance.
  - Customers must remain seated whilst watching a performance of relevant entertainment.
  - Any customer behaving in a disorderly or inappropriate manner will be removed from the premises and may be excluded for such period as the licence holder considers appropriate.
- 5.2.2 On entry to the premises, each customer must be provided with a copy of the House Rules.
- 5.2.3 All performers and staff must be given a copy of the House Rules. They must sign and date a copy of the House Rules which must be retained on the premises and made available on request by the police or by an authorised officer.
- 5.2.4 A copy of the House Rules shall be displayed at all times in or near the performers' changing room(s) so that they can be easily read by the performers.
- 5.2.5 Copies of the House Rules will be prominently displayed throughout the premises in locations where they can be easily read by the public.

5.2.6 Any changes or alterations to the House Rules must be submitted in writing for the approval of the Council.

### **5.3 Protection of Performers**

5.3.1 Performers shall be aged 18 years or over. The applicant shall ensure that, prior to employment, all performers undertaking relevant entertainment provide documents proving that they are 18 years of age or over. Acceptable forms of identification are recognised photographic identification documents, such as a driving licence, passport or ID card bearing the PASS hologram. These documents must be copied and retained on the performer's file.

5.3.2 A record shall be maintained on the premises detailing the names and start and finish times of individual performers involved in all forms of relevant entertainment. The record will be made available on request by the police or by an authorised officer.

5.3.3 Performers shall be provided with secure and private changing facilities. Performers shall have direct access to changing facilities without being required to pass through or in close proximity to the audience.

5.3.4 No performer shall be allowed to work if, in the judgement of the management they appear to be drunk, intoxicated, or under the influence of illegal substances.

5.3.5 All entrances to private areas to which members of the public are not permitted access shall have clear signage stating that access is prohibited.

5.3.6 Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking area.

5.3.7 The licence holder shall implement a written policy to ensure the safety of performers when leaving the premises after of work. The policy must be made available for inspection on request by a police officer or by an authorised officer.

5.3.8 No person other than performers and authorised staff shall be permitted in the changing room(s).

5.3.9 The charges for entrance and any compulsory purchases within the venue must be clearly displayed at every entrance to the premises.

5.3.10 All charges for products and services must be displayed prominently inside the premises and at each customer table and in any bar area.

### **5.4 Door Supervisors**

5.4.1 All individuals employed on the premises to conduct security activity (within the meaning of paragraph 2(1) (a) of Schedule 2 to the Private Security Act 2001) must be licensed by the Security Industry Authority (SIA).

5.4.2 An adequate number of SIA licensed door supervisors shall be on duty on the premises whilst the premises is open to the public (actual numbers and locations to be agreed with Devon and Cornwall Constabulary and the Council)

5.4.3 All door supervisors shall wear clothing to differentiate themselves from other staff.

5.4.4 A policy of random searches of persons entering the premises shall be operated. Any person found to be in possession of illegal drugs upon entry shall be prevented entry and, where possible, restrained until the police can take such person into custody. Any person found using illegal drugs on the premises shall be removed from the premises, or where possible, restrained until the police can take such person into custody.

## **5.5 Sale of Sex Articles**

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.

## **5.6 Exhibition of Films**

Films classified as 'RESTRICTED 18' must not be shown on the premises.



## **APPENDIX C**

### **Application Procedure for Grant, Variation, Transfer or Renewal of Licence for a Sex Establishment**

#### **Grant of a Licence**

To apply for the grant of a sex establishment licence an applicant must:

- provide a completed application form;
- provide a scale plan of the premises to which the application relates;
- provide a criminal conviction certificate from Disclosure Scotland (issued under section 112(1)(a) of the Police Act 1997 or the results of a subject access search under the Data Protection Act 1998 of the Police National Computer conducted by the National Identification Service (this will apply to all partners and directors where appropriate);
- pay the current application fee (part refundable if a hearing is not required);
- display a notice on the premises or near the premises as agreed by the Council;
- advertise the application in a local newspaper;
- send a copy of the application and plan to the Chief Officer of Police, Licensing Department (East), Devon and Cornwall Police HQ, Middlemoor, Exeter, Devon, EX2 7HQ within 7 days of making the application to the council.

#### **Plan of Premises**

The plan shall show:

- 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;
- the location of points of access to and egress from the premises;
- the location of escape routes from the premises;
- 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;
- 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;
- 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;
- in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
- in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
- the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
- the location of any kitchen, bar or serverly 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.

#### **Public notices**

A notice must be displayed at or on the premises to which the application relates for a period of not less than 21 consecutive days from the day following the day the application was given to the council, where it can be conveniently read from the exterior of the premises.

Where the premises cover an area of more than 50 square meters, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.

The notice must be on pale blue paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16.

The notice must state:

- details of the application and activities that it is proposed will be carried on or from the premises,
- the full name of the applicant,

- the postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,
- the date, being 28 days after that on which the application is given to the council, by which representations may be made to the council and that representations should be made in writing,
- that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine (£5000) for which a person is liable on summary conviction for the offence.

A similar notice must be published in a local newspaper within 7 days of giving the application to the council.

### **Variation of a licence**

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

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 of a licence**

A person may apply for 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.

## **APPENDIX D PROCEDURES FOR LICENSING SUB-COMMITTEE HEARINGS AND THE FORM OF DISCUSSION AT HEARINGS**

The quorum for Sub-Committees shall be 3 and decisions may be taken by a majority vote. Abstentions will not be permitted and the Chair will not have a casting vote.

The Sub-Committee may specify a maximum period of time in which an applicant or any other person who is permitted to appear at the hearing may address the Sub-Committee.

The Sub-Committee may refuse to permit the giving of evidence that it considers to be irrelevant or repetitious.

The Sub-Committee may from time to time adjourn the hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

### **Public Hearings**

Hearings before the Sub-Committee are normally to be held in public. The exceptions to this rule are:

- (i) Where the Sub-Committee decides that it is in the public interest for the public to be excluded from a particular hearing, or part thereof;
- (ii) Where the Sub-Committee makes a resolution that the public and the press be excluded from the hearing, on the basis that either confidential or exempt information is likely to be disclosed. This includes the situation where there is a need for the Sub-Committee to obtain legal advice.

### **Rights of Parties**

All parties have the following rights:

- (i) to attend the hearing;
- (ii) to have their representations considered by the Sub-Committee, even if unable or unwilling to attend the hearing;
- (iii) to be assisted or represented by any person, whether legally qualified or not;
- (iv) to give further information in support of their application, representation or notice, in response to a point upon which the authority has given notice to a party that it will want clarification;
- (v) to address the Sub-Committee;
- (vi) to exercise their rights within the hearing for an equal maximum time.

### **Further Opportunities for Parties**

If granted permission by the Sub-Committee, parties may also:

- (i) question any other party;
- (ii) call any other person as a witness.

A request by a party to call a witness at the hearing may only be granted where the party has given prior notification of the request and details of the points on which that witness may be able to assist the Sub-Committee in considering the application.

## Procedures at the Hearing

Subject to the right of the Sub-Committee to amend its procedures at any given hearing, the following procedures are to be followed at all hearings:

- (i) The Chair welcomes those present to the meeting, and explains briefly the location of the facilities available for the public and the procedure in the event of there being a fire alarm;
- (ii) The Chair of the meeting introduces the members of the Licensing Sub-Committee officiating, and the Officers of the Licensing Authority present and explains the role of those present on behalf of the Authority;
- (iii) The Chair introduces the matter to be resolved, asks the parties to the hearing and their representatives to introduce themselves, and establishes that no members of the Sub-Committee have a disclosable pecuniary or personal interest in the matter to be considered;
- (iv) The Chair invites the Legal Officer to summarise the procedure to be followed at the hearing. The summary indicates that the hearing takes the form of a discussion led by the Sub-Committee, and cross-examination is not permitted unless the Sub-Committee considers it is necessary for it to consider the matter appropriately;
- (v) If any party fails to attend the hearing, the Sub-Committee decides whether to adjourn the matter, or proceed in the party's absence. If the decision is taken to proceed, the party's written application or representation is taken into account;
- (vi) The Sub-Committee decides whether to grant any written request made by any party for permission to call a witness at the hearing. Any request may not be unreasonably withheld;
- (vii) The Chair invites the Environmental Health Officer (EHO) or Licensing Officer in attendance to outline the matter before the Sub-Committee, without such Officer making any recommendation as to the conclusion the Sub-Committee should reach;
- (viii) The Applicant for the licence or variation presents their case, either personally or through a representative. The Applicant may give further information in support of the application, but only in response to a point upon which the Licensing Authority has given notice that it will want clarification;
- (ix) Documentary evidence or other information produced by the Applicant may be considered, provided this has been produced prior to the hearing, or if not, with the consent of all the other parties. It may be necessary in some circumstances for the hearing to be put back until later in the day so that parties may consider additional information, which is produced at the hearing;
- (x) Members of the Sub-Committee then question the Applicant. Questions should be directed through the Chair;
- (xi) The Applicant calls any witnesses in support of their application, if the Sub-Committee under above has permitted this. The witnesses address the Sub-Committee, which may then ask any question of the witnesses through the Chair;
- (xii) When the Applicant has completed the presentation of their case, the representatives of any responsible authorities who have made relevant representations address the hearing, and may be questioned by members of the Sub-Committee. Witnesses may be called by the responsible authorities where permitted by the Sub-Committee under (vi) above. Documentary or other information produced on behalf of the responsible authority may be considered, as indicated above at (ix);
- (xiii) Thereafter, interested parties address the hearing, and members of the Sub-Committee may question them. Members of the Sub-Committee then question witnesses, who are permitted to be called under (vi) above in support of the submissions of the interested parties. Documentary or other information produced on behalf of an interested party may be considered, as indicated above at (ix);
- (xiv) After the conclusion of the evidence, each party sums up their case, by addressing the Sub-

Committee in the order in which they presented their case;

- (xv) After each party has summed up, the Chair gives each party the opportunity to make any further comment, without introducing new material to the hearing;
- (xvi) In deliberating as to its decision, the Sub-Committee is entitled to exclude the parties and the general public for any reason mentioned in paragraph 3. The most likely justification is the receipt of legal advice;
- (xvii) Once a decision is reached, and the Sub-Committee is satisfied as to the terms in which the adjudication is to be delivered, the Chair invites the Licensing and Community Safety Committee Hearing Co-ordinator (LCHC) to read aloud the terms of the decision made, along with the reasons for such decision;
- (xviii) The Chair thanks everyone for their contributions, and closes the meeting, or moves on to the next item on the agenda.

### **After the Hearing**

Once the meeting of the Sub-Committee has been concluded the LCHC prepares minutes of the hearings, for approval by the EHO/Licensing Officer and Solicitor, within three working days.

The EHO/Licensing Officer issues a notice to all of the parties involved (whether present at the hearing or not), outlining the decision of the Sub-Committee, within three working days from receipt of the approved minutes.

### **Right of Appeal**

Any such appeals must be commenced by notice of appeal given by the appellant to the Clerk to the Justices for North Devon Magistrates' Court within the period of 21 days beginning with the date of receipt of the Hearing Decision Notice.