

Draft Sex Establishment Policy 2021

Blackpool Council



Draft Sex Establishment Policy 2021

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1. Introduction

This policy statement sets out Blackpool Council's approach to the regulation of sex establishments in the Borough.

Nothing in this policy undermines the rights of any person to apply for a licence and have the application considered on its individual 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

The policy covers the operation of the following:

1.1 Sex Shops

A sex shop is defined as 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 is associated with sexual activity.

1.2 Sex Cinemas

A sex cinema is defined as any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which –

- a) Are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage –
 - i) Sexual activity; or
 - ii) Acts of force or restraint which are associated with sexual activity;
- or
- b) Are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions.

But does not include a dwelling house to which the public is not admitted.

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1.3 Sexual Entertainment Venues

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.

“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)

The following premises are not sexual entertainment venues:

- a) Sex shops and sex cinemas
- b) Premises which provide relevant entertainment on an infrequent basis i.e. premises where –
 - i) No relevant entertainment has been provided on more than 11 occasions within a 12month period;
 - ii) No such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - iii) No such occasion has lasted longer than 24 hours
- c) Other premises or types of performance or displays exempted by an order made by the Secretary of State

1.4 Waivers

Schedule 3 of the 1982 Act makes provision for the Council to grant a waiver from the requirement to hold a sex establishment licence in any case where it considers that to require a licence would be unreasonable or inappropriate. A waiver may be for such a period as the Council thinks fit.

The Council does not consider it would be appropriate to permit waivers from the requirement to hold a sex establishment licence in respect of sexual entertainment venues particularly as the legislation allows relevant entertainment on an infrequent basis of no more than 11 occasions within a 12month period, providing there is at least one month between each period of entertainment which itself does not last for more than 24 hours.

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The Council may at any time give a person who would require a licence but for a waiver notice that the waiver it to terminate on a date not less than 28days from the date the notice is given.

Whilst each application will be considered on its own merits by the Public Protection Sub-Committee in light of the exemption in relation to the provision of relevant entertainment on an infrequent basis the Council takes the view that waivers are unlikely to be appropriate in relation to relevant entertainment and would only be covered in exceptional circumstances.

2. Making an Application

Applications for the grant, renewal, variation or transfer of a licence must be made on the prescribed form which is available upon request from the Licensing Service or at www.blackpool.gov.uk. Applications can be submitted on paper or electronically.

New applications or variations which involve a change of layout must be accompanied by a plan of the premises to which the application relates. The plan must 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

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j) The location of a kitchen, if any, on the premises

2.1 Advertising of applications

Applications for must be advertised on/near the premises to which the application relates and in a newspaper circulating in the Borough.

On the premises

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 the application was given to the Council. The notice must be in such a position that it can be conveniently read by members of the public.

The notice must be on paper sized A4 or larger containing the information detailed below printed legibly in black ink.

In the newspaper

Applicants must give public notice of the application by publishing an advertisement in a local newspaper that circulates in the Blackpool Borough no later than 7 days after the date the application is made.

The notice must state:

- a) Details of the application and activities proposed to be carried on,
- b) The full name of the applicant,
- c) The postal address of the premises, or 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 the day on which the application was given to the Council, by which representations may be made to the Council in writing.

A specimen notice is available upon request from the Licensing Service or on our website www.blackpool.gov.uk.

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2.2 Objections

Objections must be made in writing (email is acceptable) within the period of 28 days from the date on which the application is given to the Council and should include the following:

- The name and address of the person or organisation making the objection
- The premises to which the objection relates
- An indication whether the objector consents to their name and address being disclosed to the applicant.

No weight will be given to any objection that does not contain the name and address of the person making it.

An objection must state the grounds on which the objection is made. Persons making an objection are encouraged to provide full reasons for their objection and, where possible, demonstrate how their reasons are relevant to the mandatory and discretionary grounds for refusal (if any) as set out in this policy.

No weight will be given by the Council to objections made on moral grounds or those that are in the opinion of the Council, frivolous or vexatious.

Where an objection is received, the applicant will be notified of the general grounds of the objection. The name and address of the objector will not be disclosed to the applicant unless the objector has consented to this

3 Determination of applications

When considering applications, the Council will have regard to:

- (a) the Local Government (Miscellaneous Provisions) Act 1982
- (b) any supporting regulations;
- (c) this Statement of Licensing Policy.

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This does not, however, undermine the rights of any person to apply for a licence and have the application considered on its individual 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.

All applications for new sex establishments and variations of existing licences will be determined by the Public Protection Sub-Committee irrespective of whether objections have been received. The Sub-Committee will also consider renewal applications where the Lancashire Constabulary have made comments or objections have been received. At the hearing the applicant and any objectors who made objections within the statutory period will be given the opportunity to address the Sub-Committee.

Uncontested applications for renewal will be determined by the Head of Licensing.

When determining an application the Council will take account of any comments made by the Police and any objections made. Each application will be considered on its own merits.

Where a hearing has taken place before the Public Protection Sub-Committee, unless otherwise advised, its decision will be given at the end of the hearing and the applicant and the objectors will receive written confirmation of the decision together with reasons within seven days

3.1 Refusal of Licences

The Local Government (Miscellaneous Provisions) Act 1982 provides mandatory and discretionary grounds for refusal of a licence.

3.1.1 Mandatory Grounds

A licence **must not** be granted to:

- a) A person under the age of 18;
- b) A person who has had a similar licence revoked within the previous 12 months;
- c) A person, other than a body corporate who is not resident in the United Kingdom, or was not so resident throughout the period of six months immediately preceding the date when the application was made;

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- d) To a body corporate who is not incorporated in the United Kingdom;
- e) To a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

3.1.2 Discretionary Grounds

A licence may be refused on the following grounds:

- a) The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason see paragraph 3.2;
- b) If the licence were to be granted, renewed or transferred the business to which it relates would be managed by, or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such licence if he made the application himself;
- c) That the number of sex establishments in the relevant locality at the time of the application is made is equal to or exceeds the number which the authority considers appropriate for that locality see paragraph 3.3;
- d) That the grant or renewal of the licence would be inappropriate having regard
 - o To the character of the relevant locality see paragraph 3.4; or
 - o To the use to which any premises in the vicinity are put; or
 - o To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made

3.2 **Suitability of applicants.**

The Council will need to be satisfied that the applicants for a sex establishment licence are suitable to operate the business by ensuring:

- a) that the operator is honest

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- b) That the operator is qualified by experience and/or knowledge to run the type of sex establishment and that the operator understands the general conditions and will comply with them
- c) That the operator is proposing a management structure which will deliver compliance with operating conditions, for example through managerial competence, presence, a credible management structure, enforcement of rules internally, a viable business plan and in the case of a sexual entertainment venue, policies for the welfare of performers
- d) If the application is for a sexual entertainment venue, that the operator can be relied upon to act in the best interests of the performers e.g. in how they are remunerated, the facilities provided, how they are protected and how and by whom their physical and psychological welfare is monitored
- e) That the applicant can be relied upon to protect the public e.g. transparent charging and freedom from solicitation
- f) That the operator can show either a track record of management of compliant premises, or that he/she has an understanding of the rules governing the type of licence applied for

All applications will be considered but they are unlikely to be granted if any of the following apply:

- a) The applicant has a criminal record. Offences that will be considered particularly relevant include convictions for:
 - Dishonesty
 - Violence
 - Sexual offences
 - Drugs
 - People trafficking
- b) The applicant has previously been involved in running an unlicensed sex establishment;

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- c) If the licence were to be granted, the business to which it relates would be managed by or run for the benefit of a person other than the applicant who would be refused the grant of such a licence if they made it themselves

3.3 Number of Sex Establishments

The Local Authority may refuse an application if it is satisfied that the number of sex establishments of a particular kind in the relevant locality at the time the application is made, is equal to or exceeds the number which the authority considers is appropriate for that locality. The Council is able to determine that the appropriate number for a locality is nil. Blackpool Council has determined that in the Bloomfield, Claremont and Talbot Wards:

- The number of sex shops shall be **one**.
- The number of sex cinemas shall be nil.
- The number of sexual entertainment venues shall be **nil***.

In all other wards the number shall be nil for all categories of sex establishments

* Sexual Entertainment Venues with the benefit of a licence immediately before this policy comes into force will be granted 'grandfather rights' meaning applications to renew will not be refused on the ground that the policy for such venues is nil. Such licences may be transferred and varied. Where, however a licence has lapsed or been revoked, new applications will be subject to the new policy on numbers (although a Court's power on appeal is not restricted)

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3.4 Location of licensed premises

In considering whether the grant or renewal of a licence would be inappropriate having regard to the character of the relevant locality or to the use of which any premises in the vicinity are put, the Licensing Authority will consider whether the grant of the application would be inappropriate having regard to its proximity to:

- Residential areas,
- Premises which are sensitive because they are frequented by children, young persons or families including, but not limited to educational establishments and leisure facilities such as parks, libraries or swimming pools.
- Shops used by or directed at families or children
- Premises sensitive for religious purposes for example, churches, mosques and temples.
- Places and/or buildings of historical/cultural interest and tourist attractions.
- The Promenade

3.5 Conditions

The Council recognises that all applications should be considered on an individual basis and any condition attached to such a licence will be tailored to each individual premises.

The conditions that may be attached to a sex shop licence are shown in Appendix A and conditions that may be attached to a sexual entertainment venue are shown in Appendix B.

3.6 Duration of licence

Licences will be granted for one year unless a shorter period is specifically stated.

3.7 Revocation of licences

The Council may revoke a licence on any of the grounds contained within the Act which include (please note this list is not exhaustive):

- the licence holder no longer being fit and proper
- Poor operation of the premises

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The Council will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before the Public Protection Sub Committee.

3.8 Appeals

There is a right of appeal against the refusal to grant, renew, vary or transfer a licence, the imposition of conditions on a licence and the revocation of a licence.

Appeals must be made to the Magistrates' Court within 21 days starting from the date the aggrieved party is notified of the decision.

It is important to note that appeals only lie against the mandatory refusals on the basis that the mandatory ground does not apply to the applicant/licence holder. Further no appeal lies against the Licensing Authority's decision made on the discretionary grounds namely:

- That it is inappropriate to grant or renew a licence on the grounds of the character of the locality or the number of premises in it; or
- The use of the premises in the vicinity or the layout, character or condition of the premises.

4. Complaints and Enforcement

4.1 Complaints

Where possible and appropriate the council will give early warning to licence holders of any concerns about problems identified at premises and of the need for improvement.

4.2 Enforcement

The Council is responsible for the administration and enforcement of the licensing regime and will have regard to the Quality Standards Enforcement Concordat. The Council will carry out its regulatory functions in a fair, open and consistent manner.

Specifically, the Council is committed to:

- (a) be proportionate – to only intervene when necessary and remedies will be appropriate to the risk posed;

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- (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.

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 offences or consistently break the law or breach the conditions of the licence.

The Council has set clear standards of service and performance that the public and businesses can expect. In particular, an enforcement policy has been created that explains how the Council will undertake its role and how the principles of effective enforcement will be achieved.

This policy is freely available from the licensing section, as are details of the corporate complaints procedures, both of which can also be viewed on the Council's website: www.blackpoolcouncil.gov.uk

5. Cancellation of licences

The licence-holder may surrender the licence at any time and may request the Council in writing to cancel the licence.

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

Where the Council are 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.

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Appendix A

Standard conditions for sex shops

Exhibition of licence

1. The licence or a clear copy shall be conspicuously exhibited at all times to the satisfaction of the Council in the premises, in such a position that it can be easily seen by all persons using the premises. The licence shall be adequately protected against theft, vandalism or defacement.

Times of opening

2. The premises shall not be open to the public before 9.00 am and shall not be kept open after 11.00 pm on any one day.
3. The premises shall not open on Christmas Day.

Conduct of premises

4. The licensee shall maintain good order in the premises
5. No person under the age of 18 shall be admitted to the premises or be employed in the business of the sex establishment
6. no poster, photograph, sketch or painting or any form of advertisement or display shall be displayed by or on behalf of the licensee on, outside, or within the premises in a position where it is visible to the public if the Council regards it as unsuitable for exhibition to the public. If the licensee is notified in writing that the Council objects under this rule to a poster, photograph, sketch, painting, advertisement or display such poster, photograph, sketch, painting, advertisement or display shall be removed or completely obscured from sight.
7. The whole of the exterior of the premises shall be of a material or covered by a material which will render the interior of the premises invisible to passers-by.

Change of use

8. No change of use of any portion of the premises from that approved by the Council shall be made until the Council's consent has been obtained thereto
9. No change of use of any portion of the premises from a sex cinema to a sex shop or from a sex shop to a sex cinema shall be effected without the consent of the Council
10. No part of the premises shall be used as a sex encounter establishment or be used in conjunction with any premises so used (whether licensed or not) without the consent of the Council

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Goods available

11. 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 sex shop the respective prices being charged.
12. 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 displayed prominently within the sex establishment
13. No film or video work shall without the consent of the Council be exhibited, sold or supplied on or from the premises unless it has been passed by the British Board of Film Classification or such other authority performing a similar scrutinising function as may be notified to the licence holder by the Council and bears a certificate to that effect and is a reproduction authorised by the owner of the copyright of the film or video work so certified.

Appendix B

Standard conditions for sexual entertainment venues

External Appearance

1. There shall be no advertisement or promotional material used by the premises that is unsuitable to be viewed by children. Any exterior signage shall be discreet and shall not display any imagery that suggests or indicates relevant entertainment takes place at the premises. Any external displays or advertising may only be displayed with the prior approval of the Licensing Service, Blackpool Council.
2. Windows and openings to the licensed premises, other than entrances, shall not be obscured otherwise than with the consent of the Council but shall have suspended immediately behind them, plain light coloured screens or blinds of a type and design approved by the Council.
3. No illuminated signs or exterior lights shall be affixed to the licensed premises unless approved by the Council's Delegated Officer and shall be subject to ratification by the Council's Licensing Committee or Public Protection Sub Committee.
4. No advertisements or other notices or items shall be displayed so as to be visible from the exterior of the premises, subject to conditions 1 and 3.
5. The Council shall approve the design of the front elevation of the premises which shall include reference to the name of the premises, its postal address, opening hours, website address and any security grilles/shutters.
6. As a general rule the name of the premises shall be of an un-contentious nature and light colours used throughout to the Council's approval
7. The exterior and entrance to the licensed premises shall be suitably screened so as to prevent any part of the interior being visible from outside the shop.
8. There shall be a solid outer and inner door fitted with automatic closures with such devices being maintained in good working order.
9. On the external facing of the inner door, there shall be displayed a warning notice as supplied by the local authority.

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Control of entry to the premises

10. No person under the age of 18 shall be on the licensed premises.
11. The Challenge 25 proof of age scheme shall be operated at the premises whereby any person suspected of being under 25 years of age shall be required to produce identification proving they are over 18 years of age. The only acceptable forms of identification are recognised photographic identification cards, such as driving licence or passport
12. The premises shall maintain a refusals log whereby on any occasion a person is refused entry details shall be recorded. The log must be made available on request by Lancashire Constabulary or an authorised officer of the Council.
13. The price for entrance and any compulsory purchases within the venue should be clearly displayed

Taking of payment for performances

14. All electronic/ card payments will be recorded in a consecutively numbered carbonated book and will include:
 - What the customer has paid for in as much detail as possible
 - All staff members involved in services/ transactions
 - The amount paid
 - The customer will be given the option to sign this record
 - The customer will be given a copy of this
 - These records will be clear and legible

This book will be made available to an authorised Officer on request

15. There will be sufficient measures in place to prevent dancers facilitating their own payment methods i.e. card terminals, internet banking.
16. Dancers will not be allowed mobile phones in any performance areas
17. All card terminals will be at a fix point. There will be CCTV coverage to show the individual making the transaction.
18. Members of staff/ dancers must not assist customers in using cash machines.

Performances of sexual entertainment

19. No person under the age of 18 shall be on licensed premises.
20. All areas within the premises shall display signs advising clients of the club rules and conditions of the licence regarding improper performances

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21. There shall be no physical contact between performers and customers at any time, before, during or after the performance, with the exception of leading a customer by the hand to and from an area permitted for performances of sexual entertainment.
22. No performances shall include any sex act with any other performers, patrons, employees, contractors, or with the use of any objects.
23. Full nudity is not permitted. Performers and employees must at all times wear at least a G string or similar clothing covering the genitalia.
24. Customers must remain seated for the duration of the performance.
25. Any person connected with or employed by the business who can be observed from outside the premises must be fully dressed. Scantily clad individuals must not exhibit in the entrance way or in the area surrounding the premises. (Scantily clad means that there is partial nudity or underwear is visible)
26. No fastening or lock of any description shall be fitted upon any booth or cubicle or other area within the premises except within the toilets or within the performers dressing rooms and staff areas.
27. At all times during a performance, performers shall have unrestricted access to a dressing room.
28. Patrons or members of the audience shall not take photographs or record digital images of performers by any means.
29. Exit routes for performers must be kept clear.

Protection of performers

30. There shall be a written code of conduct for performers. All performers shall be required to certify their agreement to comply with the code and a record shall be kept on the premises and be made available upon request by the police or an authorised officer of the Council. The code shall include the following:
 - The licence conditions relating to performances of sexual entertainment.
 - House rules.
 - Internal disciplinary procedure and details of any financial penalties that may be imposed. This should include a system to ensure that performers suffering a genuine sickness or domestic emergency are not made subject to unfair punitive financial penalties.
 - Drugs monitoring.
 - No contact with customers outside the club.

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- The arrangements for breaks and smoking facilities provided.
- Copies of approved forms of ID supplied by each performer i.e. passport, photo card driving licence or PASS card.

31. Performers shall be provided with secure and private changing facilities
32. Means to secure personal property shall be provided for the performers
33. Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking area. If no smoking area is provided a maximum of 3 performers may be permitted to take a break at any one time.
34. The licence holder shall implement a written policy to ensure the safety of performers when leaving the premises following any period of work
35. All fees and charges for performers shall be stated in writing and prominently displayed in the changing area.

Management

36. All performers shall be required to provide valid photographic identification prior to first employment at the premises. Acceptable forms of identification are recognised photographic identification cards such as driving licence or passport. Records shall be kept detailing the identification produced and must be made available to an authorised officer on request
37. All performers and staff should be eligible to work in the UK and proof of eligibility records shall be kept on the premises.
38. All performers who engage in an evening of work at the premises shall sign a document to confirm the start and finish time of the shift. The document should be dated and contain the performer's true name as well as the stage name. These records shall be kept for a minimum period of six months and shall be produced on request by an authorised officer.
39. Employment records for performers and staff shall be kept for a minimum of six months following the cessation of their employment.
40. Accurate payment and remuneration records shall be maintained and shall be made available upon request to the Police or an authorised officer of the Council.
41. Where the licence holder is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for in the management of the body is to be notified in writing to the council within fourteen 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 fourteen days of a request in writing from the council.

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42. The name of the person who has been approved by the Council as being responsible for the day to day management of the licensed premises shall be prominently displayed within the licensed premises.
43. No person under the age of 18 shall be admitted to the licensed premises or employed by the licensee to work at the licensed premises.
44. The licensee shall ensure that no part of the licensed premises shall be used by prostitutes (male or female) for soliciting or for any immoral purposes.
45. Neither the licence holder nor any employee or other person shall seek to obtain custom for the licensed premises by means of personal solicitation, by means of flyers, handouts or any like thing, outside or in the vicinity of the licensed premises.

Exhibition of the licence

46. The copy of the licence and these conditions shall be displayed in accordance with paragraph 14(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in a conspicuous position at the premises for the customers to see.

CCTV

47. CCTV shall cover all public areas of the premises including all areas where performances of sexual entertainment are conducted. **The CCTV system should store recordings for a minimum of 21 days and images should be made available to the Police of authorised Council officers on request with a minimum of delay.**

Maintenance and Repair

48. The licence holder shall maintain the licensed premises in good order, repair and state of cleanliness at all times.
49. Should an authorised officer take issue with the condition of any parts of the premises internal or external, notice will be given in writing and must be rectified within a period of 28days from the date of the notice. Any appeal against such notice must be made in writing to the licensing service within 14days of issue. The appeal will be determined by the Public Protection Sub Committee.
50. The licence holder shall take appropriate measures to ensure that refuse from the premises are kept secure from public accessibility pending removal from site.
51. The licence holder shall comply with any fire prevention and safety measures that may be required by the Fire Authority or suitably competent local authority officer.

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General

52. No part of the premises shall be let