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## Statement of Licensing Policy for Sex Establishment

**If you or someone you know has difficulty in understanding or reading this policy, then help will be offered to meet your needs. Please ring on 01803 208126 or email [Licensing@torbay.gov.uk](mailto:Licensing@torbay.gov.uk)**

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## Foreword

Torbay is situated on the South Devon coast, on the south west peninsular of England and comprises the three towns of Torquay, Paignton, and Brixham. Torbay is an outstanding coastal location including 22 miles of coastline which has shaped its economic and social development over time. Historically the local economy has focused on tourism, fishing and to a lesser extent manufacturing activities.

The three towns of Torbay and its environs have a combined population of 134,000, making Torbay the second largest conurbation to the south west of Bristol. Tourism in Torbay accounts for 1.45 million staying visitors plus 3.8 million day visitors, generating a direct and indirect spend of £442 million per annum. This represents around one third of the areas wealth and also one third of its jobs.

This Statement of Licensing Policy for Sex Establishments sets out Torbay Council's requirements for premises to be licensed as sex establishments within the meaning of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009). This legislation shall be referred to thereafter as 'the Act'.

Section 2 of the Act provides that local authorities may resolve that Schedule 3 will apply to their area, which has the effect of requiring premises operating as sex establishments in that authority's area to be licensed. The adoption of Schedule 3 also allows the Council to set terms and conditions and fees for the grant, renewal, variation and transfer of such licences and the number of licences that may be issued in the area, which may be nil.

Schedule 3 was originally adopted for Sex Shops and Sex Cinema's on the 28<sup>th</sup> October 1982, and has subsequently been adopted for Sex Entertainment Venues on the 2<sup>nd</sup> December 2010.

This policy therefore replaces all previous policies.

Torbay Council does not take a moral stand in adopting 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 administer this licensing regime in accordance with the law.

## **1.0 Introduction**

- 1.1 Torbay Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, providing that anyone wishing to operate a 'sex establishment' within the Borough must first obtain a licence from the Council.
- 1.2 This Statement of Licensing Policy for Sex Establishments sets out the Council's requirements for premises to be licensed as 'sex establishments' within the meaning of the Act.
- 1.3 The information contained in the appendices attached and referred to within this policy should be read as an inclusive part of this policy document.
- 1.4 Applicants are strongly advised to seek their own legal advice if they are unsure of the requirements of the Act or schedules issued under the Act.

### **Definition of Sex Establishment**

- 1.5 A 'sex establishment' is defined under the Act as a 'sex shop', a 'sex cinema' or a 'sexual entertainment venue'. Full definitions of those and other relevant terms can be found in Appendix A. This appendix also provides detail on when a sexual entertainment venue is exempt from the provisions of the Act.
- 1.6 Sex establishments include any premises, vehicle, vessel or stall used as a sex establishment but does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control or primarily relate to birth control.

### **Policy Development**

- 1.7 This Statement of Licensing Policy sets out position the Licensing Authority will generally apply when making decisions on applications. This document explains the application process and provides information on what is expected of Applicants. In addition, the processes by which Representations may be made about an application are explained.
- 1.8 Whilst this policy stands alone, Applicants are advised to also have regard to the Torbay Council's Licensing Act 2003 Statement of Licensing Policy which may impact on an Applicants application, particularly those wishing to undertake other licensable activities such as the retail sale of alcohol or provide regulated entertainment.
- 1.9 In addition to considering the requirements of the Act, consideration has been given to the following requirements in developing this policy:
  - (a) Section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder within the district;
  - (b) The Regulators' Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the

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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.

1.10 At the time of adopting this policy, the Borough of Torbay Council has two licensed sex establishments, both sex shops, and at least four premises that have conditions on their existing premises licence which means they are likely to fall within the definition of sexual entertainment venue. However, at present only one of the premises operates as a sexual entertainment venue.

### Consultation

1.11 The consultation with regard this document took place between **xx December 2010** and **xxx February 2011**, in line with the Her Majesty's Government Code of Practice on Consultation (published July 2008), which is available at [www.berr.gov.uk/files/file47158.pdf](http://www.berr.gov.uk/files/file47158.pdf). Consultation was conducted with local residents, the statutory responsible authorities under the Licensing Act 2003, business community, Torbay Care Trust, Town Centre Company, English Riviera Tourism Company, Torbay Development Agency, Torbay Council's Children's Services, as well as representatives of holders of premises licences under the Licensing Act 2003 in the Borough.

### Exchange of Information

1.12 The Authority may from time to time exercise its' powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the Police and other partners to fulfil its statutory objective of reducing crime in the area.

1.13 Details of applications and objections which are referred to a Licensing Sub-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.

1.14 The names and addresses of objectors will not be disclosed to Applicants or published in public reports in accordance with the Act. Such details will be made available to Councillors on the Licensing Sub-Committee.

## **Further Information**

- 1.15 Should you have comments regarding this policy please write to the Licensing and Public Protection Team, Community Safety, Torbay Council, Roebuck House, Abbey Road, Torquay, TQ2 5EJ or email [licensing@torbay.gov.uk](mailto:licensing@torbay.gov.uk)
- 1.16 Relevant legislation can be viewed at [www.opsi.gov.uk](http://www.opsi.gov.uk).

## **2.0 Primary Considerations**

- 2.1 Torbay Council being the Licensing Authority in Torbay for the purposes of the Act recognises that it can set a quantity limit regarding the number of sex establishments in an area. For the purposes of the consultation this has been set as follows.
- Sex Shops – Two (in line with the existing numerical limit)
  - Sex Cinemas – Nil
  - Sex Entertainment Venues (Lap dancing and striptease) – Two
- 2.2 Irrespective of the numerical limit, and whilst treating each application upon its own merits, the Council will not licence premises in the relevant locality to:
- (a) a residential area;
  - (b) premises, areas or access routes to such premises or areas which are designed for or attract children or families, such as school, play areas, parks, children's centres, youth clubs, nurseries or leisure facilities, or any other similar establishment;
  - (c) a place of public religious worship;
  - (d) historic buildings, cultural attractions and tourist attractions;
  - (e) educational establishments;
  - (f) community facilities and public buildings;
  - (g) an area with a history of social difficulties;
  - (h) a gateway to an identifiable locality.

## **3.0 The Application and Determination Process**

### **Making an Application**

- 3.1 Whilst not required, the Council as the Licensing Authority would normally expect that applications for licences for permanent commercial premises should be from businesses with planning consent for the property concerned.
- 3.2 The Licensing Authority expects that Applicants will have consulted with local residents, businesses and/or community groups in the vicinity of the premises so far as is reasonably practicable to do so.
- 3.3 Applicants are advised to consider the Licensing Authority's model conditions for each respective type of sex establishment, as these will be applied as conditions to each licence, unless Representations on these conditions are made and accepted to the contrary.

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- 3.4 Applications in respect of premises must state the full address of the premises. Applications in respect of a vehicle, vessel or stall must also state where it is to be used as a sex establishment.
- 3.5 Applications should be made in line with Appendix B, which details requirements such as notification of the Police, and the display and advertisement of public notices. Application forms can be downloaded from the Council's web-site, or are available upon request to the Licensing and Public Protection Team.
- 3.6** An application form and relevant documentation for the new licence, renewal, variation or transfer must be completed and returned with the appropriate non-returnable fee, as set out on the Council's webpage here: [www.torbay.gov.uk](http://www.torbay.gov.uk).
- 3.7 The fees are set in 2011-12 as follows

Application Fee - £5697  
Annual Fee - £5697  
Transfer fee - £5697

These will be reviewed annually so reference to future fee levels will be found in the Discretionary Fees and Charges for each year.

### Duration of Licences

- 3.8 Licences will generally be issued on an annual basis but can be issued for a shorter term, if deemed appropriate. An annual fee is also payable.

### Commenting on Licence Applications

- 3.9 Unlike some other licensing regimes (such as for alcohol, regulated entertainment, or gambling), a wide range of people can raise objections about sex establishment licences. The Police are a statutory consultee for all applications.
- 3.10 Those making an Objection, must state in general terms the grounds of that objection. Objections should:
- be made in writing;
  - state the name and address of the person or organisation making the Objection;
  - state the premises to which the objection relates;
  - indicate the proximity of the premises to the residential/business address of the person making the Representation.
- 3.11 Objections may only be made within the period of 28 days following the date on which the application was given to the Licensing Authority.
- 3.12 The Licensing Authority will not normally consider any objection that does not contain the name and address of the person making it.

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- 3.13 Objections received that are frivolous or vexatious or which relate solely to moral grounds are likely to be given lesser weight by the licensing Authority. 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.
- 3.14 Where Objections are made the Licensing Authority will provide copies to the Applicant. Names and addresses of those making Representations will /will not be disclosed, except with written permission.

### **Determination of Applications**

- 3.15 When considering applications, the Licensing Authority will have regard to:
- The Local Government (Miscellaneous Provisions) Act 1982 (as amended);
  - Any supporting regulations;
  - This Licensing Policy
  - Any supporting Government Guidance
- 3.16 This does not, however, undermine the rights of any person to apply for a licence and have the application considered on its own merits, nor does it override the right of any person to make objections on any application where they are permitted to do so under the Act.
- 3.17 When determining applications, the Licensing Authority will take account of all Representations made.
- 3.18 The Licensing Authority will take the following approach to deciding applications:
- Each case will be decided upon its own merits. This Licensing Authority will not apply a rigid rule to its decision making; and
  - Objectors can include individual, 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 Sub-Committee determining the application in question; and
  - The Council as the Licensing Authority will give clear reasons for its decisions.
- 3.19 In all cases, the Licensing Authority reserves the right to consider each application on its own merits. Where objections are made and not withdrawn, a hearing before a Licensing Sub Committee will normally be held within 20 working days of the end of the period during which Representations may be made.
- 3.20 Objections will be considered by a Licensing Sub Committee, where both the Applicants and objectors will be offered equal opportunity to state their case.



## **Conditions**

- 3.21 The Licensing Authority will attach all the relevant standard conditions to any licence. The Council recognises that all applications should be considered on its own merits and as such will consider any Representations about the alteration to, addition of or removal from this standard list. However there will need to be good reason to depart from the agreed conditions found within the attached appendices C and D. There are no standard conditions for Sex Cinemas, as the Council has a numerical limit of zero.

## **Refusal of licences**

- 3.22 Except where the Licensing Authority is prohibited from granting, renewing, varying or transferring a licence, the Council will not refuse a licence without first:

- Notifying the Applicant or holder of the licence in writing of the reasons;
- Giving the Applicant or holder of the licence the opportunity of appearing and making Representations before a Licensing Committee.

## **Mandatory Grounds for Refusal**

- 3.23 The Licensing Authority must refuse to grant or transfer a licence to:

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

## **Discretionary Grounds for Refusal**

- 3.24 An application for grant or renewal of a licence may be refused on one or more of the grounds shown below.
- 3.25 An application for transfer of a licence may be refused on either or both of the grounds shown in paragraphs (a) and (b) below.

The grounds for refusal are:

- (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

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grant, renewal or transfer of such a licence if he made the application himself;

- (c) That the number of sex establishments in the relevant locality that the application is made is equal to or exceeds the number which the council considers is appropriate for that locality (nil may be an appropriate number for these purposes).
- (d) That the grant or renewal of the licence would be inappropriate having regard to:
  - i. The character of the relevant locality;
  - ii. The use to which any premises in the vicinity are put; or
  - iii. The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

### Revocation of licences

3.26 The Licensing Authority may revoke a licence:

- on any of the grounds specified in paragraph under the paragraph entitled mandatory grounds for refusal;
- on either of the discretionary grounds specified in paragraph (a) and (b).

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

### Cancellation of licences

3.28 The licence holder may surrender the licence at any time and may by written request ask the Licensing Authority to cancel the licence.

3.29 In the event of the death of a licence-holder, the licence will be deemed to have been granted to his/her personal representatives and will remain in force for 3 months from the date of death, unless previously revoked.

3.30 Where the Licensing Authority is satisfied that it is necessary for the purpose of winding up the estate of the deceased licence-holder, it may extend or further extend the period in which the licence remains in force.

### Appeals

3.30 Section 27 of the Act permits appeals against the decisions of the Licensing Authority in relation to sex establishments. Appeals will be heard in the first instance by the Magistrate's Court. An appeal should be made within 21 days of the date of the receipt of the Licensing Authority's decision to the Magistrates Courts'.

3.31 An appeal can be made in the following circumstances:

- Refusal of an application for the grant, renewal or transfer of a licence.

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- Refusal of an application to vary terms, conditions, or restrictions on or subject to which any licence is held.
  - A grievance relating to any term, condition or restriction on or subject to which a licence is held.
  - Revocation of a licence.
- 3.32 There is no right of appeal for objectors. There is a right of appeal against refusal on mandatory grounds, only where the appellant alleges the ground did not apply to them. There is no right of appeal against refusal on the grounds that there are sufficient sex establishments in the locality or that to grant would be inappropriate having regard to the character of the locality, use of premises in the vicinity and the layout, character, condition and location of the premises.
- 3.33 A person wishing to appeal against a Licensing Authority decision on a sex establishment is strongly advised to seek legal advice prior to commencing any action in a Court of Law.

### **4.0 Complaints and Enforcement**

- 4.1 Where possible and appropriate, the Licensing Authority will give early warning to licence holders of any concerns about problems identified at premises and of the need for improvement.
- 4.2 Torbay Council as the Licensing Authority is responsible for the administration and enforcement of this licensing regime and will abide by Community Safety Enforcement Policy which has regard to the Department of Business Enterprise & Regulatory Reform's Regulators' Compliance Code and the Better Regulation Commission's five Principles of Good Regulation. The Council will carry out its regulatory functions in a fair, open and consistent manner. The Enforcement Policy is available from the Community Safety at Torbay Council.
- 4.3 Specifically, the Council will:
- (a) be proportionate – to only intervene when necessary and remedies will be appropriate to the risk posed;
  - (b) be accountable – to justify decisions, be subject to public scrutiny and allow opportunities to resolve differences before enforcement action is taken, unless immediate action is needed;
  - (c) be consistent – to implement rules and standards fairly;
  - (d) be transparent – to be open and to provide clear explanations of what is needed, by when and the rights of appeal.
  - (e) target its regulatory action at cases in which action is needed.
- 4.4 The Council recognises the interests of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law and the conditions attached to the licence. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law or breach the conditions of the licence.

## Appendix A

### Definition of Terms

- **Definition of a 'Sex Establishment'**

A 'Sex Establishment' is defined under the Act as a 'Sex Shop', a 'Sex Cinema' and a 'Sexual Entertainment Venue'.

It includes any premises, vehicle, vessel or stall used as a sex establishment but does not include a private dwelling to which the public are not admitted.

- **Meaning of a 'Sex Cinema'**

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

- (a) Are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage:
  - (i) sexual activity; or
  - (ii) acts of force or restraint which are associated with sexual activity
- (b) Are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions, but does not include a dwelling-house to which the public is not admitted.

- **Meaning of a 'Sex Shop'**

'Sex Shop' means 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.

- **'Sex Article'** means 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

- (a) anything to which the 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:

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

- **Sex Articles and Significant Degree**

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

The phrase ‘sex articles’ is defined in the 1982 Act, (as above) 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:

- (a) the ratio of sex articles to other aspects of the business;
- (b) the absolute quantity of sales;
- (c) the character of the remainder of the business;
- (d) the nature of the displays in the business;
- (e) turnover;
- (f) other factors which appear to be materially relevant.

- A **‘Sexual Entertainment Venue’** means

“any premises at which relevant entertainment is provided before a live audience for financial gain of an organiser. For the purposes of the Act it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.”

- **‘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). An audience includes an audience of one.

- A **‘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;

- An **organiser** means:

Any person who is responsible for the organisation or management of;

- (a) The relevant entertainment; or
- (b) The premises.

- **Exempt Premises**

Notwithstanding the above, the following are not sexual entertainment venues for the purposes of this policy:

- (a) sex cinemas and sex shops;

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- (b) premises at which the provision of relevant entertainment is such that:
- (i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months;
  - (ii) no occasion has lasted for more than 24 hours; and
  - (iii) no occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided

For the purposes of this policy, relevant entertainment is provided if, and only if, it is provided, or permitted to be provided, by or on behalf of the organiser before an audience and involves partial or full nudity.

## Appendix B

### Requirements for Applying for Grant, Variation, Transfer or Renewal of a Sex Establishment Licence

#### Grant of a licence

- 1) To apply for the grant of a sex establishment licence an applicant must: -
  - a) send the council: -
    - i) a completed application form;
    - ii) a plan to the scale of 1:100 of the premises to which the application relates;
    - iii) a non-returnable application fee of £XXX; (not yet set)
  - b) display a notice on or near the premises;
  - c) advertise the application in a local newspaper;
  - d) send a copy of the application and plan to the Chief Officer of Police, Paignton Police Station, PO Box1, Paignton, TQ3 2YF within 7 days of making the application to the Council.

#### Plan requirements

- 2) The plan shall show: -
  - a) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
  - b) the location of points of access to and egress from the premises;
  - c) the location of escape routes from the premises;
  - d) in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;
  - e) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
  - f) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
  - g) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
  - h) in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
  - i) the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
  - j) the location of a kitchen, if any, on the premises.
- 3) The plan may include a legend through which the matters mentioned or referred to above are sufficiently illustrated by the use of symbols on the plan.

### **Public notices**

- 4) A notice must be displayed at or on the premises to which the application relates for a period of not less than 21 consecutive days from the day following the day the application was given to the Council, where it can be conveniently read from the exterior of the premises.
- 5) Where the premises cover an area of more than 50 square meters, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.
- 6) The notice must be on pale blue paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16.
- 7) The notice must state: -
  - a) details of the application and activities that it is proposed will be carried on or from the premises,
  - b) the full name of the applicant,
  - c) the postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,
  - d) the date, being 28 days after that on which the application is given to the council, by which representations may be made to the council and that representations should be made in writing,
  - e) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine (£5000) for which a person is liable on summary conviction for the offence.
- 8) A similar notice must be published in a local newspaper or similar document within 7 days of giving the application to the council.

### **Variation of a licence**

- 9) The holder of a licence may apply at any time for any variation of the terms, conditions or restrictions on or subject to which the licence is held.
- 10) The process of applying for a variation is the same as that for applying for an initial grant except that a plan of the premises is not required unless the application involves structural alterations to the premises.

### **Renewal of a licence**

- 11) The holder of a licence may apply for renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application together with the appropriate fee must be submitted before the current licence expires.
- 12) The process of applying for renewal of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

### **Transfer of a licence**

- 13) A person may apply for transfer of a licence at any time.
- 14) The process of applying for transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.



## **Appendix C**

### **Standard Sex Shop Conditions**

- 1) Where any special conditions appear on any licence issued by the Council which appear to be inconsistent with these regulations, the regulations shall prevail.
- 2) The grant of a licence for a sex shop shall not be deemed to convey any approval or consent which may be required under any enactment, bye-law, regulation or order other than the Third Schedule to The Act.
- 3) Where marginal notes and headings have been inserted in these regulations, this has been done for the purpose of information and convenience only and shall not affect in any way the meaning or construction thereof.
- 4) The Council reserves the right from time to time in any special case to add to or modify these Licence Conditions.

### **OPENING TIMES**

- 5) Except with the prior consent of the Council, a Sex Shop shall not be open to the public before 9 am and shall not be kept open after 6 pm.
- 6) Sex shops must not operate on Good Friday, Easter Sunday, Christmas Day, and Boxing Day.

### **CONDUCT AND MANAGEMENT**

- 7) 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 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 or Manager are to be furnished within 14 days of a request in writing from the Council.
- 8) The Licensee or some responsible person nominated by him in writing for the purpose of managing the Sex Shop in his absence and of whom details (including photographs) have been supplied to and approved in writing by the Council shall be in charge of and upon the Premises during the whole time they are open to the public.
- 9) The name of the person responsible for the management of a Sex Shop at any particular time it is open to the public shall be prominently displayed within the Premises throughout the time he or she is responsible for its conduct.
- 10) 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 Shop in his or her absence and the names and address of all those employed in the Sex Shop. The Register is to be completed each day of the Sex Shop opening for business and is to be available for inspection by the Police and Authorised Officers of the Council.

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- 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) No person under the age of 18 years shall be admitted to the Premises or employed in any position with regard to the business of a Sex Shop.
- 14) The Licensee shall ensure that the public are not admitted to any part of the Premises other than those parts which have been approved by the Council.
- 15) The Licensee shall ensure that no part of the Premises shall be used by prostitutes (male or female) for soliciting or for any immoral purpose.
- 16) Neither the Licensee nor any employee or other person shall seek to obtain custom for the Sex Shop 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 Shop is open for business, every employee shall wear a badge of a type approved by the Council indicating his or her name and that he or she is an employee.
- 19) The copy of the Licence and of these Regulations required by be exhibited in accordance with Paragraph 14(1) of Schedule 3 to the Act shall, if reproduced, be to the same scale as the originals issued by the Council. The copy of the Licence required to be displayed as aforesaid shall be suitably framed and a copy of these regulations shall be retained in a clean and legible conditions.

## USE

- 20) A Sex Shop shall be conducted primarily for the purpose of the sale of goods by retail.
- 21) The Premises shall only be used as a shop.
- 22) No residential use shall be made of any part of the Premises unless a separate access is provided from the outside of the Premises.
- 23) 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 thereto.

## GOODS AVAILABLE IN SEX SHOPS

- 24) All Sex Articles and other things displayed for sale, hire, exchange or loan within a Sex Shop shall be clearly marked to show to persons who are inside the Premises the maximum prices to be charged.

## DRAFT ONLY

25) All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to this effect shall be prominently displayed within the Sex Shop.

26) No film or video film shall be exhibited, sold or supplied unless it complies with the Video Recording Act 1974 and is a reproduction authorised by the owner of the copyright of the film or video film so certified.

27) The Licensee shall, without charge, display and make available in the Sex Shop such free literature on counselling in relation to sexual problems, published by any organisation as may be specified by the Council. Such literature is to be displayed in a prominent position approved by the Council adjacent to all sale points in the Sex Shop.

28) No display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises except:-

(a) Any notice of a size and in a form approved by the Council which is required to be displayed so as to be visible from outside the premises by law, or by any condition of a Licence granted by the Council.

(b) Such display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing as shall have been approved by the Council.

29) The entrances to the Premises shall be of a material or covered with a material which will render the interior of the Premises not visible to passers by.

30) Windows and openings to the Premises other than entrances shall not be obscured otherwise than with the consent of the Council but shall have been suspended behind them, in a position and at an attitude approved by the Council, opaque screens or blinds of a type and size approved by the Council. This Regulation shall not be construed as lessening the obligation of the Licensee under Regulation 28 hereof.

### **STATE, CONDITION AND LAYOUT OF THE PREMISES**

31) All parts of the Premises shall be maintained in good repair and in a clean and wholesome condition.

32) A lobby area shall be provided at the entrance to the shop to ensure that the inside of the shop is not visible when the front door is opened.

33) Lighting in all parts of the Premises as approved by the Council shall be in operation continuously during the whole of the time that the Sex Shop is open to the public.

## DRAFT ONLY

34) 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:-

(a) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "EXIT".

(b) 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".

(c) Save in the case of emergency, no access shall be permitted through the Premises to any unlicensed Premises adjoining or adjacent.

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

36) 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.

37) 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.

38) 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**

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

40) The Licensee shall comply with any fire precautions and safety measures that may be required of him by Torbay Council or the Fire Authority.

41) 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.

## **Appendix D**

### **Standard Sex Entertainment Venue Conditions**

#### **General**

1) The Licensee must remain in personal control of the Premises at all times or nominate an individual in writing over the age of 18 with the authority to organise/arrange/facilitate activities within the Premises.

#### **Management Operation Manual (A guide to the safe operation of the venue including safety and security information)**

2) The Licensee must produce a Management Operation manual detailing all aspects of procedure when the Premise is operating the relevant entertainment. This document shall be regularly reviewed and be available for inspection by Torbay Council or Police Officers upon request.

3) Control measures must be in place as part of the Management Operation Manual to ensure the safety of performers when they leave the Premises following a period of work.

#### **Club Rules (A guide to the acceptable conduct of customers and performers)**

4) The Premises must provide a copy of its Club Rules or any revisions to the Council and the Police before the premises open under its Sex Establishment Licence.

5) The Licensee must ensure that all performers and staff, including door supervisors, shall be made aware of the Club Rules.

6) All dancers, staff and door supervisors shall read a copy of the Club Rules relating to operating relevant entertainment. They shall sign and date a copy which shall be retained by the Premises as part of their due diligence. They shall be available for inspection by Torbay Council or Police Officers upon request.

7) A clear copy of these conditions and the Club Rules shall be exhibited at all times in or near the performers' changing room(s) in such a manner as they can be read by the performers. These conditions shall be protected against theft, damage or defacement.

8) On arrival each customer shall be provided with a copy of the Club Rules.

#### **Staff**

9) The Licensee shall ensure that all performers and all staff working within sexual entertainment venues hold the required Work Permit, if not a United Kingdom citizen.

#### **Performers**

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10) 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 using recognised photographic documentation, such as a passport or driving licence.

11) A log book shall be maintained on the Premises detailing the names, start and finish times, of the individual performers involved in all forms of adult entertainment.

12) Performers must remain clothed in public areas and all other areas except while performing in areas specified by the Council as where sexual entertainment may be provided.

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

14) Performers must get dressed at the end of each performance to the extent that their breasts and genitals are fully covered.

15) Performers shall not accept any telephone number, email address, addressor contact information from any customer.

### **Performances**

16) Performers shall only perform on the stage area, to seated customers or in such other areas of the licensed premises as may be agreed in writing with the Council.

17) There shall be no physical contact between customers and the dancers except for the placing of money or tokens in a garter on into the hands of the dancer at the beginning or conclusion of a performance.

18) 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 or private dance.

19) A clear distance of 1 meter must exist between customers and performers at all times during a performance.

20) Performers must not

- a) Climb onto any furniture unless provided as an on stage prop for the purpose of their performance.
- b) Simulate any sex acts
- c) Undertake any performance involving a sex act with any other performer, persons in the audience or any object.
- d) Use inappropriate, suggestive or sexually graphic language at any time.

21) Signs displaying the Club Rules on the performance relevant entertainment will be displayed throughout the Premises and be clearly visible to customers. This will include any private individual booth area.

22) In the event of the relevant entertainment be performed for private viewing, the customer shall be informed of the duration and price of the relevant entertainment,

## DRAFT ONLY

and the details shall be specified in a clearly visible notice in each area designed for private relevant entertainment.

### **Door Supervisors**

23) Any individual employed on the Premises to conduct a security activity (within the meaning of section paragraph 2(1)(a) of schedule 2 to the Private Security Industry Act 2001) must be licensed by the Security Industry Authority or any replacement organisation.

24) An adequate number of registered Door Supervisors shall be on duty on 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 of each dressing room(s).

### **Customers**

25) No person under the age of 18 shall be admitted to the Premises. Customers who appear to be under the age of 25 must be asked to provide Pass-Scheme approved photographic proof of their age. The Licensee must provide prominent notices at each entrance to the Premises to this effect.

26) No customer shall be admitted to the Premises if, in the judgement of the management or the SIA door staff, they appear to be intoxicated, or under the influence of illegal substances.

27) Customers may not dance at any time except in areas specifically designated by the Council as being separate from areas for sexual entertainment.

28) Customers must remain appropriately clothed at all times.

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

29) The Licensee shall ensure that CCTV is installed and maintained to the satisfaction of the Police and Officers of Torbay Council.

- CCTV shall be installed in all private performance areas
- any images are retained for a period of at least 31 days, and
- made available to a police officer or authorised officer of the Council.
- images shall be down loaded on request with a copy provided to a police officer or authorised officer of the Council.

30) A member of staff who is fully trained in the use of the CCTV system shall be on duty at all times when the Premise is open till the premises are clear of customers, cleared of staff and closed.

31) The Premises will provide any footage upon request by the Police or Licensing Authority within 24hrs of the request.

32) Other than recordings made in accordance with the conditions relating to CCTV, no filming, recording or electronic transmission of performances shall take place without the prior consent of the Licensing Authority.

### **Layout of Premises**

33) The approved activities shall only take place in the areas designated by the Licensing Authority

34) All dance booths used as part of the approved activities must be equipped with a panic alarm for safety. Procedures shall be put in place to ensure that this alarm system is monitored at all times during approved entertainment. The Licensee shall ensure to the Council's satisfaction (including, where required, necessary planning or building control consents) that the interior of the premises is not visible from the outside of the Premises, and that the exterior is maintained to a satisfactory level of decorum. At no point may dancers be visible from outside of the Premises.

35) The Licensee shall ensure that any numerical limits set by Torbay Council are not exceeded whilst sexual entertainment takes place on the premises.

36) Information shall be clearly displayed within the internal exit areas of all sexual entertainment venues, reminding customers to behave in a responsible and appropriate way towards all persons, after leaving the venue.

### **Advertising**

37) 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.

38) Where the Council has 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.

39) The Licensee shall not permit the display outside of the Premises of photographs or other images which indicate or suggest that striptease or similar entertainment takes place on the Premises and which may be offensive.

40) 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 distribute flyers direct to residential and/or commercial premises, advertising the venue.

### **Documentation**

41) The Licensee shall provide in a timely fashion copies of any documents reasonably required by an authorised officer of the Council in relation to compliance with this Licence.