



LICENSING OF SEX ESTABLISHMENTS

STATEMENT OF LICENSING POLICY

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

Policy Adopted 21st November 2018

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1. Introduction

1.1 The Local Government (Miscellaneous Provisions) Act 1982 referred to “Sexual Establishment” as sex cinema or a sex shop.

1.2 The Policing and Crime Act 2009 amends this Act to introduce new classification of sex establishment, namely sexual entertainment venues. Sexual entertainment venue means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

1.3 The legislation provides for local authorities to adopt a policy and standard conditions relating to sexual entertainment venues, sex shops and sex cinemas.

1.4 This policy sets out the Council’s approach for the benefit of applicants and operators. It also aims to guide and inform the public and other public authorities and aims to ensure transparency and consistency in decision making.

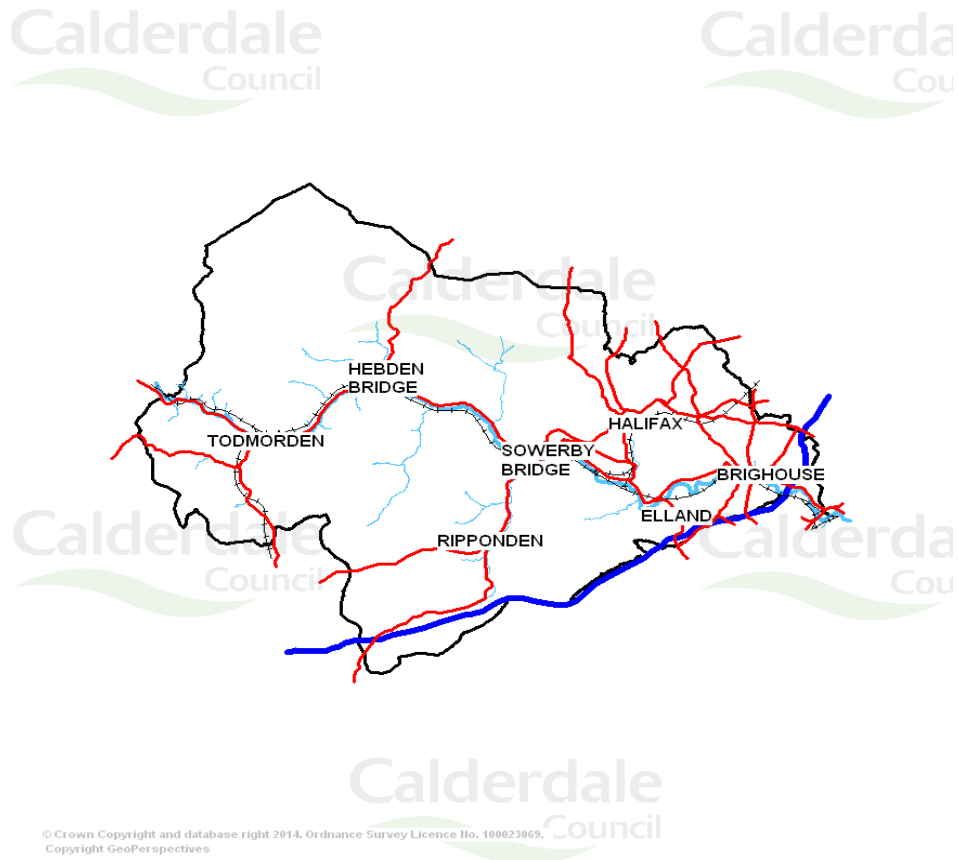
1.5 This policy also has regard to the guidance issued by the Home Office

1.6 Calderdale Council adopted the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 on 28th April 2010.

1.7 It was also resolved that the Council functions at Part 3 of the Constitution be amended to include the following provisions:

- a. Licensing and Regulatory Committee Power to grant, refuse, vary and revoke applications for sexual entertainment venue licences.
- b. Head of Customer Services – Renewal of Licenses where no objections have been received.

2. The Calderdale District



2.1 The Creation of the Borough

Calderdale Council was created in 1974 out of local government reorganisation when nine separate local authorities were replaced by Calderdale Metropolitan Borough Council. Calderdale is home to some of the Country's most highly regarded leisure and nightlife providers. Calderdale is the home to six thriving Town Centres; Brighouse, Elland, Halifax, Todmorden, Hebden Bridge and Sowerby Bridge. In 2016 Halifax Town Centre was awarded the Purple flag status for the sixth consecutive year for being a safe and welcoming place for a night out.

2.2 Our Mission

BE THE BEST BOROUGH IN THE NORTH and to Grow the Economy, Reduce Inequalities and Build a Sustainable Future.

2.3 Census

The most recent census was held in 2011 and the results showed a significant increase in the population of Calderdale to 203,800 since the previous census in 2001. There is a strong commitment across the borough to work together for the benefit of all Calderdale Communities. The Council works in partnership with other public sector organisations, private companies as well as voluntary and community groups in a strategy which aims to promote the social, economic and environmental success of Calderdale

3. Definitions

3.1 The Act

This refers to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009.

3.2 Sex Shop

A sex shop is 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
- b. Other things intended for use in connection with or for stimulating or encouraging:-
 - i. Sexual Activity
 - ii. Acts of force or restraint which are associated with sexual activity

3.3 Sex Articles

A sex article is anything for use in connection with or for stimulating or encouraging

- a. Sexual activity
- b. Acts of force or restraint which are associated with sexual activity
- c. Anything:-
 - i. 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
 - ii. To any recording of 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 primarily deals with or relates to, genital organs, or urinary or excretory functions.

3.4 Sexual Entertainment Venue

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.’

This includes any vessel, vehicle or stall but not a private dwelling to which the public are not permitted.

3.5 Relevant Entertainment

Is “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 (eg where the entertainment takes place in private booths).

Relevant entertainment includes, but is not limited to:

- Lap dancing
- Pole dancing
- Table dancing
- Strip tease
- Live sex shows and similar venues
- Topless bars

3.6 Sex Cinema

A sex cinema is any premises, vessel, vehicle or stall used to a significant degree for the exhibition of moving pictures however produced, which:

- a. Are concerned primarily with the portrayal of, or primary deal with or relate to or intending to stimulate or encourage sexual activity, 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 organ or urinary or excretory functions but does not include a dwelling house to which the public is not admitted.

3.7 The Organiser

This is any person who is responsible for the organisation or management operation of the relevant entertainment or the premises.

In most cases this will refer to the manager of the premises concerned but on occasion it may also refer to someone who organises the relevant entertainment on behalf of those who are responsible for the management of the premises.

3.8 Display of Nudity

This means:

- In the case of a woman: exposure of her nipples, pubic area, genitals or anus; and
- In the case of a man: exposure of his pubic area, genitals or anus.

3.9 Relevant Locality

This is the locality where premises are situated or where the vehicle, vessel or stall is going to be used as a sex establishment.

3.10 Permitted Hours

These are the hours of activity and operation that have been authorised under a sex establishment licence. These may vary from premises to premises and will be considered on individual circumstances.

4. Public Consultation

4.1 List of Consultees

- All Ward Councillors
- Members of Parliament
- West Yorkshire Police
- Advertisements placed in all Local Newspapers, Halifax Courier, Brighouse Echo, Hebden Bridge Times and Todmorden News
- Representatives of Current Licence Holders
- Objectors of Previous Applications
- Childrens and Adults Safeguarding Service
- Community Safety Service
- Notice placed at Halifax Town Hall and Halifax Customer First
- On Street Survey in Halifax Town Centre, Hebden Bridge Town Centre, Todmorden Town Centre, Sowerby Bridge Town Centre, Brighouse Town Centre and Elland Town Centre.

5. General Policy

5.1 Grounds For Refusal

Mandatory grounds for refusal

Applications for sex establishments must be refused on the following mandatory grounds:

- If the applicant is under 18;
- If the applicant has a disqualification following the revocation of their licence;
- If the applicant is a non-resident in the UK;
- Company not incorporated in the UK;
- Or a previous refusal of the applicant in the previous 12 months.

Discretionary Grounds for Refusal

There are also a number of discretionary grounds. These are:

- If the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason that would be provided to us by West Yorkshire Police as the Responsible Authority;
- If the business would be managed by or carried on for the benefit of a third party who would be refused a licence in their own right;
- That the number of sex establishments in the locality or of the particular kind in the locality equals or exceeds the number considered appropriate.
- Is inappropriate having regard to:
 - i. The character of relevant locality
 - ii. Use of premises in the vicinity
 - iii. Layout, character, condition or location of the premises

A decision to refuse a licence must be relevant to one or more of the above grounds. The refusal of an application cannot be on moral grounds or values and when determining an application the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention of Human Rights. The Local Authority must also have regard to its public sector equality duty.

If having considered an application for the grant, renewal or transfer of a licence, the licensing authority decides to refuse it on one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.

5.2 Relevant Locality

A licence can be refused if either:

1. The number of sex establishments within Calderdale would exceed one (1) if granted
2. That a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. This is a matter for the Licensing authority and will be decided on the facts of each individual application.

The Licensing Authority recognises that the character of a locality may alter over time. Its decision on an application will be based on its assessment of the character of the locality at the time an application is determined and this may include any developments in progress.

Relevant Locality Specific to Calderdale

The Council will generally consider it inappropriate to grant or renew a sexual establishment licence if the sexual entertainment venue is located/is to be located where :-

- The character of the locality is of residential or predominantly residential in nature
- Premises in the vicinity are used for religious worship
- Premises in the vicinity are used for schools, children's nurseries, youth clubs, children's centres, toy shops or similar such establishments which children under 18 years of age may reasonably be expected to attend
- Premises in the vicinity that are used for community facilities including, but not limited to, swimming pools, leisure centres, public parks, library's, sheltered housing and accommodation for vulnerable people.
- The number of other premises within the vicinity are being used as sex establishments

Applications for a sex establishment in any of the above locations are likely to be refused, however, each application location will be considered at the time of submission.

The opening hours of the premises named above and the opening hours of the sex establishment may be taken into consideration. If the above premises are closed when the sex establishment is open the licence, may be granted.

5.3 Hearings

All applicants are given the opportunity to appear before and be heard by the Licensing and Regulatory Committee who are responsible for determining the application.

Each application will be considered on its own merits, taking into account local knowledge, this policy and guidance issued by the Home Office.

5.4 Licence Conditions

Once the Licensing authority has decided to grant a licence it can impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence or standard conditions applicable to all sex establishments, or particular types of sex establishment.

5.5 Duration of Licenses

Licences for sex establishments can be granted for up to one year and applications to renew are annual.

5.6 Planning

The use of a premises is subject to planning control. Such use will require planning permission or must also be lawful under planning legislation. Planning permission is generally required for the establishment of new premises or the change of use of premises.

5.7 Appeal Process

In the event that an application for the grant, renewal or transfer of a sex establishment licence has been refused the applicant may appeal the decision at the Magistrates Court.

5.8 Licensing Act 2003 Considerations

Premises holding a sexual entertainment venue licence will also require a premises licence under the 2003 Act if the premises is carrying on other licensable activities, e.g. the sale of alcohol or the provision of regulated entertainment at any time.

6. The Application

6.1 Application Process

The application form should be completed and returned to The Licensing Unit, Town Hall Halifax HX1 1UJ together with the appropriate fee (see fees list). Or complete on line at www.calderdale.gov.uk

Please note that the applicant is personally responsible for sending a copy of the application to the West Yorkshire Police Licensing Officer, Calderdale Division, Richmond Close, Halifax HX1 5TW not later than 7 days after the date of application.

Notice No. 1 must be displayed in a prominent position on the premises where it can conveniently be read by the public for a period of 21 days beginning with the date of the application.

Notice No. 2 must be published in a local newspaper circulating in the area not later than 7 days after the date of application.

Notice No. 3 must be forwarded to the Licensing Unit following the notice period, together with a copy of the newspaper page containing the advertisement of Notice No. 2.

A minimum period of 28 days is required before the application can be considered.

6.2 Standard Conditions for Sex Establishments

NOTE: The following words and/or expressions shall have the meaning hereby respectively assigned to them:

“the licensed premises” means any premises licensed under Schedule 3 of the Act;

“licence holder” means the person or body who is the holder of a sex establishment licence granted by the Council;

“advertisement” means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or partly for the purposes of advertisement or announcement.

1. The shop frontage of the licensed premises shall be of such a nature that the inside of the licensed premises is not visible.
2. The contents of the licensed premises must not be visible when the door or doors of the licensed premises is/are open.
3. The sign or advertisement relating to the licensed premises shall be approved by the Council.
4. There shall be no signs placed outside of the licensed premises.
5. Where the licensee is a body corporate or an unincorporated body, any change of director, company secretary or any other person responsible for the management of the body is to be notified in writing to the Council within fourteen days and such written details as the Council may require in respect of any new director, secretary or manager to be furnished within fourteen days of such request.
6. There shall be no protruding signs affixed to the licensed premises.
7. There shall be no window display of licensed sex articles.
8. The licence holder or some responsible person nominated by him in writing shall be in charge or on the licensed premises at all such times as the licensed premises are open for the serving of customers. Any such nomination shall be produced on demand to an authorised officer of the Council or to a police officer.

9. The licence holder shall not employ any person under the age of eighteen to work at the premises in any capacity.
10. Persons under the age of eighteen shall be prohibited from the licensed premises.
11. The Chief Constable of West Yorkshire Police, officer from the West Yorkshire Police Service, the Chief Fire Officer, any authorised officer in uniform of the West Yorkshire Fire Service, or any person authorised by the licensing authority shall have access to all parts of the licensed premises at all reasonable times.
12. The licensed premises shall at all times be maintained in a clean and safe condition and shall be open during the continuance of the licence to an inspection by the licensing authority or their authorised agents.
13. In the case of a sex shop, no moving picture shall be provided on display at the licensed premises unless it is that of advertising videos on a loop system or allowing a prospective purchaser a short preview, being no longer than three minutes in length, of films upon request.
14. The shop front style and colours shall be approved by the licensing authority and no changes shall be made to the shop front without the specific consent of the Council.
15. No amusement or gaming machines of any kind whether for prizes or otherwise shall be kept or used upon the licensed premises at any time.

6.3 Standard Conditions for Sexual Entertainment Venues

A sexual entertainment venue is defined in the Local Government (Miscellaneous Provisions) Act 1982 section 2A (1) as “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.” Relevant entertainment is defined at 2A(2) as (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).

Conditions

1. No person under the age of 18 shall be admitted or allowed to the premises. This includes performers and employed personnel.
2. No conduct likely to cause a breach of the peace shall be permitted on the premises.
3. The licensee shall take all reasonable precautions and exercise all due diligence to ensure that soliciting and prostitution does not occur.
4. Only the performers shall provide the relevant entertainment, no audience participation must be permitted.
5. The agreed activities will take place only in designated areas within the premises approved by the Local Authority and in the full view of the audience. No part of the premises accessible to the audience shall be concealed from observation without consent of the Local Authority.
6. The performers at all times shall wear a non-transparent g-string or similar piece of clothing on the appropriate part of the body, and at no time will it reveal any part of their genitalia or anus.
7. There shall be no physical contact between customers and performers except for the placing of money or tokens in a garter or into the hands of the dancer at the beginning or conclusion of the performance. Whilst the dancers are performing, there shall be a minimum distance of 300 millimetres (12 inches) between the dancer and the customers.
8. There shall be no physical contact between dancers whilst performing.
9. Customers shall remain seated while watching the performance. Performers must report any breaking of these conditions or House Rules to the management. Management shall be ultimately responsible to ensure customers comply with the seating requirement. Any breaches must be logges and submitted with any licence renewal applications.
10. Notices must be clearly displayed on each table, each bar and at the entrance to the premises stating:

- a. There is to be no physical contact between customers and performers.
 - b. A minimum distance of 300 millimetres must be maintained between performers and customers.
 - c. Customers must be seated during the performance.
- 11. Performers must not:
 - a. Climb on to furniture provided for patrons.
 - b. Engage in sex acts
 - c. Remain in a state of undress whence they have completed their act.
- 12. Any person who can be observed from outside the premises must be properly and decently dressed. Individuals who are not fully clothed must not exhibit in the entranceway or in the area surrounding the premises. There shall be no attempt outside the premises to solicit people to enter.
- 13. Except with the consent of the Local Authority there shall be no external advertising of the striptease entertainment, either at the premises or in the immediate vicinity.
- 14. The licensee must not display outside the premises or on any advertising material photographs or other images that indicate or suggest that erotic dancing takes place on the premises and which may be offensive.
- 15. An appropriate room, to be agreed by the Local Authority, shall be set aside to provide changing and rest area for the entertainers. Arrangements will be made for restricted access to the rooms, which shall be maintained at all times whilst the agreed activities are taking place until such time as all performers using the dressing room have finished.
- 16. The licence holder or Designated Premises Supervisor or some other responsible person over the age of 21 years, nominated by the licensee in writing, shall be in charge and be present on the licensed premises during the whole time that relevant entertainment is taking place.
- 17. A minimum of two door supervisors registered in accordance with the Local Authority scheme must be on duty at all times.
- 18. Door supervisors shall continually monitor all entrances, exits and toilets.
- 19. Door supervisors shall also monitor performances to ensure compliance with conditions 6, 7 and 8 above.
- 20. The licensee must participate in the Local Licensees' Radio Scheme.
- 21. Closed circuit television cameras shall be provided by way of a recordable camera system capable of providing pictures of evidential quality in all lighting conditions and a type that indicates the recording of date and time of the recording.

22. Cameras shall encompass all ingress (entrance) and egress (exit) to the premises, the licensed area, the surrounding area of the premises and any other area as required by the Local Authority or the Police.
23. CCTV equipment shall be maintained in good working order and recording kept in date order, numbered consecutively and retained in a secure place for a period of 28 days.
24. Recordings shall be made available to the Licensing Authority or an officer employed by West Yorkshire Police on demand.
25. No still or moving photographic records or other recording other than under conditions 21 – 24 above shall be made of any performances.
26. Without prejudice to the above, the Local Authority may impose any special conditions deemed necessary to safeguard the public and performers.

Conditions applicable to door supervisors

The licensee shall ensure that all Door Supervisors are SIA registered and that when on duty they display the badge issued to them by the SIA.

The licensee shall maintain an accurate and up-to-date log-book in respect of all Door Supervisors employed on the premises. This shall comprise of three distinct parts recording:

- (i) the name, address, telephone number and any registration number of each Door Supervisor; the name, address and telephone number of the agency providing the supervisor where the supervisor is not employed directly by the licensee;
- (ii) the name and any registration number of each Door Supervisor; the dates and times of commencement and finishing of work; the signature of the Door Supervisor in respect of both entries;
- (iii) details of any incident in which the door supervisor is involved, including any calling of the police and any police action taken.

Conditions applicable to the keeping of good order

The licensee shall not permit conduct on the premises that is likely to cause disorder or a breach of the peace or drug misuse. In particular the licensee shall ensure that none of the following shall take place:

- (i) indecent behaviour, including sexual intercourse, except as permitted by Theatres Act 1968;
- (ii) the offer of any sexual or other indecent service for reward;
- (iii) acts of violence against person or property and/or the attempt or threat of such acts;
- (iv) unlawful possession and/or supply of drugs controlled by the Misuse of Drugs Act 1971.

7. Enforcement

7.1 Proactive

Although the Council recognises that sex establishments are not generally a source of crime and disorder within Calderdale, there will be a minimum of 5 annual routine inspections of licensed sexual entertainment premises without notice by Licensing Enforcement Officers.

7.2 Reactive

Where complaints are received, an inspection will be made, again without notice, to check compliance with the conditions attached to the licence and compliance with the relevant legislation.