

**London Government (Miscellaneous Provisions) Act 1982
as amended by the Policing and Crime Act 2009**

**London Borough of Barking and Dagenham
Sex Establishments Licensing Policy**



Legal Notes

The provision to adopt local authority licensing of sex establishments, defined as sex shops and sex cinemas, was created under Part II of the Local Government (Miscellaneous Provisions) Act 1982¹ (the Act) and the basis of such licensing regimes prescribed in Schedule 3 to the Act.

On 27 October 1982 this Council passed a resolution under Section 2 of the Act adopting Schedule 3 within the London Borough of Barking and Dagenham.

Section 27 of the Policing and Crime Act 2009² amended the definition of sex establishment in the 1982 Act to include sex entertainment venues.

This Council's first Sex Establishments Licensing Policy was produced in 2008. This revision has been prepared to reflect the inclusion of sex entertainment venues within the licensing regime.

This policy has been compiled with regard to the Act, secondary legislation and the Home Office Guidance, "Sex Entertainment Venues", issued to local licensing authorities in England and Wales.

Nothing in this policy is intended to prevent any individual application from being considered on its individual merits at the time the application is made.

¹ <http://www.legislation.gov.uk/ukpga/1982/30/part/II>

² <http://www.legislation.gov.uk/ukpga/2009/26/contents>

Executive Summary

This policy is divided into five sections.

Section 1 - provides demographic information about the borough and sets out this Council's vision and priorities.

Section 2 - sets out the purpose of the policy and describes the categories of premises and the licences covered by the Act.

The function of the policy is to describe the Council's role as licensing authority and inform prospective applicants how their applications will be considered. The policy deals with the grant, renewal, variation and transfer of licences in respect of sex shops, sex cinemas and sex entertainment venues.

Section 3 - deals with procedure and matters of general principle.

The grant or otherwise of sex establishment licences will be determined by sub-committee of the Council's Licensing Regulatory Board at a public hearing where applicants and objections will be heard. No licence will be granted for a period greater than one year.

Section 4 – sets out how licence applications will be determined.

Every application for a licence will be subject to detailed consideration of all relevant issues. Mandatory grounds for the refusal of a licence are provided by the Act but this Council also adopts a presumption against the grant of a licence in a number of specified circumstances. Whilst any application will be considered on its merits, the Council has determined that the appropriate number of sex establishments within any locality in the borough is nil.

Section 5 - explains this Council's approach to regulation and enforcement.

The Council seeks to ensure that all of its enforcement activities are undertaken in a clear, fair, consistent and transparent manner. We support responsible business operators and take effective actions against irresponsible operators. We aim to ensure that all licensed premises are well managed, providing a safe environment for staff, clientele and the local community.

Contents

Section 1 – Introduction	
• Vision and priorities	06
Section 2 – Purpose and Scope of this Policy	
• The purpose of this policy	07
• The scope of this policy	07
• Definitions	08
• Premises providing occasional striptease	08
Section 3 – Procedure and Principles	08
• The Licensing and Regulatory Board	09
• European Convention on Human Rights	09
• Equality duty	09
• Applications for licences	10
• Guidance on the licensing process	10
• Public hearing of applications	11
• Duration of licence	11
• Waivers	11
Section 4 – Licensing Decisions and Conditions	
• Statutory reasons for refusal of licences	12
• Appropriate numbers of licensed premises	13
• Assessment of ‘relevant locality	13
• Presumption against grant of licences in specified circumstances	13
• Other considerations	14
• Licence conditions	15
• Protection of children and young people	15
• Sexual exploitation	16
• Prevention of crime and disorder / anti-social behaviour	16
• Variation of a licence	16
• Revocation of a licence	17
• Cancellation of a licence	17
• Appeals	17
Section 5 – Enforcement	18

Section 1 – Introduction

Vision and priorities

1. Our vision for the borough is “One Borough; One Community; No-one left behind”.
2. The Council’s Corporate Plan sets out how we will deliver this vision by working across four themes:
 - A new kind of council
 - Build a well-run organisation
 - Ensure relentlessly reliable services
 - Develop place-based partnerships
 - Empowering people
 - Enable greater independence and protect the most vulnerable
 - Strengthen our services for all
 - Intervene earlier
 - Inclusive growth
 - Develop our aspirational and affordable housing offer
 - Shape great places and strong communities through regeneration
 - Encourage enterprise and enable employment
 - Citizenship and participation
 - Harness culture and increase opportunity
 - Encourage civic pride and social responsibility
 - Strengthen partnerships, participation and a place-based approach

Section 2 – Purpose and Scope of this Policy

The purpose of the policy

3. The purpose of this policy is –
 - To set out the powers and responsibilities of the Council as licensing authority
 - To inform sex establishment licence applicants how the Council will make licensing decisions
 - To set out how this Council intends to support responsible operators and take effective actions against irresponsible operators
 - To inform local residents, business and licensed premises users, about the protections afforded to the local community

The scope of the policy

4. Under the Local Government (Miscellaneous Provisions) Act 1982 as amended by s27 of the Policing and Crime Act 2009 the Council is responsible for determining sex establishment licences within its area.
5. This policy is concerned with the grant, renewal, variation, and transfer of sex establishment licences.
6. Licensable sex establishments fall into one of three categories:
 - sex shops
 - sex cinemas
 - sex entertainment venues

Definitions

7. Sex shops may sell, hire, exchange, lend, display or demonstrate sex articles or other things that are 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.
8. Sex cinemas may show films that are primarily for the portrayal of sexual activity or acts of force or restraint which are associated with sexual activity with the intention of sexually stimulating customers.
9. Sex entertainment venues may provide sexual entertainment (e.g. lap dancing, peep show, live sex show, strip show, etc.) to a live audience for the financial gain of the organiser or the entertainer.

Premises Providing Occasional Striptease

10. The Licensing Act 2003 allows for limited, occasional striptease and/or similar performances to be given under a premises licence authorising alcohol on sales without the need for a sex entertainment venue licence.
11. Any person providing striptease or similar performances under a licence issued under the Licensing Act 2003 will have appropriate conditions attached to that licence.

Section 3 – Procedure and Principles

12. This policy should be read in conjunction with the Council's statutory Statement of Licensing Policy³ made under the Licensing Act 2003. In cases where a premise may

³ <https://www.lbbd.gov.uk/sites/default/files/attachments/Licensing-Act-2003-Policy-2017-22.pdf>

be licensed under, and regulated by, both Acts, the licensing objectives under the 2003 Act will apply, namely:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

13. Notwithstanding any presumptions indicated below, nothing in this Policy is intended to undermine the right of any individual to make an application in accordance with the 1982 Act and to have that application considered on its individual merits.

14. The Council may make exceptions to its policy where it is appropriate to do so and will give reasons for any such exception.

The Licensing and Regulatory Board

15. The Council's Licensing and Regulatory Board will form Licensing sub-committees to perform all functions relating to licensing.

16. The Council will annually appoint 10 members to sit on the Licensing and Regulatory Board. From this overall membership, any 3 members may sit as a licensing sub-committee to determine applications. Only councillors who have received relevant licensing training will take part in decisions on licensing matters.

17. Members of the Licensing and Regulatory Board will not take part in any licensing decisions concerning premises in which they have an interest. A member of the Licensing and Regulatory Board may not hear an application that is in their own ward, but they may observe the meeting as a member of the public.

18. All decisions in respect of applications for sex establishment licences will be made by the Licensing Sub-Committee, although Licensing Officers may determine that an objection received is frivolous or vexatious and may not refer it for the sub-committee's consideration.

European Convention on Human Rights

19. When determining any licence application, the Sub-Committee will have regard to relevant Convention rights, including:

- Article 1, Protocol 1 concerning a person's entitlement to the peaceful enjoyment of his/her property.
- Article 6 concerning the right to a fair and public hearing

- Article 8 concerning the right to respect for private and family life
- Article 10 concerning the right to freedom of expression

Equality Duty

20. In taking licensing decisions, the Sub-Committee will also be mindful of the Council's public sector equality duty under the Equality Act 2010⁴.

21. Decisions will be taken with due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not

Applications for licences The Council may grant to any applicant, and from time to time renew, a licence for the use of any premises, vehicle, vessel, or stall specified for a sex establishment, on such terms and conditions and subject to such restrictions as may be specified. Any application for the grant, renewal or transfer of a sex establishments licence must be made either in writing or electronically, on the form provided by the Council. The application form must be fully completed, signed and dated by the applicant or their representative, and submitted together with the appropriate fee and all other required documentation to the Council's Licensing Team. No application will be deemed complete or be processed until all information requested is received in full.

25. Applicants for a sex establishment licence must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than 7 days after the date the application is made.

26. Where the application relates to premises, a notice must also be displayed on or near the premises in a place where it can be conveniently read by members of the public. The notice must be displayed for a period of 21 days beginning the date the applications is made.

27. A notice of the application will also be placed on the Council's website.

28. Any person may object to the grant or renewal of a sex establishment licence.

⁴ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

Guidance on the licensing process

29. This policy document does not intend to set out the steps of the licensing process. Detailed information on the licensing process is provided in the Council's separate ['Guidance Note for Applicants and Objectors under the Local Government \(Miscellaneous Provisions\) Act 1982'](#).

Public hearing of applications

35. All applications for the grant, renewal or transfer of sex establishment licences will be determined by a sub-committee of the Licensing Regulatory Board at a public hearing if the application is opposed.

All applicants will be required to appear before the sub-committee when their application is heard.

31. Whilst the Act does not make provision for objectors to be heard in person, the Council is under a duty to consider any objections made within 28 days of the application and has deemed that registered objectors will be given the opportunity to appear before and be heard at the licence determination hearing. The Council reserves the right to hear late objections provided that the applicant is given the opportunity to respond to them.

32. Where the Council refuses the grant, renewal or transfer of a licence, a written statement of the reasons for the decision will be provided to the applicant or holder of the licence, if required, within 7 days.

Duration of licence

33. Unless previously cancelled or revoked, any licence issued shall remain in force for one year or for such shorter period specified in the licence.

Waivers

34. Although the Council is permitted to waive the requirement for a licence in any case where it considers that to require a licence would be unreasonable or inappropriate, the Council does not consider it would be appropriate to waive the requirement to hold a sex establishment licence in respect of sex shops and sex cinemas, except in the most exceptional circumstances.

35. The Council does not consider it would ever be appropriate to waive the requirement to hold a sex establishment licence in respect of sexual entertainment venues.

Section 4 – Licensing Decisions and Conditions

Statutory reasons for refusal of licences

36. Mandatory grounds for refusal are set out in Section 12 of Schedule 3 to the 1982 Act. Any refusal of an application must be in reference to one or more of the stated grounds.
37. A licence may not be granted to —
- (a) a person under the age of 18; or
 - (b) a person who has had a previous licence revoked; or
 - (c) a person who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date of the application; or
 - (d) a body corporate which is not incorporated in the United Kingdom; or
 - (e) a person who has, within a period of 12 months immediately preceding the date of the application, been refused the grant or renewal of a licence for the premises in respect of which the application is made, unless the refusal has been reversed on appeal.
38. An application for the grant or renewal of a licence may also be refused where —
- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - (b) were the licence to be granted, renewed or transferred, the business to which it relates would be managed by or carried on for the benefit of a person other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
 - (c) the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number the Council considers to be appropriate for that locality;
 - (d) the grant or renewal of the licence would be inappropriate, having regard to
 - (i) the character of the relevant locality; or
 - (ii) the use to which any premises in the vicinity are put; or
 - (iii) the layout, character or condition of the premises in respect of which the application is made.
39. Similarly, an application for the transfer of a licence may be refused on either or both of grounds (a) and (b) above.

Appropriate numbers of licensed sex establishments

40. The Council is permitted under s12(4) to determine that the appropriate number of sex establishments in any relevant locality is nil.
41. Barking and Dagenham is highly residential and has a young and growing population. No area of the borough has a recent association with the provision of sexual entertainment. In that context the Council considers it inappropriate to allow the introduction of sex entertainment venues in any locality because of the impact that they and their customers may have on the locality.
42. Accordingly, the appropriate number of licensed sex establishments of any category in any area of the borough is determined to be nil.
43. The Council will continue to consider applications and to consider each application upon its own individual merits, but it is expected that this policy will be strictly applied and licences will therefore only be granted in exceptional circumstances. The ability of an applicant to demonstrate that they are of good character and could provide a high standard of management will not alone constitute exceptional circumstances.

Assessment of 'relevant locality'

44. In general, this Council will treat the ward in which the premises that is subject of the application is situated as the relevant locality, although a different view may be taken following representations raised in individual cases (for example, where a premises subject of an application borders another ward).

Presumptions against the grant of licences in specified circumstances

45. This Council takes the position that there should be a policy presumption against permitting licensed sex establishments either adjacent to or in the vicinity of premises in the following categories, regardless of location:
 - Schools and other facilities used primarily by children and young persons, including playgroups and playgrounds
 - Facilities used primarily by vulnerable adults and adult social care facilities
 - Facilities used primarily by women
 - Places of worship
 - Hospitals and medical facilities
 - Community facilities or public buildings
 - Community leisure facilities and open spaces

- Cultural facilities, including cinemas, theatres and galleries
- Residential accommodation
- Another licensed sex establishment

46. The meaning of “in the vicinity” will be determined on the circumstances of each case, however for the purposes of general guidance a radius of 250 metres will be considered.

Other considerations

47. In all cases, there are further issues that this Council considers to be relevant and will take into account when determining applications for sex establishment licences, namely:

- The position of the premises in respect of popular access routes to the categories of premises identified above
- The nature of any logo for the sex establishment
- The nature of any external images, advertisements or displays
- Whether advertising positioned inside the sex establishment could be viewed from outside of the premises
- Whether the name of the sex establishment clearly indicates the nature of the activities that would take place upon the premises
- The operating hours of the premises and their relationship to the operating hours of nearby premises
- The scheme of management
- Proposed front of house controls and security arrangements, both external and internal
- Queueing arrangements for customers wishing to gain admission
- Age verification procedures to prevent admission of under-age persons
- The layout and condition of the premises
- Arrangements for ensuring the safety of customers, staff and performers on the premises
- Whether planning consent has been obtained for the proposed use
- Whether there are any planned developments in the area that may render the locality unsuitable for a sex establishment
- The potential for local crime and disorder and/or anti-social behavior that may arise from the operation of the premises
- Whether the applicant has had any relevant enforcement action taken against them by the Police or any other regulatory body
- Whether the applicant can comply with the relevant standard conditions for the category of sex establishment

- Accessibility to the premises for disabled persons

Licence conditions

48. Where the Council decides to grant a licence it will do so subject to standard conditions. It may also impose specific conditions and/or restrictions applicable to an individual licence.
49. This Council has prescribed standard conditions applicable to all sex establishments and additional standard conditions applicable accordingly if the premises is a sex shop, a sex cinema or a sex entertainment venue
50. The relevant standard licence conditions will be attached to every licence granted, renewed or transferred by the Council unless expressly excluded.
51. The standard licence conditions are detailed in full in the separate document “Sex Establishments – Standard Licensing Conditions”⁵.

Protection of Children and Young People

52. No person under the age of 18 years may be admitted to any sex establishment while the premises is in use under its licence. No person under the age of 18 years may be employed at any sex establishment.
53. To ensure that no child or young person is exposed to any licensable activity, it is important that a rigorous age verification scheme is established. This Council promotes the principles of ‘Challenge 25’.
54. Anyone who appears to be under 25 years of age will be asked for ID and admission will be refused to any person appearing under 25 years of age who cannot provide valid ID establishing they are over 18. Notices to this effect must be displayed in a clear and prominent position at the premises. Valid ID would comprise a photo driving licence, passport or other approved photographic ID bearing the PASS hologram.
55. No licensable activity or related material may be visible from the street and passersby may not be subject to touting.

⁵ <https://www.lbbd.gov.uk/sex-establishment-licence>

Sexual Exploitation

56. To help prevent the exploitation of any person at any time, no dancer or performer employed at a sex entertainment venue may be under 18 years of age; and no performer or dancer may be permitted to perform under the influence of alcohol or drugs. The licence holder will be required to undertake reasonable checks to ensure that all dancers or performers are eligible to work in the UK and obtain a certified photocopy of the passport of each performer together with their personal details.
57. Performers and dancers must be subject to a Code of Conduct and allied disciplinary procedure for failure to comply with the Code (which must not include monetary fines).
58. A Customers' Code of Conduct must also be devised, together with a means of ensuring that it is communicated to all customers on or soon after entering the premise. Repeated or serious failure to comply should result in the ejection, and potentially barring, of the customer from the premises.
59. Performers and dancers must be provided with adequate changing and sanitary accommodation, and there must be an appropriate welfare policy.

Prevention of Crime and Disorder and / or Anti-Social Behaviour

60. The Council will seek to ensure that no licensed premises contributes to levels of local crime and disorder or anti-social behavior.
61. Accordingly, the Council will expect high standards of management at all times.
62. The Council will expect the premises management to maintain a good working relationship with the police and the Licensing Team.
63. The Council will require all licensed premises to have good CCTV coverage. All sex entertainment venues must have adequate door supervision (registered with the Security Industry Authority) and good internal security and monitoring arrangements.

Variation of licences

64. The holder of a sex establishment licence may apply at any time to the Council for a variation of any term, condition or restriction.

65. Where such application is made the Council may
- Make the variation specified in the application; or
 - Make such variations as it thinks fit (including variations other than those specified in the application); or
 - Refuse the application.

Revocation of licences

66. The Council may, after giving the holder of a licence an opportunity of appearing before and being heard by them, at any time revoke the licence on any of the grounds specified above for the refusal of a licence.
67. Where a licence is revoked, the Council will provide a statement in writing of the reasons for the decision within 7 days of the revocation.
68. Where a licence is revoked, its holder shall be disqualified from holding or obtaining a licence in the borough for a period of 12 months from the date of revocation.

Cancellation of licence

69. In the event of the death of the holder of a licence, that licence shall be deemed to have been granted to his personal representatives and shall, unless previously revoked, remain in force until the end of the period of 3 months beginning with the death. The licence shall then expire, unless extended by the Council upon application by the representatives.
70. The Council may extend the licence upon application, if it is satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable.
71. The Council may, at the written request of the holder of a licence, cancel the licence.

Appeals

72. Where this Council refuses an application for the grant, renewal or transfer of a sex establishment licence the applicant may appeal the decision in a magistrates' court, unless the application was refused for the reasons given below, in which case the only means of challenge is by way of judicial review.
- That the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality;

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

Section Five – Enforcement

73. The Council’s enforcement services aim to safeguard the local community and environment and provide a level playing field on which businesses can trade fairly.
74. Council officers are subject to the provisions of the Regulators’ Code⁶, which is designed to ensure effective and efficient public protection services. Specifically, the Council is committed to accord with the principles of good enforcement practice by carrying out its regulatory functions in a fair, open, transparent, and consistent manner.
75. Our resources will be ‘intelligence led’ and directed to where they are needed most. Responsible business operators, with proven operating history, can expect a light touch enforcement approach, enabling resources to be directed to supporting new operators and dealing with irresponsible and illegal operations.
76. The 1982 Act empowers both police constables and authorised Council officers to take enforcement actions.
77. Licensed premises may be subject to ‘during performance’ or ‘during operation’ visits conducted on a risk-assessed basis, having regard to the premises previous operating history and regulator confidence in management.
78. Where it is necessary to take enforcement action officers will:
- be clear about the issue(s) that have made enforcement action necessary
 - for action short of licence revocation and/or prosecution, provide a clear explanation as to what remedial action is necessary and a reasonable timescale for completion
 - advise the licensee of any right of appeal
79. The Council and partner agencies recognise the interests of both citizens and businesses and will work together to assist licence holders to comply with the law and the licensing objectives.

⁶ <https://www.gov.uk/government/publications/regulators-code>

80. The Council has set clear standards of service and performance that the public and businesses can expect. We have an Enforcement Policy, which sets out our principles for effective enforcement.