



Council of the Isles of Scilly

Sex Establishment Licensing Policy

Incorporating Guidance and
Standard Conditions

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Introduction

- 1.1 The Licensing Department is responsible for developing and implementing this policy.
- 1.2 This policy has been drafted as a result of Council adopting legislation to allow the Council to regulate lap dancing and similar venues.
- 1.3 The creation of this policy has also allowed for the unification of the regulation of any existing sex establishments in the Islands.
- 1.4 The Council of the Isles of Scilly has adopted schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) so that it can regulate sex shops, sex cinemas and sexual entertainment venues in the Islands. In this policy, we refer to these as “sex establishments” unless we say otherwise.
- 1.5 The Standard Conditions appended to this policy (Appendices B, C & D) do not form part of the policy document, although they may be referred to within the policy. These Standard Conditions could be subject to change during the duration of this policy, but such amendment may not result in review of this policy.
- 1.6 Should any change to the Standard Conditions make it necessary to update relevant parts of this policy document, the amended policy document will be consulted upon.
- 1.7 Appendix E of this policy relates to the Procedure for the Conduct of Sex Establishment Licensing Hearings and does not form part of the policy document, although it may be referred to within the policy. This procedure could be subject to change during the duration of this policy, but such amendment will not result in review of this policy.
- 1.8 Appendix F of this policy relates to Numerical Limits. This Appendix may be amended during the lifetime of this Policy; however consultation would only take place on the numerical limit being introduced or amended, and not the policy as a whole. Amendments to this Appendix may also take place during the review of the policy as part of the consultation process.
- 1.9 Appendix G of this policy is the Schedule of Delegated Authority and does not form part of the policy document, although it may be referred to within the policy. This Schedule could be subject to change during the duration of this policy, but such amendment will not result in review of this policy.
- 1.10 Appendix H of this policy provides contact details for Licensing Services and the Police and does not form part of the policy document and is provided as information only, although it may be referred to within the policy. This Appendix may be subject to change during the duration of this policy, but such amendment will not result in review of this policy.

Purpose and aim of the policy

- 2.1 The policy is intended to set out clear and concise guidance, procedure and principles for the benefit of the Licensing Authority, the community, applicants and other relevant organisations.

- 2.2 Due to the requirement that each application must be considered on its own merits, although the Licensing Committee must have regard to this policy as part of their decision making process they are not rigidly bound by it. Should the Licensing Committee choose to depart from this policy, clear and concise reasons for doing so will be provided.
- 2.3 The policy also contains standard conditions which will be applied to the different types of sex establishment which forms part of any licence granted.

Scope

- 3.1 This policy relates to any premises wishing to operate as a Sex Shop, Sex Cinema or Sexual Entertainment Venue in The Isles of Scilly.
- 3.2 Not all premises will automatically require a licence. Where there is an exemption within the legislation this has been set out in this policy document.
- 3.3 Notwithstanding matters contained within this policy document, consideration will be given to the provisions of the Human Rights Act 1998 when considering applications for Sex Establishment licences.
- 3.4 When considering applications for a Sexual Entertainment Venue licence, in respect of premises that have previously operated without the requirement for a licence prior to the adoption of the legislation, in addition to this policy document the Licensing Authority must have regard to the Home Office guidance issued in March 2010 entitled "Sexual Entertainment Venues – Guidance for England and Wales."

Policy and Procedures statement

- 4.1 The Council does not take a moral stance through the adoption of this policy. We recognise 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. It is our role as a licensing authority to regulate such premises in accordance with the law.

SEX ESTABLISHMENT LICENSING

5 Types of Sex Establishment

- 5.1 There are 3 types of sex establishments; Sex Shops, Sex Cinemas and Sexual Entertainment Venues.
- 5.2 Not all of these premises automatically require a licence. This is due to certain provisions and exemptions within the legislation. The criteria for requiring a licence is laid out below.
- 5.3 **Sex Shop**

The legislation defines a Sex Shop as:

- “(1) Any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating –
- (a) sex articles; or
 - (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging –
 - (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity.
- (2) No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.”

Sex articles are defined as:

- “(3) (a) anything made for use in connection with, or for the purpose of stimulating or encouraging –
- (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity; and
- (b) anything to which sub-paragraph (4) below applies.
- (4) This sub-paragraph applies –
- (a) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
 - (b) to any recording vision or sound, which –
 - (i) is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage,

- sexual activity or acts of force or restraint which are associated with sexual activity; or
- (ii) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.”

5.4 Sex Cinema

The legislation defines a Sex Cinema as:

- “(1) Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which –
- (a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage –
 - (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity; or
 - (b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions,
- but does not include a dwelling-house to which the public is not admitted.
- (2) No premises shall be treated as a sex cinema by reason only -
- (a) if they are licensed under Section 1 of the Cinemas Act 1985, of their use or purpose for which a licence under that section is required; or
 - (b) of their use for an exhibition to which Section 6 of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of Section 6(6) of that Act.”

5.5 Sexual Entertainment Venue

The legislation defines a Sexual Entertainment Venue as:

- “2A (1) In this Schedule “sexual entertainment venue” means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.
- (2) In this paragraph “relevant entertainment” means—
- (a) any live performance; or
 - (b) any live display of nudity;
- which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).
- (3) The following are not sexual entertainment venues for the purposes of this Schedule—
- (a) sex cinemas and sex shops;

- (b) premises at which the provision of relevant entertainment as mentioned in sub-paragraph (1) is such that, at the time in question and including any relevant entertainment which is being so provided at that time—
 - (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 ending with that time;
 - (ii) no such occasion has lasted for more than 24 hours; and
 - (iii) no such 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 (whether or not that previous occasion falls within the 12 month period mentioned in sub-paragraph (i));
- (c) premises specified or described in an order made by the relevant national authority. “

(4) – (12) omitted as they refer to other matters

(13) “For the purposes of this Schedule references to the use of any premises as a sexual entertainment venue are to be read as references to their use by the organiser.

(14) In this paragraph—

“audience” includes an audience of one;

“display of nudity” means—

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

“the organiser”, in relation to the provision of relevant entertainment at premises, means any person who is responsible for the organisation or management of—

- (a) the relevant entertainment; or
- (b) the premises;

“premises” includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted;

and for the purposes of sub-paragraphs (1) and (2) it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.”

Waivers

6.1 Applications can be made to waive the requirement for a sex establishment licence.

- 6.2 The Licensing Authority does not consider it would be appropriate to permit waivers from the requirements to hold a sex establishment licence in respect of Sex Shops and Sex Cinemas, except in extreme circumstances considered by the Licensing Committee (for example, to allow a temporary re-location of a business following damage to licensed premises).
- 6.3 The Licensing Authority does not consider it would be appropriate to permit waivers from the requirements to hold a sex establishment licence in respect of Sexual Entertainment Venues, particularly as the legislation allows relevant entertainment on an infrequent basis of no more than eleven occasions within a 12-month period, providing there is at least one month between each period of entertainment which itself does not last for more than 24 hours.

Application Process

- 7.1 Applicants should be aware that planning permission to operate a premises as a sex establishment may not be in place. Planning is a separate process to obtaining a sex establishment licence. The Licensing Authority would recommend that potential licence applicants ensure that the appropriate planning permission is in place prior to submission of an application for a licence.
- 7.2 Applications must be submitted to the Licensing Authority together with the application fee, applications may be submitted online. The application form can be used for grant, variation, transfer and renewal applications. The application must be copied by the applicant to the Police within 7 days after the date the application was made.
- 7.3 Applicants must provide their name, address and, where the applicant is an individual, their age, plus the premises address and the proposed licensed name of the premises.
- 7.4 Applicants must, at the time of submission of a new grant or variation application, provide a scheme showing the exterior design for consideration by the Licensing Authority before the premises are opened for business in order to ensure that exterior design of the premises shall be such that the interior of the premises is not visible to passers-by.
- 7.5 In addition, applicants must, at the time of submission of a new grant or variation application, provide a plan showing the interior layout of the premises for consideration by the Licensing Authority. In the case of Sexual Entertainment Venues such plan must outline the area where relevant entertainment will take place.
- 7.6 Applicants for Sexual Entertainment Venues must also submit a copy of their "House Rules". Such House Rules must contain the required conduct of performers which shall include matters containing conditions of licence, i.e. no touching, no meeting customers outside of the licensed premises for any purpose, no sex acts, no giving or taking phone numbers (including exchange of business cards).

Such House Rules will form part of the licence (if granted) and may be subject to amendment by the Licensing Authority prior to approval.

Applicants must make provision for all performers to sign documentation to confirm their knowledge of and acceptance to adhere to the House Rules. Such documentation must be retained for the duration of the performers' employment and

for a further 6 months from the date they last worked at the premises, whether they are employed directly or freelance.

- 7.7 The Licensing Service may, as part of the application process, visit the locality of the premises to establish whether there are any characteristics of the locality which may require consideration by the Licensing Committee.
- 7.8 Applicants (other than applicants for variation of licence) must also give public notice of the application by publishing an advertisement in a local newspaper which circulates in the area of the Licensing Authority to which the application has been submitted. This must be published within 7 days of making the application. If the application relates to a premises then there is an additional requirement for notice of the application to be displayed for 21 days on or near the premises where it can be conveniently read by the public. The notice, the form of which is prescribed by the Licensing Authority, must contain certain information.

The Licensing Authority's prescribed notice is contained within this policy document as Appendix A.

- 7.9 Please note that with regard to online applications tacit authorisation does **NOT** apply to new grant applications for sex establishment licences. This means you must wait for the Licensing Authority to determine your application before you can operate a sex establishment.
- 7.10 If an application is for the renewal of a sex establishment licence, the premises can continue to operate past the licence expiry date; provided that the renewal application has been submitted to the Licensing Authority before the licence expires. The Licensing Authority will notify you of the decision.

Commenting on licence applications

- 8.1 Unlike some other licensing regimes (such as for alcohol, entertainment, or gambling), a wide range of people can raise objections about sex establishment licences. The police are a statutory consultee for all applications.
- 8.2 Although applicants are only required to provide notice of the application to the police, the Licensing Department will publish a list of current sex establishment premises applications on the Council's website, to allow the public to view basic details and provide a contact number for enquiries.
- 8.3 Objectors should limit their objection to matters which are relevant to the statutory grounds for refusal as set out in the 1982 Act. The grounds relevant to the majority of objectors are as follows:
- that the grant or renewal of the licence would be inappropriate, having regard to the character of the relevant locality or to the use to which any premises in the vicinity of the premises, vehicle or vessel or stall in respect of which the application is made.

Any objections received by the Licensing Authority which do not relate to the grounds set out in the Act must be rejected by the Licensing Service. Where objections are rejected, the objector will be given written reasons.

- 8.4 Objectors can include residents'/tenants' associations, community associations and trade associations. Councillors and MPs may also raise objections. Elected Councillors may represent interested parties, providing they do not also sit on the Licensing Committee.
- 8.5 The Licensing Authority will not consider objections that are frivolous or vexatious, or which relate to moral grounds (as these are outside the scope of the 1982 Act). Decisions on whether objections are frivolous or vexatious will be made objectively by Licensing Services officers and not on the basis of any political judgement. Where objections are rejected, the objector will be given written reasons. A report will be made to the Licensing Committee/Sub-Committee determining the application (if appropriate), indicating the general grounds of the representation and the reasons for rejection.
- 8.6 A vexatious objection is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice. A frivolous objection is generally taken to be one that is lacking in seriousness.
- 8.7 Valid objections will be considered by the full Licensing Committee or delegated to a Licensing Sub-Committee at the hearing to consider the application. Applicants will be given an opportunity to state their case in accordance with the Licensing Committee's Code of Conduct for hearings in relation to applications for Sex Establishment Licences, which is shown at Appendix E.

The Authority accepts that in terms of the legislation it has no power to restrict either the duration of the applicant's presentation to Committee, or the content thereof.

Persons who have made representation regarding an application have no automatic right to address the Committee when the application is being heard. The consultation period allows the opportunity for comment, not the hearing. However the Chairman of the Committee can exercise his/her discretion and may allow those who have made competent representation to address the Committee. A time limit per speaker may be set. Where a number of persons have requested to speak the Chairman may require a spokesperson to be elected.

- 8.8 Objections must be made in writing (email is acceptable) and should include the following:
- the name and address of the person or organisation making the Objection
 - the premises to which the objection relates
 - the proximity of the premises to the person making the objection; a sketch map or plan may be helpful to show this
 - the reasons for making the objections, which are clearly set out in relation to the grounds for refusal (as stated at 8.3 above).

Petitions must clearly state the name and address of the premises application being objected to. The full objection that people are signing to say they agree with must be at the top of the petition. The objection must be in line with the requirements of the legislation (as detailed above). The names and addresses of those signing the petition should be provided and should be legible, together with a signature.

The Licensing Authority must be confident that those signing the petition were aware what they were signing for; so in the interest of clarity for those signing best practice

would be to have the objection at the top of each page, especially where several people are involved in collecting signatures.

It should be noted that submissions to the Licensing Authority may also be in support of an application. These should also contain the same information as stated above.

Determination of applications

9.1 Section 12 (1)(a-e) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 prohibits the Licensing Authority from granting a licence:

“

- (a) to a person under the age of 18; or
- (b) to a person who is for the time being disqualified from holding a licence following revocation of such a licence; or
- (c) 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 6 months immediately preceding the date when the application was made; or
- (d) to a body corporate which is not incorporated in an EEA state;
- (e) to a person who had, within a period of 12 months immediately preceding the date when 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.”

Please note there is no right of appeal against refusal on these grounds.

9.2 If none of the above applies to the applicant and no objections have been received and there are no other statutory grounds for refusal, including that the application does not exceed any permitted numbers, the application will be granted by way of delegated authority.

However if any objections have been received, or if there are concerns regarding the characteristics of the locality, the application will be referred to the Council's Licensing Committee for a hearing of the application.

9.3 Section 12 (3)(a-d) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 the Licensing Authority may refuse an application for the grant or renewal of a licence 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;
- (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, renewed or transfer of such a licence if he made the application himself;
- (c) that the number of sex establishments or of sex establishments of a particular kind, in the relevant locality at the time the application is made (determined) is equal to or exceeds the number which the authority consider is appropriate for that locality;
- (d) that the grant or renewal of the licence would be inappropriate, having regard –
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made. “

An application for the transfer of a licence can only be refused by virtue of the (a) & (b) above.

NOTE: Any numerical limit set for any area within The Isles of Scilly is attached as Appendix F to this policy.

- 9.4 Each application will be decided upon its own merits. The Licensing Authority will not apply a rigid rule to its decision making.
- 9.5 The Licensing Authority will give clear reasons for its decisions.
- 9.6 The Licensing Authority will aim to determine all applications within 12 weeks of the date of submission of a competent application.
- 9.7 When issuing a Sex Establishment Licence the Licensing Authority is permitted to issue it on such terms and conditions and subject to restrictions as specified at the time the licence is issued.

In addition to this the Licensing Authority has the power to make standard conditions applicable to all licences for sex establishments.

- 9.7 It is an offence to breach the conditions and the penalty for this is a fine not exceeding £20,000.
- 9.9 Details of the standard conditions relating to each type of licence are contained in Appendices B-D. Should these standard conditions be amended at any time in the future, they would apply to all licences already issued as if the conditions had been in place at the time they were granted.

All standard conditions will be reviewed as part of the full Policy review.

9.10 **Revocation of licence**

The Licensing Authority is given jurisdiction to revoke a sex establishment licence by virtue of Schedule 3 paragraph 17(1) of the Local Government (Miscellaneous Provisions) Act 1982.

The Licensing Authority may call a hearing, without requiring a third party to request such a hearing, and give the licence holder an opportunity to appear before them.

The Licensing Authority may revoke the licence on any of the mandatory grounds which are detailed at 9.1 (above) or in respect of (a) or (b) detailed at section 9.3 (above), namely that the licence holder is unsuitable or that the manager or beneficiary of the licence is unsuitable.

Should the Licensing Authority revoke a Sex Establishment licence then full reasons for the revocation would be provided to the licence holder within 7 days of the decision.

Revocation of a Sex Establishment licence would disqualify the licence holder from holding or obtaining another Sex Establishment licence in the Licensing Authority's

area for a period of 12 months. However, this does not prevent the licence holder from holding a licence in another Licensing Authority's area.

9.11 Duration of licence

The Licensing Authority will, unless there are exceptional reasons otherwise, grant licences for the maximum duration of one year to provide certainty to those operating businesses, unless the licence is revoked during this period.

9.12 Right to appeal a decision

If an application is refused, or revoked, following a hearing, then the applicant will be informed of the decision and whether there is any right of appeal.

Appeals must be made to the local magistrates' court within 21 days, starting from the date the applicant is notified of the Licensing Authority's decision. The notice will advise the address of the appropriate Magistrate's court to which such an appeal should be submitted. It should be noted that a fee may be payable to the magistrates to lodge such an appeal.

Applicants can appeal against the refusal of a grant, renewal, variation or transfer application, or against the decision to revoke a licence. They can also appeal against conditions or restrictions imposed.

Please note that you cannot appeal against the Licensing Authority's decision if the application was refused on the grounds 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; or
- 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.

The Magistrates' court will determine the appeal application. If you do not agree with the decision made by the magistrates' court, you can appeal to the local crown court. The decision made by the crown court will be final.

The Licensing Authority must comply with a decision made by the Magistrates or Crown court.

Fees

10.1 The appropriate fees for applications can be found on the Council's website. Application fees must be paid in full at the time of submission of the application.

10.2 At the meeting of the Council's Licensing Committee held on 23 April 2010 it was resolved that any refused or unsuccessful application would qualify for a refund of 25% of the application fee.

The Committee further resolved on 10 November 2010 (and reconfirmed on 17 December 2010) the following:

Refund of application fees is only permitted once and will only be made after the expiration of the appeal period, and only if an appeal has not been lodged. If an appeal is lodged refunds will only be made if the appellant is unsuccessful, officers will refund the appropriate proportionate element.

N.B. It is intended to review the current fees for sex establishments; this will include consideration of the introduction of a fee for Sexual Entertainment venues (both transitional and standard) and a reduced variation fee in relation to the change of name of premises only.

Definitions & Guidance Documentation

11.1 Relevant Localities

In considering the characteristics of a locality the Licensing Authority shall particularly take account of the density and proximity of:

- (1) schools, nurseries, crèches, youth hostels and other similar educational or recreational facilities attended by children,
- (2) parks and children's play areas,
- (3) residential and sheltered accommodation,
- (4) religious and community buildings,
- (5) alcohol or entertainment licensed premises,
- (6) other retail units (and their uses).

11.2 Numerical Limits

The Licensing Authority can refuse applications for new or renewed licences where the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number the number which we consider appropriate for that locality.

The Council recognises that different parts of the The Isles of Scilly have different characteristics and therefore each application should be judged on it's own merits.

The Licensing Committee resolved at the meeting held on 10 November 2010 that it would recommend to Council that no numerical limits should be set in any area within The Isles of Scilly in respect of any type of Sex Establishment Licence, and that decision was confirmed by the Licensing Committee on 17 December 2010.

11.3 Operation of CCTV to the Council's satisfaction

CCTV REQUIREMENT – MINIMUM SPECIFICATION

1. A minimum of one high resolution (minimum of 450tvl) colour day/night camera, complete with an auto iris vari-focal lens, fitted in a heated weatherproof external housing, for external coverage of entrances.
2. A minimum of one high-resolution colour camera complete with an auto iris vari-focal lens shall be fitted to each public entrance/exit. Door entrance cameras must be capable of providing good quality head and shoulder images of persons entering/leaving the premises, in order to provide assistance with identification of patrons, if required.
3. There must be sufficient cameras located within the premises to cover all public areas, that are capable of providing good quality head and shoulder images of persons within the premises (in order to provide assistance with identification of patrons, if required). These cameras must be able to operate within the normal operational lighting levels of the premises.
4. Lighting in any foyer area and outside must be of sufficient brightness to enable camera images to be recorded to the quality stated at condition 2 above.
5. In addition to the control equipment it is recommended that an additional high-resolution 15" monitor must be sited in or near the bar area or foyer entrance. This will give customers and staff visible reassurance on the installation and quality images provided.
6. All equipment shall have constant time/date generation. This shall include a system to ensure automatic update in relation to the beginning and end of British Summer Time. If the system is not capable of achieving this requirement the Licence holder, or a nominated person, must ensure that a manual facility is available to carry out this update as an alternative.

Recording/image capture system

Although it will be acceptable for images to be recorded using conventional time lapse analogue video recorders, it is recommended that if a digital multiplex recorder is installed it must meet the following requirements:

1. The unit shall have an on board CD/DVD writer/re-writer, to enable evidence recovery.
2. If a CD/DVD is used to transfer the digital CCTV images from a digital hard drive CCTV system then a write once CD-R/DVD-R medium must be used. The disc containing the recorded images needs to be able to be played back on a modern Windows system such as Windows 2000 Professional, Windows XP or Windows 7. The Licence holder, or a nominated person, must ensure that their data transfer system is capable of being upgraded to take into account development of Windows operating systems.
3. The playback software needs to be written to the CD-R/DVD-R at the same time of writing the CCTV images. This software must be able to play back the images at full screen resolution with forward and reverse replay, including pause and slow motion.

4. There must be a “SAVE AS” feature so that a still image can be saved and exported to an external system in either BITMAP or JPEG format.
5. The system must be capable of downloading/copying all the stored CCTV footage to another medium in its native format, i.e. an external hard driver that can be played back via a windows based computer.
6. There shall be sufficient members of trained staff available during the hours of operation of the premises to be able to download evidence at the request of the Police or an Authorised Officer of the Council.
7. CCTV warning signs shall be fitted in public areas of the premises.
8. The installing company must provide a letter certifying compliance with this specification, a copy of which must be provided to the Licensing Authority and Devon & Cornwall Police.
9. The CCTV system must be maintained and checked every twelve months to ensure the system is operating correctly. The installing/maintenance company must produce a letter confirming that the system is fully functional and meets the specified requirements.
10. Recordings **must** be kept for a minimum of 31 days. This period may be reduced for premises that have a large number of cameras, long recording time with high resolution recordings that will make it impossible for the premises to adhere to the 31 days. The Council’s Licensing Team and the Police Licensing section must be consulted in these circumstances for authorisation of the reduction of the retention period.
11. Recordings of incidents at the premises must be made secure for inspection by the Police.
12. An Authorised Officer may, at any time, request a recording. Failure to comply with this request will be regarded as a serious breach of this condition.
13. The Licence holder, or a nominated person, must be able to demonstrate that they operate a recording management system that prevents recordings being tampered with, stolen, or misplaced. This should include a back-up system to ensure there is no failure to record. Recording equipment shall be housed in a secure room/cabinet where access and operation is strictly limited to authorised persons.
14. Unauthorised persons should not be allowed access to the system or view personal data as it could contravene the Data Protection Act or jeopardise any criminal investigation.
15. In the event of a system malfunction the Licence holder, or a nominated person, must immediately notify the Licensing Authority and Police Licensing Department. Details of any malfunction must be clearly recorded in the premises incident book. Arrangements for its repair must be made without delay. The Licensing Authority and Police Licensing must be notified when the operation of the system is restored.

Any requirements contained within this section would not override any specific condition attached to an authorisation under the Licensing Act 2003.

11.4 ID Checks

To ensure customers are over the age of 18 premises should operate a “Challenge 25” policy, whereby if a customer appears to be under that age an adequate ID check is carried out. This would require photographic ID to be checked and only current passports and driving licences should be accepted for this purpose. If customers are unable to provide such forms of ID to establish their age then they must be refused entry.

11.5 Protection of Children and Vulnerable persons from Harm

This includes protection from physical, mental or emotional harm.

11.6 SIA Registered Door Supervisors

Only door supervisors who hold a valid Door Supervisors licence issued by the Security Industry Authority (SIA) should be employed.

11.7 Tacit Authorisation

The term “tacit authorisation” relates to online submission of applications. Tacit authorisation means that if the timescale set for determining applications is exceeded any application will be deemed acceptable (granted) and Tacit Authorisation given. However this does **not** apply to Sex Establishment licences.

SEX SHOPS

11.8 Significant Degree & Sex Articles

Licences for sex shops are required where 18R rated films are being sold, or where there is a “significant degree” of “sex articles”.

It should be noted that in respect of Mail Order premises the Video Recordings Act 1984 states at section 7 (b) & (c) that no video recording that may only be viewed by persons aged 18 or over is to be supplied other than in a licensed sex shop. Case law precludes the sale of 18R rated films by Mail Order premises which holds a Sex Shop licence because the supply of the film to a person aged 18 or over cannot be confirmed; such supply would fail to ensure that the age controls are properly enforced.

The phrase “sex articles” is defined in the 1982 Act, but the phrase “a significant degree” is not. When considering whether or not a business is selling a significant degree of sex articles and needs a licence, we will consider:

- (1) the ratio of sex articles to other aspects of the business
- (2) the absolute quantity of sales
- (3) the character of the remainder of the business
- (4) the nature of the displays in the business
- (5) turnover
- (6) other factors which appear to be materially relevant.

Sex articles are defined as:

- (a) anything made for use in connection with, or for the purpose of stimulating or encouraging-
 - (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity; and
- (b) anything to which sub-paragraph below applies.

This sub-paragraph applies-

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

SEXUAL ENTERTAINMENT VENUES

11.9 Relevant entertainment

Licences for sexual entertainment venues are required for “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”.

“Relevant entertainment” is defined in schedule 3 (as amended by section 27 of the Policing and Crime Act 2009) 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. in a private booth.

In deciding whether entertainment is “relevant entertainment” the Licensing Authority will judge each case on its merits, but will generally apply to:

- (1) lap dancing
- (2) pole dancing
- (3) table dancing
- (4) strip shows
- (5) peep shows
- (6) live sex shows

Adult entertainment not classed as “relevant entertainment” may still require regulation under the Licensing Act 2003.

11.10 Nudity

Section 27 of The Policing and Crime Act 2009 defines the “display of nudity” as:-

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

For further information in relation to regulation of Sexual Entertainment Venues please refer to the Home Office Guidance issued in March 2010 entitled “Sexual Entertainment Venues – Guidance for England and Wales”.

11.11 Suitable number of trained staff

Conditions require that the Licensee must ensure that a suitable and sufficient number of trained staff are employed to supervise the interior of the Premises (“floor supervisors”) to ensure that conditions of licence are complied with, in particular the no touching conditions, and to ensure the safety of customers, performers and persons working in the premises.

A suitable and sufficient number should be determined by carrying out a risk assessment of all activities, design of the premises (including accessibility to all areas), and number of performers. This should be linked to the capacity of the premises.

11.12 Adequate non-public changing rooms for performers

Conditions require that the Licensee shall provide adequate non-public changing rooms for performers.

This means that there should be separate changing rooms for all genders and that different genders should not share changing rooms at the same time. Non-public means that the Licensee should ensure that the public do not have access to these changing facilities at any time and appropriate measures should be employed to ensure this.

GUIDANCE DOCUMENTATION

11.13 Form of Notice – Indecent Displays (Control) Act 1981

The Council’s Standard Conditions require that a warning notice be displayed in accordance with the above legislation. The legislation states at 1(4)(e):

“(a) The warning notice must contain the following words, and no others-

“WARNING

Persons passing beyond this notice will find material on display which they may consider indecent. No admittance to persons under 18 years of age.”

- (b) The word “WARNING” must appear as a heading.
- (c) No pictures or other matter shall appear on the notice.
- (d) The notice must be so situated that no one could reasonably gain access to the shop or part of the shop in question without being aware of the notice and it must be easily legible by any person gaining such access.”

Public Notice (of application)

- 11.14 The notice can be downloaded from the Council's website. A copy is attached to this policy at Appendix A.

Policy details

- 12.1 In developing this policy the Council has had regard to the legal requirements of the 1982 and 2009 Acts and our duties under:
- (a) section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder within the The Isles of Scilly;
 - (b) the Regulators' Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the regulations we set out and to particularly consider the impact of regulations on small businesses; and
 - (c) the Provision of Services Regulations 2009 to ensure requirements are:
 - (i) non-discriminatory
 - (ii) justified by an overriding reason relating to the public interest
 - (iii) proportionate to that public interest objective
 - (iv) clear and unambiguous
 - (v) objective
 - (vi) made public in advance, and
 - (vii) transparent and accessible.

Consultation and engagement

- 13.1 The Council consulted on this policy between April 2011 and May 2011 and it was approved by the Licensing Committee on XX June 2011, and adopted by the Council on XX July 2011.
- 13.2 This licensing policy has been drawn up in consultation with residents and businesses in The Isles of Scilly; any existing Sex Establishment Licence holders; the statutory responsible authorities under the Licensing Act 2003; holders of premises licences under the Licensing Act 2003 in the Islands; and other organisations and persons as appear to the Licensing Authority to be affected by licensing matters covered by this policy.
- 13.3 Details of applications and objections which are referred to the Licensing Committee for determination will be published in reports that are made publicly available in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000. It should, however, be noted that certain items or information may have to be excluded from the public domain as permitted by Local Government Act 1972.
- 13.4 The names and address of objectors will not be disclosed to applicants, or published in public reports, in accordance with Section 8 (17) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. Such details will be made available to Councillors on the Licensing Committee.

Performance and risk management

- 14.1 The policy will be regularly reviewed and monitored to ensure that it reflects current legislation, is effective, up to date and achieving a responsible regulatory framework for The Isles of Scilly.
- 14.2 This will be achieved by monitoring the outcome of hearings, appeals through the Magistrates courts, developments in legislation, by having regard to stated cases, local needs and economic impacts.
- 14.3 The Council will ensure that Members and Council Officers involved in the development and implementation of this policy, enforcement of licensing regime and day-to-day operation of the service receive adequate training.
- 14.4 Training will be carried out following any review and amendment of the policy, alterations to legislative requirements or fundamental changes to the provision of the licensing service.

Communicating the policy

- 15.1 This policy is available on the Council's website and will be made available at Council offices across the The Isles of Scilly. In addition any responsible authorities will be provided with a copy of this policy document.
- 15.2 The adoption or any amendment of the policy will be communicated to the community by way of press release and on the Council's website. Persons having been actively involved in any consultation on the policy will be notified directly.

Breaches and non-compliance

- 16.1 The Licensing Authority will monitor and implement, as appropriate, developments in the work of the Better Regulation Executive and other central government bodies in its consideration of the regulatory functions of local authorities.
- 16.2 The Council recognises that sex establishments are not generally a source of crime or disorder. The Licensing Service will therefore adopt a light touch inspection regime, carrying out simple inspections of premises no more than once a year unless exceptional circumstances require otherwise.
- 16.3 It is further recognised that Sexual Entertainment Venues are also regulated by other legislation due to the nature of those operations, and therefore may require more frequent inspection. However, it is anticipated that, wherever possible, consolidated enforcement inspections will be undertaken.
- 16.4 The Licensing Service's approach to enforcement is set out in enforcement policies which are available on request.

- 16.5 Breach of conditions or legislative requirements may result in formal action being taken by the Licensing Authority. Should such breaches be dealt with by way of Fixed Penalty Notice or prosecution through the Magistrates' court, then licence holders may be liable to a financial penalty.

Exchange of Information

- 16.6 The Council 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 reducing crime in the area.

Information

- 17.1 The following can be viewed at www.opsi.gov.uk
- The Local Government (Miscellaneous Provisions) Act 1982
 - The Policing and Crime Act 2009
 - Crime and Disorder Act 1998
 - Provision of Services Regulations 2009
 - Legislative and Regulatory Reform Act 2006
 - Human Rights Act 1998
 - Equality Act 2010

Evaluation and review

- 18.1 This Policy will be reviewed on a 3-yearly basis. Any proposed amendments to the Policy will be fully consulted upon, prior to re-adoption by the Council.
- 18.2 The policy will be subject to review by June 2014.

APPENDIX A

NOTICE OF APPLICATION FOR THE GRANT / RENEWAL / TRANSFER* OF A SEX ESTABLISHMENT LICENCE

I/we

.....
.....

hereby give notice that I/we have applied to The Council of the Isles of Scilly under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 as amended for a licence to use the premises referred to below as a Sex Shop / Sex Cinema / Sexual Entertainment Venue* as detailed below.

Proposed Licensed Name.....

Address of premises.....

.....
.....

Proposed hours of opening/operation

.....
.....

Any person wishing to make representations about the application should make them in writing to the Licensing Department, Council of the Isles of Scilly, Town Hall, St Mary's, Isles of Scilly TR21 0LW within 28 days of the date of the application which was [INSERT DATE].

Signed.....**Date**.....

Notes:

1. Enter full details of the application on this form, including the name of the premises being requested as "the licensed name" and proposed opening hours, or hours of operation in the case of Mail Order Premises.
2. Affix a copy of the completed Notice on the premises to which the application relates, in a prominent position that may be easily read by the public on the day of making application. You must ensure that this Notice remains in position for 21 days.
3. The content of this Notice, as completed, must be published in a local newspaper within 7 days of making the application.

* Delete as applicable

APPENDIX B

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

STANDARD SEX ESTABLISHMENT LICENCE CONDITIONS RESTRICTIONS AND TERMS APPLICABLE TO SEX SHOPS AND SEX CINEMAS

Introduction

1. In these Conditions “The Council” shall mean the Council of the Isles of Scilly and all enquiries concerning this licence shall be directed to the Licensing Department, Council of the Isles of Scilly.
2. These conditions are imposed by the Council, pursuant to its powers under paragraph 13 (1) of Schedule 3 to the above Act, as terms, conditions and restrictions on a subject to which a licence is, in general, to be granted, renewed or transferred by the Council save, and insofar as, they do not conflict with the provisions of the Act itself.
3. These conditions are only applicable to “Sex Shop and Sex Cinema” premises.

Management of the Premises

4. The Licensee, or a responsible person over the age of 18 having been nominated by him and approved in writing by the Council for the purpose of managing the sex establishment (“the manager”), shall have personal responsibility for and be present on the Premises at all times when the Premises are open to the public. A form will be provided for this purpose.
5. Where the Licensee is a body corporate or an incorporated body, any change of director, company secretary or other person responsible for the management of the body shall be notified in writing to the Council within 14 days of such change and such written details as the licensing authority may require in respect of the change of personnel shall be furnished within 14 days of a request in writing from the Council.
6. A copy of the licence and any special conditions attached shall, at all times, be displayed in a conspicuous position on the Premises so as to be available for inspection by the police, the fire authority, and authorised officers of the Council.
7. The name of the person responsible for the management of the Premises, whether the Licensee or the manager, shall be displayed in a conspicuous position within the Premises throughout the period during which he is responsible for the conduct of the Premises.
8. The Licensee shall retain control over all areas of the Premises and shall not let, licence or surrender possession of any area. The Council must be immediately notified in the event that any area of the Premises is affected by the termination of a lease or other event affecting the Licensee’s control of the Premises.
9. The Licensee shall ensure that the public is not admitted to any part of the Premises that has not been licensed, other than toilet facilities where provided for customers.
10. Neither the Licensee nor any employee or agent shall personally solicit custom for the sex establishment outside (or in the Islands generally) of the Premises.

11. The Licensee shall ensure that during the hours that the Premises are open for business every employee wears a badge of a type approved by the Council indicating their name and that they are an employee.
12. The Licensee shall maintain a daily register in which shall be recorded the name and address of any person who is to be responsible for managing the Sex Establishment in the Licensee's absence and the names and addresses of those employed in the Sex Establishment. The Register is to be completed each day within thirty minutes of the Sex Establishment being opened for business and is to be available for inspection by the police and by authorised officers of the Council.
13. The Licensee shall take all reasonable precautions for the safety of the public, employees and other persons working in the premises.
14. No person under the age of 18 shall be admitted to the Premises.
15. The Licensee shall adopt a procedure to check the age of customers entering the shop who appear to be younger than 25 in order to ensure that they are not under the age of 18.
16. All persons working in the premises shall be aged not less than 18 years. The Licensee must maintain adequate records of the names, addresses and dates of birth of persons working in the premises including adequate identity checks.
17. The Licensee shall ensure that a closed-circuit television system is installed internally and externally to the satisfaction of the Council. Appropriate notices must be displayed in accordance with the Data Protection Act 1998, advising that CCTV is in operation. In addition the Licensee must ensure that the requirement under that Act regarding registration with the Data Protection Commissioner is complied with.
18. The Licensee shall provide upon request copies of any documents reasonably required by an authorised officer of the Council in relation to compliance with this Licence.

Opening of the Premises

19. The Premises shall not, without the written consent of the Council, be opened and used for the purposes for which the licence is granted except during the following hours:

Monday – Saturday 9:30 am – 6:00 pm

20. The Premises shall not, without the written consent of the Council, be opened and used for the purposes for which the licence is granted on Sundays, Christmas Day or Good Friday.

Operation of the Premises

21. Approval from the Council is required for changes from:

- a sex shop (including a mail-order shop) to either a sex cinema or sexual entertainment venue
- sex cinema to either a sex shop or sexual entertainment venue
- a sexual entertainment venue to either a sex cinema or a sex shop.

This will require consideration of an appropriate application.

22. No sex articles or other items 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 used, displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema or a sexual entertainment venue.
23. The primary use of a sex shop must be for the purpose of the sale of goods by retail.

External Appearance

24. A notice stating that no person under the age of 18 shall be admitted to the premises must be displayed on the outside of the Premises. The notice must also include a statement that proof of age may be requested.
25. The exterior design of the premises shall be such that the interior of the premises is not visible to passers-by.
26. The windows and openings of the Premises shall be of a material or covered with a material, which will ensure the interior of the Premises is not visible to passers-by.
27. No items should be stored on the premises so that they can be viewed from any external window or door.
28. The windows, doors, fascia board, walls and all external parts of the premises including the roof shall not contain any form of writing, sign or display save for:
- (i) The licensed name of the premises (as explained in paragraph 40 hereof) may be displayed, unless the Council determines that the name is of a profane or sexual nature or gives other cause for concern.
 - (ii) The form of warning notice required to be displayed by virtue of the provisions of Section 1(6) of the Indecent Displays (Control) Act 1981.

- (iii) A notice stating the opening hours of the establishment.
 - (iv) The wording "PRIVATE SHOP" or "ADULT SHOP" but no other indication as to the nature of the business carried on at the licensed premises.
29. The lettering used in respect of such permitted items:-
- In the case of the permitted items at paragraph 24 'i', 'ii' and 'iv' the lettering used shall not exceed 15 cm (approximately 6" inches) in height for each letter.
30. (a) No other words or signs, or any displays or advertisements, shall be displayed on the outside of the Premises or in the vicinity of the Premises, except those mentioned in conditions 22 and 25 or otherwise approved by the Council in writing;
- (b) No external loudspeakers may be installed.

State, Condition and Layout of the Premises

31. Notwithstanding the Licensee's duties under the Health and Safety at Work etc Act 1974 and related legislation and his obligations under any lease or other agreement for the use of the Premises, he shall maintain the Premises in good repair and condition.
32. External doors shall be closed at all times other than when persons are entering or leaving the Premises. The external doors shall be fitted with a device to ensure their automatic closure and such devices shall be maintained in good working order.
33. The Premises shall be fitted with an inner entrance door or screen so that no part of the interior of the Premises or any of the contents of the premises shall be visible when persons are entering or leaving the Premises. Such inner entrance door or screen shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
34. No access shall be permitted through the Premises to any other Premises adjoining or adjacent except in the case of emergency.
35. Lighting shall be in operation continuously during the whole of the time that the Sex Establishment is open to the public.
36. Alterations or additions, either internal or external, shall not be made to the Premises without prior written consent from the Council. A variation application will be required in order for consent to be considered.
37. No previewing of films, video recordings or other similar material shall be allowed to be shown in the premises. *(N.B. This condition only relates to Sex Shops.)*
38. No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Establishment nor shall more than one person (including any employee be present in any such booth or cubicle at any time). Appropriate fastenings are permitted on toilet doors.

Goods Available in Sex Establishments

39. All Sex Articles as defined in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and other things displayed for sale, hire, exchange or loan within a the shop shall be clearly marked to show to persons who are inside the Sex Shop the respective prices being charged.
40. All printed matter, DVD, video and other formats capable of storing readable/viewable material offered for sale, hire, exchange or loan shall be openly displayed and available for inspection prior to purchase and a notice to this is effect is to be prominently displayed inside the Sex Establishment. (This regulation does not require that films or video films be exhibited (played) to customers).
41. No film, DVD, or video recording (or computer game, or other formats capable of storing readable/viewable material) shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to the effect.
42. In accordance with section 7 (b) & (c) of the Video Recordings Act 1984 and case law no 18R rated films may be sold or supplied by Mail Order.

Information for Customers

43. The Licensee shall make available in the Sex Establishment free counselling and advice literature on matters related to sexual health and issues as may be published by the Family Planning Association, the NHS and or other similar organisations. Such literature should be displayed in a prominent position, preferably adjacent to all points of sale in the Sex Establishment.

Licensed Name

44. (a) The Council at the time of granting the licence in respect of the premises shall appoint a name referred to as "The Licensed Name" by which it is intended that the premises shall be known and the licence holder shall ensure that the premises are known solely by that name and by no other, save as provided for by paragraph (b) below. Such name shall have been provided on the application form.
- (b) An application in respect of a change of licence name shall be made to the Council in writing not less than 28 days prior to the proposed change and the Council shall have an absolute and unfettered discretion to allow or refuse such change.

APPENDIX C

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

STANDARD SEX ESTABLISHMENT LICENCE CONDITIONS RESTRICTIONS AND TERMS APPLICABLE TO MAIL-ORDER PREMISES

INTRODUCTION

1. In these Conditions “The Council” shall mean the Council of the Isles of Scilly and all enquiries concerning this licence shall be directed to the Licensing Department, Council of the Isles of Scilly..
2. These conditions are imposed by the Council, pursuant to its powers under paragraph 13 (1) of Schedule 3 to the above Act, as terms, conditions and restrictions on a subject to which a licence is, in general, to be granted, renewed or transferred by the Council save, and insofar as, they do not conflict with the provisions of the Act itself.
3. These conditions are only applicable to a “Mail-Order Sex Shop” premises.

Management of the Premises

4. The Licensee, or a responsible person over the age of 18 having been nominated by him and approved in writing by the Council for the purpose of managing the sex establishment (“the manager”), shall have personal responsibility for and be present on the Premises at all times when the Premises are open to the public. A form will be provided for this purpose.
5. Where the Licensee is a body corporate or an incorporated body, any change of director, company secretary or other person responsible for the management of the body shall be notified in writing to the Council within 14 days of such change. Such written details as the licensing authority may require in respect of the change of personnel shall be furnished within 14 days of a request in writing from the Council.
6. A copy of the licence and any special conditions attached shall, at all times, be displayed in a conspicuous position on the Premises so as to be available for inspection by the police, the fire authority, and authorised officers of the Council.
7. The name of the person responsible for the management of the Premises, whether the Licensee or the manager, shall be displayed in a conspicuous position within the Premises throughout the period during which he is responsible for the conduct of the Premises.
8. The Licensee shall retain control over all areas of the Premises and shall not let, licence or surrender possession of any area. The Council must be immediately notified in the event that any area of the Premises is affected by the termination of a lease or other event affecting the Licensee’s control of the Premises.
9. The Licensee shall ensure that the public is not admitted to any part of the Premises. No person under the age of 18 years will be admitted to the premises at any time, for whatever reason or purpose.

10. All persons working in the premises shall be aged not less than 18 years. The Licensee must maintain adequate records of the names, addresses and dates of birth of persons working in the premises including adequate identity checks.
11. Neither the Licensee nor any employee or agent shall personally solicit custom for the sex establishment outside or in the locality (village, town or city) of the Premises.
12. The Licensee shall maintain a daily register in which shall be recorded the name and address of any person who is to be responsible for managing the Sex Establishment in the Licensee's absence and the names and addresses of those employed in the Sex Establishment. The Register is to be completed each day within thirty minutes of the Sex Establishment being opened for business and is to be available for inspection by the police and by authorised officers of the Council.
13. The Licensee shall take all reasonable precautions for the safety of employees.
14. The Licensee shall provide upon request copies of any documents reasonably required by an authorised officer of the Council in relation to compliance with this Licence.

Operation of the Premises

15. Approval from the Council is required for changes from:
 - a sex shop (including a mail-order shop) to either a sex cinema or sexual entertainment venue
 - sex cinema to either a sex shop or sexual entertainment venue
 - a sexual entertainment venue to either a sex cinema or a sex shop.

This will require consideration of an appropriate application.

16. No sex articles or other items 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 used, displayed, sold, hired, exchanged, loaned or demonstrated in a Mail order sex shop premises.
17. The sex establishment shall be used exclusively for 'mail-order' purposes only, selling sex articles and other articles that do not fall within the definition of sex articles in Schedule 3, paragraph 4(3) of the Local Government (Miscellaneous Provisions) Act 1982.
18. All advertisements, catalogues, sales documents used in connection with the business intended or likely to be seen by customers will clearly and prominently state "MAIL ORDER ONLY". All deliveries/despaches of parcels shall be in plain wrapping not identifying what is inside.

External Appearance

19. No external nameplate, advertisement board or any other written or pictorial or graphic display connected with the business shall be observable from outside the building, or from other units within the building or from the common parts of the building.
20. The exterior design of the premises shall be such that the interior of the premises is not visible to passers-by.

21. The windows and openings of the Premises shall be of a material or covered with a material, which will ensure the interior of the Premises is not visible to passers-by.
22. No items should be stored on the premises so that they can be viewed from any external window or door.

State, Condition and Layout of the Premises

23. Notwithstanding the Licensee's duties under the Health and Safety at Work etc Act 1974 and related legislation and his obligations under any lease or other agreement for the use of the Premises, he shall maintain the Premises in good repair and condition.
24. External doors shall be closed at all times other than when persons are entering or leaving the Premises. The external doors shall be fitted with a device to ensure their automatic closure and such devices shall be maintained in good working order.
25. No access shall be permitted through the Premises to any other Premises adjoining or adjacent except in the case of emergency.
26. Alterations or additions, either internal or external, shall not be made to the Premises without prior written consent from the Council. A variation application will be required in order for consent to be considered.

Goods Available in Sex Establishments

27. No film, DVD, or video recording (or computer game, or other formats capable of storing readable/viewable material) shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to the effect.
28. In accordance with section 7 (b) & (c) of the Video Recordings Act 1984 and case law no 18R rated films may be sold or supplied by Mail Order premises (even one which holds a Sex Shop licence).

Licensed Name

29. (a) The Council at the time of granting the licence in respect of the premises shall appoint a name referred to as "The Licensed Name" by which it is intended that the premises shall be known and the licence holder shall ensure that the premises are known solely by that name and by no other, save as provided for by paragraph (b) below. Such name shall have been provided on the application form. Paragraph 16 of these conditions applies.
- (b) An application in respect of a change of licence name shall be made to the Council in writing not less than 28 days prior to the proposed change and the Council shall have an absolute and unfettered discretion to allow or refuse such change.

APPENDIX D

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

STANDARD SEX ESTABLISHMENT LICENCE CONDITIONS RESTRICTIONS AND TERMS APPLICABLE TO SEXUAL ENTERTAINMENT VENUE PREMISES

INTRODUCTION

1. In these Conditions “The Council” shall mean the Council of the Isles of Scilly and all enquiries concerning this licence shall be directed to the Licensing Department, Council of the Isles of Scilly.
2. These conditions are imposed by the Council, pursuant to its powers under paragraph 13 (1) of Schedule 3 to the above Act, as terms, conditions and restrictions on a subject to which a licence is, in general, to be granted, renewed or transferred by the Council save, and insofar as, they do not conflict with the provisions of the Act itself.
3. These conditions are only applicable to a “Sexual Entertainment Venue” premises.

Management of the Premises

4. The Licensee, or a responsible person over the age of 18 having been nominated by him and approved in writing by the Council for the purpose of managing the sex establishment (“the manager”), shall have personal responsibility for and be present on the Premises at all times when the Premises are open to the public. A form will be provided for this purpose.
5. Where the Licensee is a body corporate or an incorporated body, any change of director, company secretary or other person responsible for the management of the body shall be notified in writing to the Council within 14 days of such change and such written details as the licensing authority may require in respect of the change of personnel shall be furnished within 14 days of a request in writing from the Council.
6. A copy of the licence and any special conditions attached shall, at all times, be displayed in a conspicuous position on the Premises so as to be available for inspection by the police, the fire authority, and authorised officers of the Council.
7. The name of the person responsible for the management of the Premises, whether the Licensee or the manager, shall be displayed in a conspicuous position within the Premises throughout the period during which he is responsible for the conduct of the Premises.
8. The Licensee shall retain control over all areas of the Premises and shall not let, licence or surrender possession of any area. The Council must be immediately notified in the event that any area of the Premises is affected by the termination of a lease or other event affecting the Licensee’s control of the Premises.
9. The Licensee shall ensure that the public is not admitted to any part of the Premises that has not been licensed, other than toilet facilities where provided for customers.
10. Neither the Licensee nor any employee or agent shall personally solicit custom for the sex establishment outside or in the locality (village, town or city) of the Premises.

11. The Licensee shall maintain a daily register in which shall be recorded the name and address of any person who is to be responsible for managing the Sex Establishment in the Licensee's absence and the names and addresses of those employed in the Sex Establishment. The Register is to be completed each day within thirty minutes of the Sex Establishment being opened for business and is to be available for inspection by the police and by authorised officers of the Council.
12. The Licensee shall take all reasonable precautions for the safety of the public, employees and other persons working in the premises.
13. The Licensee must ensure that a suitable and sufficient number of trained staff are employed to supervise the interior of the Premises ("floor supervisors") to ensure that conditions of licence are complied with, in particular the no touching conditions, and to ensure the safety of performers.
14. No person under the age of 18 shall be admitted to the Premises.
15. The Licensee shall adopt a procedure to check the age of customers entering the premises who appear to be younger than 25 in order to ensure that they are not under the age of 18.
16. All persons working in the premises, including Performers, shall be aged not less than 18 years. The Licensee must maintain adequate records of the names, addresses and dates of birth of performers including adequate identity checks.
17. The Licensee must submit a set of "House Rules" to the Licensing Authority as part of the application process; these rules will form part of the licence, and must be complied with. Furthermore they must ensure that all performers are fully conversant with and sign an agreement to adhere to such House Rules.
18. In the event that an authorisation under the Licensing Act 2003 does not require the provision of a CCTV system, then the Licensee shall ensure a closed-circuit television system is installed internally and externally to the satisfaction of the Council. Appropriate notices must be displayed in accordance with the Data Protection Act 1998, advising that CCTV is in operation. In addition the Licensee must ensure that the requirement under that Act regarding registration with the Data Protection Commissioner is complied with.
19. CCTV recordings will be made available for viewing by authorised officers of the licensing authority or the police. Copies of such recordings must be provided upon request.
20. CCTV must be capable of monitoring the whole of the premises, in particular any private booths or rooms to ensure the safety and security of performers and other persons within the premises. The CCTV system must be monitored by a dedicated member of staff or security personnel at all times that the premises are in operation.
21. The Licensee shall ensure that neither they nor any person promoting or providing entertainment on the Premises (nor any person acting on behalf of any such person) shall display advertisements promoting the entertainment or the Premises in any unlawful manner.
22. Where the Council have given notice in writing to the Licensee objecting to an advertisement on the grounds that, if displayed, it would offend against good taste or

decency or be likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling, that advertisement shall not be displayed.

23. The Council may specify, in writing, the number of members of the public that shall be present on the Premises at any time whilst relevant entertainment takes place, on the grounds of public safety, public nuisance or crime and disorder. The Licensee shall ensure that the number specified is not exceeded at any time.
24. The Licensee shall provide upon request copies of any documents reasonably required by an authorised officer of the Council in relation to compliance with this Licence.
25. The Licensee shall provide adequate non-public changing rooms for performers.

Opening of the Premises

26. Relevant entertainment may only be provided during the hours permitted by an authorisation under the Licensing Act 2003 unless a specific condition on the Sex Establishment Licence permits otherwise.

Operation of the Premises

27. Approval from the Council is required for changes from:
 - a sex shop (including a mail-order shop) to either a sex cinema or sexual entertainment venue
 - sex cinema to either a sex shop or sexual entertainment venue
 - a sexual entertainment venue to either a sex cinema or a sex shop.

This will require consideration of an appropriate application.

28. No sex articles or other items 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 used, displayed, sold, hired, exchanged, loaned or demonstrated in a sexual entertainment venue or a sex cinema.

External Appearance

29. A notice stating that no person under the age of 18 shall be admitted to the premises must be displayed on the outside of the Premises. The notice must also include a statement that proof of age may be requested.
30. The exterior design of the premises shall be such that the interior of the premises is not visible to passers-by.
31. The windows and openings of the Premises shall be of a material or covered with a material, which will ensure the interior of the Premises is not visible to passers-by. At no time shall performers or persons working in the premises be visible from outside of the Premises, with the exclusion of Door Supervisors.

32. The Licensee shall not permit the display outside of the Premises of photographs or other images which indicate or suggest that relevant entertainment takes place on the Premises.
33. External advertising of relevant entertainment shall not include any of the following:
 - a) any depiction of full nudity
 - b) any depiction of partial nudity (including the display of breasts, buttocks or genitalia)
 - c) any depiction of overtly sexual or violent images or any other images which may give rise to concerns in respect of public decency or protection of children or vulnerable persons from harm.
34. The windows, doors, fascia board, walls and all external parts of the premises including the roof shall not contain any form of writing, sign or display save for:
 - (i) The licensed name of the premises (as explained in paragraph 40 hereof) may be displayed, unless the Council determines that the name is of a profane or sexual nature or gives other cause for concern.
 - (ii) The form of warning notice required to be displayed by virtue of the provisions of Section 1(6) of the Indecent Displays (Control) Act 1981.
 - (iii) A notice stating the opening hours of the establishment.
35. The lettering used in respect of such permitted items:-

In the case of the permitted items at paragraph 24 'i', 'ii' and 'iv' the lettering used shall not exceed 15 cm (approximately 6" inches) in height for each letter.
36. (a) No other words or signs, or any displays or advertisements, shall be displayed on the outside of the Premises or in the vicinity of the Premises, except those mentioned in conditions 27 and 33 or otherwise approved by the Council in writing;
- (b) No external loudspeakers may be installed.

State, Condition and Layout of the Premises

37. Notwithstanding the Licensee's duties under the Health and Safety at Work etc Act 1974 and related legislation and his obligations under any lease or other agreement for the use of the Premises, he shall maintain the Premises in good repair and condition.
38. External doors shall be closed at all times other than when persons are entering or leaving the Premises. The external doors shall be fitted with a device to ensure their automatic closure and such devices shall be maintained in good working order.
39. The Premises shall be fitted with an inner entrance door or screen so that no part of the interior of the Premises or any of the contents of the premises shall be visible when persons are entering or leaving the Premises. Such inner entrance door or screen shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.

40. No access shall be permitted through the Premises to any other Premises adjoining or adjacent except in the case of emergency.
41. Lighting shall be in operation continuously during the whole of the time that the Sex Establishment is open to the public.
42. Alterations or additions, either internal or external, shall not be made to the Premises without prior written consent from the Council. A variation application will be required in order for consent to be considered.
43. No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Establishment nor shall more than one person (including any employee be present in any such booth or cubicle at any time). Appropriate fastenings are permitted on toilet doors.

Provision of Relevant Entertainment

44. Performers shall only perform in specified designated areas, to seated customers or in such other areas of the licensed Premises as may be agreed in writing with the Council.
45. The Licensee is to implement a policy to ensure the safety of the Performers when they leave the Premises after a period of work.
46. Performers must remain clothed in public areas and all other areas except while performing in areas specified by the Council as being where relevant entertainment may be provided.
47. At the conclusion of performances all articles of clothing removed during that performance must be put back on. This does not prevent performers going to their non-public changing area to change their attire.
48. Performers may not accept any telephone number, email address, address or contact information from any customer.
49. Performers may not give any telephone number, email address, address, contact information or business card to any customer or in any way solicit themselves.
50. Performers must not perform a nude table dance unless in a supervised area or within five metres of a floor supervisor.
51. Performers are never to be in the company of a customer except in an area open to the public within the Premises (this excludes the toilets as performers must not use the public toilets whilst open to the public).
52. The Licensee must ensure that during the performance of a table or lap dance:
 - (1) customers must be seated in an upright position against the back of the booth or seat with their hands by their sides before a dancer can start a table dance;
 - (2) customers must remain seated during the entire performance of the dance;

- (3) for the purpose of restraint only, Performers may only touch a customer above the customer's chest (excluding the head) with their hands only;
 - (4) Performers must not sit on or straddle the customer;
 - (5) Performers must not place their feet on the seats.
53. The Licensee must ensure that during performances of relevant entertainment:
- (1) Performers may not perform any act that clearly simulates any sexual act;
 - (2) Performers must never intentionally touch the genitals, anus or breasts of another dancer or to knowingly permit another dancer to intentionally touch their genitals, anus or breasts;
 - (3) Performers may not intentionally touch a customer any time during the performance unless absolutely accidentally or due to a third party;
 - (4) Performers may not use inappropriate, suggestive or sexually graphic language at any time;
 - (6) Performers must not engage in communications that could be deemed as acts of prostitution or solicitation, even if the Performer has no intention of carrying out the act;
 - (7) Performers must only perform nude or semi-nude dancing (of any description) within areas specified by the Council.
54. The Licensee must ensure that during performances of relevant entertainment:
- (1) Customers may not dance at any time except in areas specifically designated by the Council as being separate from areas for sexual entertainment.
 - (2) Customers must remain appropriately clothed at all times.
55. At all times there must be no physical contact between customers and employees, or other persons working within the premises, in any part of the premises save for the following:-
- The payment of an entry fee by customers to authorised members of staff.
 - The payment of a fee for relevant entertainment.
 - The purchasing of drinks by customers from authorised members of staff.
 - The placing of bank notes by the customer in a garter worn by females or an armband worn by males.
 - SIA door staff in the execution of their duties.
56. At all other times during the performance the performer will keep a minimum distance of at least 3 feet away from the customer.
57. Relevant entertainment will only take place in specified designated areas within the premises, as identified on the plan attached to the licence.
58. Notices outlining condition 55 will be clearly displayed at each entrance to the premises and in the specified designated areas. Notices must state that no touching

relates to customers touching performers and other persons working within the premises and vice versa.

59. Performers will stop immediately and move away from any customer who is offensive or attempts to touch them, and shall report such behaviour and any other inappropriate behaviour or breach of house rules to the management. If after receiving a warning a customer continues behave inappropriately, the customer must be requested to leave the premises and should be escorted from the premises by appropriately authorised staff only (i.e. SIA registered door supervisors).

Licensed Name

60. (a) The Council at the time of granting the licence in respect of the premises shall appoint a name referred to as “The Licensed Name” by which it is intended that the premises shall be known and the licence holder shall ensure that the premises are known solely by that name and by no other, save as provided for by paragraph (b) below. Such name shall have been provided on the application form.
- (b) An application in respect of a change of licence name shall be made to the Council in writing not less than 28 days prior to the proposed change and the Council shall have an absolute and unfettered discretion to allow or refuse such change.

APPENDIX E

LICENSING COMMITTEE

Procedure for the Conduct of Sex Establishment Licensing Hearings

Procedure

1. The Chairman should ask whether the applicant, if unaccompanied, was aware that they could be represented.
2. The Chairman should introduce those present at the meeting and state their position if Officers.
3. The Chairman should then request the appropriate Officer of the Council to outline the matter under consideration.
4. The Applicant should then present their opening submission.
5. Members of the Committee and Council Officers will then have the opportunity to question the applicant regarding their opening submission.
6. Any Objectors would then be invited to address the Committee in relation to the relevant parts of their previously submitted representation. This may be subject to a time limit, which will be advised in advance of the hearing.

N.B. This will occur only if Chairman has exercised his/her discretion to allow Objectors to address the Committee. As case law & legislation restricts objectors addressing the Committee, the Committee and the applicant are not permitted to ask questions of the objectors.

7. The applicant should then present their main submission which should include their response to objections, and call any necessary witnesses.
8. Members of the Committee and Council Officers will then have the opportunity to question the applicant regarding their main submission.
9. The applicant will then have the opportunity to sum up and generally have the right of final reply.
10. The Committee will then retire to obtain legal advice (see note i). The Legal Officer and Democratic Services Officer will retire with them.
11. The Committee will, unless an adjournment or deferral is necessary, return and the Decision will be read out.

NOTES: -

Note i – Exclusion of the Public Procedure: - Paragraph 5 of Part 1 of Schedule 12A Local Government Act 1972, as amended. (Chairman will call for a proposal to exclude press and public, followed by a seconder and vote will be taken.)

General

1. The case for any party should only be put in the presence of the others, unless one party voluntarily chooses to leave the meeting. It is vital that all Members of the Committee present at the opening of the meeting remain present throughout the hearing, any Member arriving after consideration of the item has commenced should not take part in deliberations.
2. Members of the Committee should, during the hearing, confine themselves to questions and not embark upon discussion of the merits of the application.
3. Applications for adjournments should be granted if refusal would deny the applicant a fair hearing.
4. The Chairman may after consultation with the Licensing Adviser present at the meeting vary the provisions of this Code of Conduct if deemed appropriate in the particular circumstances of an item of business being considered by the Committee.
5. The Chairman's ruling, in relation to this code and the conduct of the hearing, is final.

APPENDIX F

Numerical Limits	
Location	Limit

No numerical limits have been set for any area in the Isles of Scilly in respect of any type of Sex Establishment Licence.

APPENDIX G

SCHEDULE OF DELEGATED AUTHORITY

Matter to be dealt with	Full Committee	Officers
Grant of an Application for the grant of any type of Sex Establishment Licence.	If a relevant objection received or Officers have concerns in respect of the application or characteristics of the locality.	All other cases
Decision on whether an objection is frivolous or vexatious.	In respect of Grant applications.	In respect of Renewal Applications.
Decision on whether an objection is irrelevant.		All cases
Application for Waiver of Licence in respect of any type of Sex Establishment Licence.	All cases	
Refusal of an Application for the grant of any type of Sex Establishment Licence on the grounds of the Applicant being under the age of 18.		All cases
Refusal of an Application for the grant of any type of Sex Establishment Licence on the grounds of the Applicant being a person who is for the time being disqualified from holding a licence following revocation of such a licence.		All cases
Refusal of an Application for the grant of any type of Sex Establishment Licence on the grounds of the Applicant being a person, other than a body corporate, who is not resident in an EEA state or was not so resident throughout the period of 6 months immediately preceding the date when the application was made.		All cases
Refusal of an Application for the grant of any type of Sex Establishment Licence on the grounds of the Applicant being a body corporate which is not incorporated in an EEA state.		All cases
Refusal of an Application for the grant of any type of Sex Establishment Licence on the grounds of the Applicant being a person who had, within a period of 12 months		All cases

Matter to be dealt with	Full Committee	Officers
immediately preceding the date when 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.		
Refusal of an Application for the grant, renewal or transfer of any type of Sex Establishment Licence on the grounds that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason.	All cases	
Refusal of an Application for the grant, renewal or transfer of any type of Sex Establishment Licence on the grounds 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, renewed or transfer of such a licence if he made the application himself.	All cases	

Refusal of an Application for the grant or renewal of any type of Sex Establishment Licence on the grounds that the number of sex establishments or of sex establishments of a particular kind, in the relevant locality at the time the application is made (determined) is equal to or exceeds the number which the authority consider is appropriate for that locality.	All cases	
Refusal of an Application for the grant or renewal of any type of Sex Establishment Licence on the grounds that the grant or renewal of the licence would be inappropriate, having regard – (iv) to the character of the relevant locality; or	All cases	

Matter to be dealt with	Full Committee	Officers
(v) to the use to which any premises in the vicinity are put; or (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.		
Refusal of an Application for the Variation of the terms, conditions or restrictions on or subject to which the licence is held for any type of Sex Establishment Licence.	All cases	
Revocation of a licence.	All cases	
Refund of proportion of fee in respect of refusal of a Grant or Renewal application.		All cases
Where conditions allow written consent to amend restrictions in relation to opening hours, external appearance, etc.	If a relevant objection received or Officers have concerns	All other cases

APPENDIX H

CONTACT DETAILS FOR COUNCIL LICENSING SERVICES

Licensing Officer Council of the Isles of Scilly Town Hall St Mary's Isles of Scilly TR21 0LW	Tel: 01720 424000
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CONTACT DETAILS FOR DEVON & CORNWALL POLICE LICENSING SECTIONS

Licensing Officer Devon & Cornwall Constabulary Hayle Police Station Sea Lane HAYLE TR27 3AY	Tel: 01736 751844
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Prepared by

Administration Officer

Licensing Department

20 May 2015

If you would like this information
in another format please contact:

Council of the Isles of Scilly

Town Hall

St Mary's

Isles of Scilly, TR21 0LW

Telephone: **01720 424000**

Email: Licensing@scilly.gov.uk

www.scilly.gov.uk

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