

SEX ESTABLISHMENTS LOCAL GOVERNMENT (MISC. PROVISIONS) ACT 1982 GENERAL GUIDANCE NOTES

1. Do I require a Licence for a Sex Establishment?

Yes - a licence is required for either a sex cinema, a sex shop or a sexual entertainment venue.

2. What is a Sex Cinema?

These are 'any premises, vessel, vehicle or stall used to a significant degree for the exhibition of moving pictures, however produced, which are concerned primarily with the portrayal of, or primarily deal with or relate to or intending to stimulate or encourage sexual activity or acts of force or restraint which are associated with sexual activity or are concerned primarily with the portrayal etc of the genital organs or urinary or excretory functions.'

There is exemption for:

- (i) premises licence under the Cinemas Act 1985 and used for a purpose for which a licence is required under that Act;
- (ii) premises used for non- commercial exhibitions under s6 of that Act; and
- (iii) private dwelling- house to house which the public are not admitted.

3. What is a Sex Shop?

These are 'any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or other things intended for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.'

The most contentious part of the definition is the phrase 'significant degree'. Unfortunately, the courts have not been too helpful in defining this phrase and each case has looked at it on its own facts. One to one-and-a-half per cent of business turnover from the sale of sex items is held not to a significant degree; other material considerations are the nature of the display articles and the nature of the articles themselves: *Lambeth London Borough Council v Grewal* (1985) 84 LGR 538. In another case the judge said 'significant must mean something which signifies, which is not insignificant, perhaps something which cannot be missed under the deminimis rule': *Watford Borough Council v Private Alternatives Birth Control and Education Centres* [1985] Crim LR 5.

4. What is a Sexual Entertainment Venue?

These are defined as *“any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.”* The meaning of ‘relevant entertainment’ is defined as *“any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means).”* An audience can consist of just one person (e.g. where the entertainment takes place in private booths).

The Guidance issued by the Home Office over these matters indicates that whilst local authorities should judge each case on its own merits, it would be expected that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows

5. What does sex articles mean?

These are ‘anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.’ A licence is not required for the sale of birth control items.

6. How can I make an application?

- In general the Authority has discretion whether or not to grant a licence for the use of any premises, vehicle, vessel or stall to be used as a class of sex establishment.
- A Licence cannot, however, be granted to:
 - ❖ a person under 18;
 - ❖ a person who has held a licence but has had it revoked within 12 months preceding the date of application;
 - ❖ to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made;
 - ❖ to a body corporate which is not incorporated in an EEA State; or
 - ❖ a person who has within the last 12 months preceding the date of the application been refused a licence in respect of the same premises.
- An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on any ground specified above does not have a right to appeal unless the applicant seeks to show that the ground did not apply to him.

- The Authority may refuse an application for the grant or renewal of a licence on one or more of the grounds below:
 - i. that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - ii. 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;
 - iii. that the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
 - iv. that the grant or renewal of the licence would be inappropriate, having regard to:
 - (a) the character of the relevant locality; or
 - (b) the use to which any premises in the vicinity are put; or
 - (c) the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- An applicant whose application for the grant or renewal of a licence is refused on either ground specified in (c) or (d) above does not have the right to appeal the decision. In such cases the applicant can only challenge the refusal by way of judicial review.
- When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.
- Paragraph 10 (15) of Schedule 3 of the 1982 Act gives a statutory right to any person to object to an application. However, only objections received within the statutory 28 days can be considered: *R v Birmingham City Council and others, ex parte Quietlynn Ltd and others* (1985) 83 LGR 461.
- If objections are received then the Authority is under a duty to provide, in general terms, details of the objections to the applicant. However, without the consent of the objector the Authority cannot divulge their name and address.
- The Authority must give the applicant an opportunity of appearing before the body making the decision before refusing an application.
- An application made by an individual must give their full name, permanent address and age. In the case of a limited company or unincorporated body they must supply the name of the organisation, the address of the registered or principle office and the full names and private addresses of the directors or other persons responsible for its management.
- In all cases the application must contain the full address of the premises or state where the vehicle, vessel or stall is to be used.

- Notice must also be given of the application in the local press, the Notice to appear not later than seven days after the date of the application. The Notice must also be displayed for a period of 21 days, beginning with the date of the application, on or near the premises. Within seven days of making the application a copy of the form must be sent to the police.
- A licence will remain operative beyond its expressed date of expiry provided an application for renewal is made before the old licence expires. Similarly, an application to transfer a licence can be made before expiry of the licence and the original licence will continue until the matter has been determined.

7. Can I appeal if you refuse my application?

The following may at any time, before the expiration of the period of 21 days following receipt of the application's determination, appeal to the magistrates' court acting for the relevant area:

- (i) an applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application is refused;
- (ii) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or,
- (iii) a holder of any such licence whose licence is revoked.

8. How long does a licence last?

12 months