

CHESTERFIELD BOROUGH COUNCIL

Sex Establishment Licensing Conditions

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Sex Establishment Licensing Regulations

1.0 Introduction

On the 1st March 2011 Chesterfield Borough Council adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act) so that it can licence sex shops, sex cinemas and sexual entertainment venues in the Borough. These are referred to as 'Sex Establishments' unless otherwise stated.

The Council does not make a moral stand in adopting these regulations. It recognises that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. The role of the Licensing Authority is to administer the licensing regime in accordance with the law.

2.0 Objections

A wide range of people can raise objections about the grant, renewal or transfer of sex establishment licences. The persons/groups can include local residents, tenants associations, community associations and trade associations as well as Councillors and MP's. Councillors may also represent interested parties, providing they do not sit on the Licensing Committee that determines the application in question.

2.1 Relevant Objections

If an objection is received, the Licensing Authority Officers will determine if an objection is relevant. The Council will not consider objections that are frivolous or vexatious, or which relates to moral grounds/values (as these are outside the scope of the 1982 Act). Decisions on whether objections are frivolous or vexatious will be made objectively by Officers. Where objections are rejected, the objector will be given a written reason.

Objections should ideally be made in writing (unless submitted electronically), indicating the name and addresses of the person or organisation making the representation and indicate the premises to which the objection relates. Additionally the person making the objection should clearly set out the reasons for making the objections and where possible provide evidence.

When the Council receives objections it will give notice in writing of the general terms of the objection to the applicant. The Council will not without, prior consent of the objector, reveal their name or address to the applicant.

3.0 Definitions

3.1 In this policy 'sex establishment' means a sex shop, sex cinema or a sexual entertainment venue.

3.2 A 'Sexual Entertainment Venue' is defined as 'any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.'

In this paragraph, relevant entertainment means;

- any live performance
- any live display of nudity
- Which is often such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means). An audience can consist of one person, e.g. where the entertainment takes place in private booths.

In determining whether entertainment is 'relevant entertainment' each case will be judged on its own merits, but the Guidance issued by the Home Office over these matters would expect the definition of relevant entertainment to apply to the following forms of entertainment;

- lap dancing
- pole dancing
- table dancing
- strip shows
- peep shows
- live sex shows

(Please note that the above list is not exhaustive and as the understanding of the exact nature of these descriptions may vary, should only be treated as indicative. Decisions to licence premises as 'sexual entertainment venues' shall depend on the content of the entertainment not on the name it is given.)

Adult entertainment not classed as 'relevant entertainment' may still require licensing under the Licensing Act 2003. Please contact the Licensing Section for further information.

The use of private booths for performances of relevant entertainment shall not be permitted otherwise than with the prior consent of the Council having considered the number, style and construction of the booths.

3.3 'Sex Shop' means any premises, vehicle, vessel or stall used for a business which consists to a significant degree (ref 3.6) of selling, hiring, exchanging or lending, displaying or demonstrating;

- a) sex articles; or
- b) Other things intended for use in connection with, or for the purpose of stimulating or encouraging, sexual activity or acts of force or restraint which are associated with sexual activity.

3.4 'Sex Article' means anything made for the use in connection with, or for the purpose of stimulating or encouraging, sexual activity or acts of force or restraint

which are associated with sexual activity;

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

3.5 'Sex Cinema' means any premises ,vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, however produced, which;

- a) Are concerned primarily with the portrayal , primarily deal with or relate to, or are intended to stimulate or encourage sexual activity; or acts of force or restraint which are associated with sexual activity.
- b) Or is concerned primarily with the portrayal of or primary deal with or relate to genital organs, or urinary or excretory functions.

3.6 Significant Degree

The phrase 'significant degree' is not defined in the Local Government (Miscellaneous Provisions) Act 1982.

When considering if a business is selling a significant degree of sex articles thus requiring a licence, the following criteria is considered;

- the ratio of sex articles to other aspects of the business
- the absolute quantity of sales
- the character of the remainder of the business
- the nature of the displays in the business
- turnover
- And other factors which appear to be materially relevant.

Each case will be judged on its own merits giving regard to the above criteria.

Similar criteria will be applied to Sex Cinemas in respect of a significant degree in showing films subject to this schedule.

4.0 How can I make an application?

In general the Authority has discretion whether or not to grant a licence for the Use of any premises, vehicle, vessel or stall to be used as a class of sex Establishment.

A Licence cannot, however, be granted to:

- .. a person under 18;
- .. a person who has held a licence but has had it revoked within 12 months Proceeding the date of application;
- .. To a person, other than a body corporate, who is not resident in an EEA State Or was not so resident throughout the period of six months immediately Proceeding the date when the application was made;
- .. to a body corporate which is not incorporated in an EEA State; or
- .. a person who has within the last 12 months preceding the date of the

Application was refused a licence in respect of the same premises.

4.0 Grounds for Refusal

4.1 There are mandatory grounds for refusing sex establishment licences set out in Paragraph 12 of Schedule 3 to the 1982 Act. These include where the applicant themselves are unsuitable, due to their age, domiciliary status or previous criminal convictions.

4.2 Applications for new or renewed licences can be refused where;

a) The number of sex establishments in the relevant locality at the time of the application is made, is equal to or exceeds the number that the Licensing Authority consider appropriate for that locality.

b) 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
- To the layout, character or conditions of the premises.

5.0 Relevant Localities.

5.1 When considering the locality, consideration shall be given to the proximity of the following;

- residential accommodation
- parks and children's play areas
- other retail units
- Schools and nurseries
- Religious and communal buildings
- alcohol or entertainment licensed premises.

6.0 Duration of Licence

A licence will normally be granted for a period of one year, unless there are exceptional circumstances/reasons for the licence to be granted for a shorter period.

7.0 Application Form and Fees

An application form and details of the relevant fees can be obtained from the Licensing Section, including the public notices, or via the website at www.chesterfield.gov.uk.

8.0 Delegation Scheme

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for a new Sex Establishment Licence		All Cases	
Application for a variation of a Sex Establishment Licence		All Cases	
Application for a transfer of a Sex Establishment Licence		Where a relevant objection has been received	Where no relevant objections have been received
Application for renewal of a Sex Establishment licence		Where a relevant objection has been received	Where no relevant objections have been received
Setting of all fees in relation to sex establishment licences	The full Council		
Consideration of the revocation of a Sex Establishment Licence		All Cases	
Setting Policy	All Cases		
Determining if an objection is relevant			All Cases
Determining relevant localities	All Cases		

Part 1 – Standard Conditions for Sex Shops

Definition

1. In these Regulations save when the context otherwise requires the following expressions shall have the following meanings:-
 - (i) "Sex establishment" and "sex entertainment venue," "Sex Cinema" "Sex Shop", "Sex Entertainment Venue" and "Sex Article" shall have the meanings ascribed to them in the Local Government (Miscellaneous Provisions) Act 1982.
 - (ii) "Premises" means a building or part of a building and any forecourt yard or place of storage used in connection with a building or part of a building which is the subject of a licence for a Sex establishment and sex entertainment venue granted under the said Third Schedule.
 - (iii) "Approval of the Council" or "Consent of the Council" means the approval or consent of the Council in writing.
 - (iv) "Approved" means approved by the Council in writing.
 - (v) "The Council" means Chesterfield Borough Council.
 - (vi) "Film" shall have the meaning ascribed to in it the Films Act 1985.

General

2. In the event of a conflict between these Regulations and any special conditions contained in a licence relating to a Sex establishment the special conditions shall prevail.
3. The grant of a licence for a Sex establishment shall not be deemed to convey any approval or consent which may be required under any enactment, by law, Order or regulation other than the Third Schedule of the

Local Government (Miscellaneous Provisions) Act 1982.

4. The marginal notes inserted in these Regulations are inserted for the purposes of convenience only and shall not affect in any way the meaning or construction thereof.

Times of
Opening

5. The opening hours for a sex establishment shall be such as is determined by the Council in respect of each licence irrespective of the hours of opening of any other retail establishment in the Borough.

6. Except with the previous approval of the Council a Sex establishment shall not be open on Sundays on Christmas Day, Good Friday or any Public Holiday.

Conduct and
Management of
Sex
Establishments

7. Where the Licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary, manager or person in charge are to be furnished within 14 days of a request in writing from the Council..

8. The licensee or some responsible person, being 18 years of age or over, nominated by the Licensee, in writing shall be in attendance at the premises at all such times as the premises are open to the public. Prior to any such nomination or within 5 working days thereafter the licensee shall provide details (including a photograph) of the person involved to the Council. The Council may serve notice on the licensee that such nomination shall not be made or shall be revoked

9. The name of the person responsible for the management of the Sex establishment be he the licensee or a manager approved by the Council shall be prominently displayed within the Sex establishment throughout the period during which he is responsible for its conduct.

10. The Licensee shall maintain a daily register in which he shall record the name and address of any person who is to be responsible for managing the Sex establishment in his 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 opening for business and is to be

available for inspection by the Police and by authorised officers of the Council.

11. The Licensee shall retain control over all portions of the Premises and shall not let, licence or part with possession of any part of the Premises.
12. The Licensee shall maintain good order in the Premises.
13. The Licensee shall ensure that no person under the age of 18 shall be admitted to the premises or employed in the business of a Sex Establishment.
14. The licensee shall ensure that the public are not admitted to any part or parts of the Premises other than those which have been approved by the Council.
15. No part of the Premises shall be used by prostitutes (male or female) for the purpose of solicitation or of otherwise exercising their calling.
16. Neither the Licensee nor any employee or other person shall seek to obtain custom for the Sex establishment by means of personal solicitation outside or in the vicinity of the Premises.
17. The Licensee shall comply with all statutory provisions and any regulations made there under.
18. The Licensee shall ensure that during the hours the Sex establishment is open for business every employee wears a badge of a type to be approved by the Council indicating his name and that he is an employee.
19. The copy of the licence and of these Regulations required to be exhibited in accordance with paragraph 14(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall be reproductions to the same scale as those issued by the Council. The copy of the licence required to be displayed as aforesaid shall be suitably framed and the copy of these Regulations shall be retained in a clean and legible condition.
20. No film or video film shall be exhibited sold or supplied unless it bears a certificate to that effect that it is a reproduction authorised by the owner of the copyright of the film or video film so certified.

21. The Licensee shall make provision in the means of access both to and within the Sex establishment for the needs of members of the public visiting the Sex establishment who are disabled.
22. No charge shall be made to any member of the public or visitor for admission neither to the premises in respect of which a licence is granted, nor for admission to any part thereof.
23. No advertisements of any kind shall be exhibited within the licensed premises except those which relate solely to the goods for sale, hire, exchange, loan, display or demonstration therein.

User

24. The premises hereby licensed shall be used only for the purposes of a sex shop as defined by paragraph 4 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and shall not be used either wholly or in part for any other purpose or purposes whatsoever during the period in respect of which this licence is granted.
25. No refreshments of any kind shall be consumed on the premises other than by bona fide staff in a part of the premises not open to the public.
26. Save as otherwise hereinafter provided no music of any kind shall be played at any time upon the premises hereby licensed.
27. No amusement or gaming machines of any kind whether for prizes or otherwise shall be kept or used upon the premises hereby licensed at any time.
28. No moving picture, moving displays nor recorded sound of any description howsoever produced shall be permitted upon the premises hereby licensed except for a period not exceeding 60 seconds for the bona fide purpose of demonstration only to a prospective purchaser hirer or borrower of the article in question but not further or otherwise.
29. No change of use of any portion of the premises from that approved by the Council shall be made until the consent of the Council has been obtained.
30. No change from a Sex Cinema to a Sex Shop or from a Sex Shop to a Sex Cinema shall be made without the consent of the Council.

Goods available in
Sex Establishments

31. Neither Sex Articles nor other things intended for use in connection with or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a Sex Cinema.
32. All Sex Articles and other things displayed for sale, hire, exchange or loan within a Sex Shop shall be clearly marked to show persons inside the Sex Shop the respective prices being charged.
33. All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and notices to this effect are to be prominently displayed within the Sex Establishment.
34. The Licensee shall comply with all Acts of Parliament governing the sale of any recorded media capable of reproducing pictures, whether moving or otherwise, from the premises. Furthermore, the Licensee should be aware that any conviction of the licensee in respect of the foregoing may lead to the revocation of the licence.

External
Appearance

35. Except as provided for in sub-paragraphs (a) - (c) hereof no advertising material, sign, word, graphic or pictorial or other display or representation whatsoever referring to the premises hereby licensed or to the goods, articles or services provided therein shall be displayed outside near to or within the premises hereby licensed in such a position or manner as to be visible to any person lawfully using any street, highway, close, yard, court, footpath or place to which the public has access for the time being.
 - (a) The name or trading name, style or title of the holder of these premises provided always that no name style or title other than that of person or company granted this licence shall be so exhibited unless and until approved by the Council in writing.
 - (b) Any notice required by any statute or any instrument or regulation made there under.
 - (c) Any notice required by condition 30 hereunder.
36. There shall be displayed above the entrance or in a position so that it is immediately apparent to all persons entering the said premises through the outer entrance

door a notice in permanent form in letters not less than 2" high or more than 3" high stating the name of the licensee of the said premises and that the said premises are licensed under Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as a sex shop.

37. All windows, doors or other means by which the interior of the premises would otherwise be visible to any person lawfully using any street highway close yard court footpath or place to which the public has access for the time being shall be obscured or screened in such a way as to prevent the interior of the said premises or any article material or display of any kind therein from being visible to any such said persons.

State,
condition and
layout of the
Premises

38. The Premises shall be maintained in good repair and condition and all parts thereof shall be kept in a clean and wholesome condition to the satisfaction of the Council.

39. The number, size and position of all doors or openings provided for the purposes of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements:-

- (i) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "exit" or "fire exit" in 5" (125 mm) white block letters on a green background sited above the doors or openings.
- (ii) Doors and openings which lead to parts of the Premises to which the public are not permitted to have access shall have notices placed over them marked "private".
- (iii) Save in the case of emergency no access shall be permitted through the Premises to any unlicensed premises adjoining or adjacent.

40. The external doors to the Sex establishment shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.

41. The licensee shall make provision in the means of access both to and within the Sex Establishment for the

needs of members of the public visiting the Sex Establishment who are disabled.

42. No fastenings of any description shall be fitted upon any booth or cubicle within the Sex establishment and sex entertainment venue nor shall more than one person (including any employee) be present in any such booth or cubicle at any time.

43. Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the Premises shall not be made except with the prior approval of the Council.

Safety

44. The Licensee shall take all reasonable precautions for the safety of the public and employees.

45. The Licensee shall comply with any fire prevention and safety measures that may be required of him by the Council.

46. The Premises shall be provided with fire appliances suitable to the fire risks of the Premises and such fire appliances shall be maintained in proper working order and shall be available for instant use.

Part 2 - Conditions for Sexual Entertainment Venue

General Conditions

1. The term 'relevant entertainment' has the same meaning as in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982; 'any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means.)' An audience can consist of just one person, e.g. where the entertainment takes place in a private booth.
2. The term performer means a performer of relevant entertainment.

Times of Relevant Entertainment

3. Relevant Entertainment shall be permitted at the premises on the following days;

And between the following times;

Type of Entertainment

Area for Lap dancing;

Area for Pole dancing;

Performers

4. The term performer means a performer of relevant entertainment.
5. Relevant entertainment shall be given only by performers who are engaged exclusively for that purpose.

6. Performers shall be aged not less than 18.
7. No performer shall be allowed to work if they appear to be under the influence of intoxicating liquor and/or drugs.
8. There shall be no physical participation between performers or any member of the audience and any performer (other than a normal socially acceptable greeting, such as a handshake, light kiss on the cheek or placing of a hand on a shoulder or waist.)
9. The licence holder, management or anyone concerned in providing the relevant entertainment shall not encourage or permit the encouragement of the audience to throw money or other gratuities to the performers.
10. No performers shall accept or give any telephone number or business card or notes to or from members of the audience.
11. There shall be no private booths provided on the premises for the use of a performance of relevant entertainment without the prior consent of the Council.
12. Performers shall be provided with changing room(s) which shall be located as to be separate and apart from public facilities. No person other than performers and authorised staff shall be permitted in the changing room(s).
13. The licence holder shall ensure that each performer is to be trained to be fully aware of the House Rules and the conditions contained within them.
14. Performers or dancers who are in the public area and not performing shall be properly and decently dressed.

Performances

15. Whilst dancers are performing there shall be a minimum distance of one metre between the dancer and the seated customers and prominent, clear notices shall be displayed at each table stating this requirement. The licensee must take all reasonable steps to ensure customers remain seated whilst authorised entertainment is taking place.
16. There shall be no physical contact between customers and dancers except for the placing of money or tokens in a garter or into the hands of the dancer at the beginning or conclusion of a performance.
17. No performances shall include any sex act with any other performer, persons in the audience or with the use of any object.

18. No audience participation shall be permitted.

19. The relevant entertainment shall not be visible from the street. Any person who can be observed from outside the premises shall be decently dressed.

House Rules

20. No person, staff, performer, entertainer, visitor or customer under the age of 18 years shall be allowed in any part of the premises whilst relevant entertainment is being performed or at any time whilst a rehearsal or audition for such entertainment is being conducted. A notice shall be clearly displayed at the entrance to the premises stating that "No persons under 18 will be admitted."

21. Signs displaying the House rules on the performance of relevant entertainment will be displayed throughout the premises and be clearly visible to patrons. This will include any private individual booth area.

22. In the event of the relevant entertainment being performed for private viewing, the patron shall be informed of the duration and price of the relevant entertainment, and the details shall be specified in a clearly visible notice in each area designated for private relevant entertainment.

23. The licence holder must not display outside the premises any material which indicates or suggests that striptease or similar dancing takes place on the premises.

24. A copy of the House Rules and Management Procedures when the premises are operating should be produced and approved by the Council and Police. This document shall be ongoing and constantly reviewed.

Door Supervision

25. An adequate number of SIA registered Door Supervisors shall be on duty at the premises whilst relevant entertainment takes place. There shall be at least one Door Supervisor on each entrance, in each separate part of the premises and on the door to the dressing room.

26. All Door Supervisors working outside the premises or whilst engaged in the dispersal of patrons at the close of business shall wear High Visibility clothing.

27. The premises shall be a member of the Pub Watch radio scheme.

Closed Circuit Television (CCTV)

28. A CCTV system shall be installed to cover all entrances and exits to the premises and areas where relevant entertainment takes place. This system must be installed and

fully operational before the premises opens for the licensable activity applied for. All cameras shall continually record whilst the premises are open to the public and video recordings shall be kept available for a minimum 28 days with date and time stamping.

29. The CCTV system shall be capable of monitoring and recording satisfactory colour images from each and every camera continually.

30. All aspects of the CCTV must comply with the Data Protection Act 1998. Signage shall be clearly displayed informing customers that a CCTV system is in operation and recording on the premises.

31. During all hours that the premises are open or licensable activities are permitted, a member of staff will at all times be on the premises and capable of operating the system in its entirety.

Layout of Premises

32. All dance booths are to be equipped with a panic alarm for safety.

33. Arrangements shall be put in place to restrict access to the dressing rooms at all times when the relevant entertainment is taking place and until such time as all performers have vacated it.

34. Safe and controlled access to the dressing room for performers must be maintained at all times when the performance is taking place and immediately afterwards. The dressing rooms must be capable of being locked from inside to ensure privacy.

Change of use of Premises

36. The Licensing Authority must be informed should the licensee wish to change the use of the establishment to another form of sex establishment.

Sale of Goods

37. No sex articles or items intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force, or restraints, which are associated with sexual activity, shall be displayed, sold, hired, exchanged, loaned or demonstrated in a 'Sexual Entertainment Venue.'