



VALE OF GLAMORGAN COUNCIL

SEX ESTABLISHMENT LICENSING POLICY

2011 - 2016

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2. FOREWORD

The Vale of Glamorgan Council has adopted schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) so that it can licence sex shops, sex cinemas, and sexual entertainment venues. In this policy, these are referred to as “sex establishments” unless stated otherwise.

The Council does not take a moral stand in adopting this policy recognising 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 the role of the licensing authority to administer the licensing regime in accordance with the law.

In developing this policy the Council has taken into account the legal requirements of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) and duties under:

- (a) section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder within the Vale of Glamorgan;
- (b) the Regulators’ Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the regulations 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.

The Council will aim to maintain a balance between customer interests and the interests of preserving the heritage of the area and protecting the interests of residents.

This ‘Sex Establishment Policy’ sets out the policies the Vale of Glamorgan Council will generally apply when making decisions on applications. It also sets out information about the application process, what is expected of applicants and how people can make objections about applications. It also sets out the types of controls that are available to the Vale of Glamorgan Council when decisions are made about licence applications and explain what action can be taken if complaints are received.



Councillor John Thomas
Chairman Vale of Glamorgan Licensing Committee

3. INTRODUCTION

The Vale of Glamorgan Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the amendment under Section 27 of the Policing and Crime Act 2009 on 28th February 2011.

The Vale of Glamorgan Council consulted on this policy between 11th April 2011 and 4th July 2011. The consultation was advertised on the Vale of Glamorgan website.

Consultation was conducted with Town Councils, Elected Members, Citizens Panel, responsible authorities under the Licensing Act 2003; and holders of premises licences under the Licensing Act 2003 within the Vale of Glamorgan.

The policy was endorsed by Licensing Committee on 13th September 2011.

This document sets out the Vale of Glamorgan Council's policy (the 'Policy') regarding the regulation of sex establishments.

This document relates to applications for Sex Establishment Licences covering:

- sex shops
- sex cinemas
- sexual entertainment venues (as set out in the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009).

The policy will guide the Vale of Glamorgan Council when considering applications for licences in balancing the conflicting needs of commercial interests, patrons, employees, residents and communities and will inform applicants and objectors of the parameters under which the Vale of Glamorgan Council will make licence decisions.

The application process sets out:

- the process for making an application; and
- the process the Vale of Glamorgan Council will follow in considering and determining an application for a Sex Establishment Licence.

4. DEFINITIONS

The Act

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

The Policy

This refers to Vale of Glamorgan Council's Sex Establishment Policy.

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 men: exposure of his pubic area, genitals or anus.

The Licensed Premises

This is the premises, vessel, vehicle or stall which is subject to a sex establishment licence. The premises will be in possession of all appropriate consents and permissions to operate. Note that licences are not required for the sale, supply or demonstration of birth control items.

The Organiser

This is any person who is responsible for the organisation or management of the Relevant Entertainment or the premises.

Permitted Hours

These are the hours of activity and operation that have been authorised under a Sex Establishment Licence.

Sex Article

A sex article is anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

Relevant Entertainment

This is defined under Schedule 3 (as amended by section 27 of the Policing and Crime Act 2009) as any live performance or any live display of nudity of such a nature that, regardless of financial gain, it must reasonably be assumed to be provided solely or primarily for the purpose of sexually stimulating any member of the audience whether by verbal or other means.

Sex Shop

A sex shop is any premise, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or other things intended for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

Sex Cinema

A sex cinema is any premise, vessel, vehicle or stall used to a significant degree for the exhibition of moving pictures, however produced, which are concerned primarily with the portrayal of, or primarily deal with or relate to or are intended to stimulate or encourage sexual activity or acts of force or restraint which are associated with sexual activity or are concerned primarily with the portrayal of or primarily deal with or relate to genital organs or urinary excretory functions.

Sexual Entertainment Venue

A sexual entertainment venue is any premise where relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

Relevant Locality

This is the locality where premises are situated or where the vehicle, vessel or stall is going to be used. The locality and the area that this covers is a matter for the local authority to decide. The Vale of Glamorgan Council has determined that

relevant locality will be determined on a case by case basis for the purpose of decision making.

Character of the Relevant Locality

The Vale of Glamorgan Council has not defined what type of area would or would not be acceptable in terms of character. The Vale of Glamorgan Council will consider the character of the area on a case by case basis and will take into account such factors as: the uses and users of the area; how the area is perceived; the vision/plan for the area; the views of the planning authority.

5. GENERAL POLICY

5.1. Principles to be Applied

The Act lists those people who are excluded from being able to hold a licence. A licence cannot be granted:

- a) To anyone under 18 years of age
- b) To someone who has held a licence that was revoked in the last 12 months (from the date of revocation)
- c) To someone who has been refused a new or renewal of licence within the last 12 months prior to the date of making the application
- d) To an individual who is not resident in the United Kingdom or has not been resident for six months prior to making an application
- e) To a company not incorporated in the United Kingdom.

On determining an application the Vale of Glamorgan Council shall have regard to all relevant considerations, including any representations received, comments made and any planning considerations.

The Vale of Glamorgan Council has not set a limit on the number of sex establishments or a sex establishment of a particular kind that it thinks is appropriate for any relevant locality. Each application for the grant, refusal, renewal, transfer or variation of a licence will be determined by the Vale of Glamorgan Council on its merits on a case by case basis.

This part of the policy may be subject to change following any future review.

5.2. Character of the Relevant Locality

When considering whether the grant or renewal of a licence would be inappropriate having regard to the character of the relevant locality, the Vale of Glamorgan Council will have regard to the location and situation of the premises in relation to other premises in the area including:

- churches or other places of worship
- community halls / centres
- schools / nurseries
- play grounds / areas

5.3. Disabled Access

Applicants are reminded of their duties under the Disability Discrimination Act 1995 and should provide such facilities so as to enable the admission of disabled people.

5.4. Layout, Character and Condition of the Premises

When considering an application for the grant, renewal, variation or transfer of a licence the Vale of Glamorgan Council will also take into account the following:

- the type of activity to which the application relates
- the duration of the proposed licence
- the days and hours of operation of the activity
- the layout and condition of the premises
- the use to which other premises in the vicinity are put
- the levels of crime and disorder in the area

Sex establishments should not be functionally visible to passers by on retail thoroughfares or pedestrian routes.

In more sensitive locations applicants should consider whether it would be appropriate to locate such premises at basement level or locate entrances away from retail thoroughfares or busy pedestrian routes.

5.5. Suitability of the Applicant

Applicants will be required to demonstrate that they are a suitable person to hold a licence. In determining suitability, the Vale of Glamorgan Council will normally take into account:

- previous knowledge and experience of the applicant
- any evidence of the operation of any existing/previous licences held by the applicant, including any licence held in any other local authority area
- any report about the applicant and management of the premises received from objectors or the Police and any criminal convictions or cautions of the applicant
- any other relevant reason

The above factors are not an exhaustive list of considerations but are merely indicative of the types of factors which may be considered in dealing with an application.

6. PREMISES

6.1. Length of Licence

The Vale of Glamorgan Council will, unless there are exceptional reasons otherwise, grant licences for the period of 12 months.

6.2. Application Form

The Vale of Glamorgan Council has a standard application form and public notice to be used by applicants which are available on request from our licensing team or www.valeofglamorgan.gov.uk.

6.3. Waiver

The Vale of Glamorgan Council will not normally grant a waiver for a sex establishment licence but will consider applications on their individual merits. Applicants will be expected to demonstrate exceptional circumstances in justifying why the licensing requirement should be waived. Applications will be

considered by the Sub-Committee and reasons shall be given of the decision taken.

6.4. Licence Conditions

The Vale of Glamorgan Council have adopted standard conditions for the operation of sexual entertainment venues. Where it is reasonable and necessary to do so, our Sub-Committee will impose additional proportional conditions on a licence. Wherever possible, these will be discussed in advance with operators by our licensing officers.

6.5. Fees

Our fees are set each year and details are available from our Licensing Team or www.valeofglamorgan.gov.uk.

6.6. Exemption

No sex establishment licence is required for 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.

6.7. Sex Shop

A sex shop may be in a 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.

6.7.1. Times of operation

Except with the previous consent of the Vale of Glamorgan Council a Sex Shop shall not be open to the public before 9 a.m. and shall not be kept open after 8 p.m.

Except with the previous consent of the Vale of Glamorgan Council a Sex Shop shall not be open on Sundays, bank holidays or public holidays.

6.7.2. 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 “a significant degree” is not defined in the 1982 Act. When considering whether or not a business is selling a significant degree of sex articles and needs a licence, the Vale of Glamorgan Council will consider:

- (1) the ratio of sex articles to other aspects of the business
- (2) the absolute quantity of sales
- (3) the character of the remainder of the business
- (4) the nature of the displays in the business
- (5) turnover
- (6) other factors which appear to be materially relevant

6.8. Sex Cinema

A 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; 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.

It does not matter by what means the moving pictures are produced whether digitally or on a reel, for example. It does not include images projected onto the screen of a video game.

6.8.1. Times of operation

Except with the previous consent of the Vale of Glamorgan Council a Sex Cinema shall not be open to the public before 9 a.m. and shall not be kept open after 8 p.m.

Except with the previous consent of the Vale of Glamorgan Council a Sex Cinema shall not be open on Sundays, bank holidays or public holidays.

6.8.2 Licensing Act 2003

A sex cinema even if it only shows R18 films, also requires a licence under the Licensing Act 2003.

6.9. Sexual Entertainment Venue

A premise includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted.

Licences for sexual entertainment venues are required for “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”.

An audience can consist of just one person, e.g. in a private booth.

In deciding whether entertainment is “relevant entertainment” each case will be judged on its merits, but will generally apply to:

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

The Act makes it clear that relevant entertainment is provided only if it is provided, or permitted to be provided, by or on behalf of the organiser. This could include the manager of the performers, the promoter of the show or the publican laying on the facilities. This means for example if the host of a stag night in a venue had ordered a stripogram without the permission of the proprietor, this would not require a licence.

6.9.1. Times of operation

Except with the previous consent of the Vale of Glamorgan Council a Sexual Entertainment Venue shall not be open to the public before 9 a.m. and shall not be kept open after 11 p.m.

Except with the previous consent of the Vale of Glamorgan Council a Sexual Entertainment Venue shall not be open on Sundays, Good Friday and Christmas Day.

6.9.2. Frequency exemption

This enables relevant entertainment to be provided on 11 occasions within any period of 12 months provided that each occasion lasts no longer than 24 hours and no such occasion begins less than a month from the end of the last.

If this exemption is breached for example by two relevant events taking place in the same week, it will take 12 months before the premises could come within the exemption, even if it ran no more events during that period of 12 months. Therefore if further events are required either a licence or waiver would need to be applied for.

6.9.3. Licensing Act 2003

Where sexual entertainment is being provided in such a manner that a sexual entertainment venue licence is required, or the requirement has been waived, then the entertainment is deemed not to be regulated entertainment under the Licensing Act 2003.

If the sexual entertainment stands outside the Licensing Act 2003 then live and recorded music will also be deemed as not regulated under the Licensing Act 2003.

A licence under the Licensing Act 2003 will be required for the sale of alcohol.

7. APPLICATION PROCESS

7.1. General Principles

Detailed guidance documents are available from the Licensing Team or www.valeofglamorgan.gov.uk.

Officers from the Licensing Authority and the Fire Authority will inspect the premises prior to any licence being issued, to ensure that required technical standards are met. If works are required to bring the building up to standard, the applicant will be notified.

Licences will not be issued until all required works are satisfactorily completed. Comments on applications will be sought from:

- Ward Councillors
- Police
- Planning Authority
- Environmental Health
- Trading Standards
- Children Services
- Fire Authority
- Town / Community councils
- any other relevant person as deemed appropriate by the Vale of Glamorgan Council

The Vale of Glamorgan Council will not determine an application for the grant, transfer or renewal of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

Any licence approved does not constitute any approval under any other Acts. The applicant must ensure that all necessary consents and approvals are obtained prior to operation.

Applicants are warned that any person who, in connection with an application for the grant, renewal or transfer of a licence, makes a statement which s/he knows to be false in any material respect, or which s/he does not believe to be true, is guilty of an offence and liable to summary conviction to a fine not exceeding £20,000.

7.2. Renewal Application

Provided that an application for renewal has been made prior to the date of expiry, the licence is deemed to continue until the application is withdrawn by the applicant or determined by the licensing authority.

When considering a renewal application the Vale of Glamorgan Council will take into account the criteria as set out for the grant of a licence and:

- past demonstrable adverse impact from the activity
- whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts

It should be noted that the Vale of Glamorgan Council in applying its decision-making discretion may consider it appropriate to refuse the renewal of the licence even where there has been no change in the character of the relevant locality or in the use to which any premises in the locality are put.

7.3. Variation Application

Variation applications relate only to proposed changes to terms, conditions or restrictions on or subject to which the licence is held as may be specified in the application. Any changes in licensee must be the subject of a transfer application.

Applicants must not operate any revised or varied arrangements until such an application has been approved and any revised or varied licence has been issued.

7.4. Transfer Application

The Authority may transfer a licence to any other person on the application of that other person. The Authority may refuse the transfer of the licence namely that the applicant is unsuitable and that the manager or beneficiary would be unsuitable.

Provided that an application for renewal has been made prior to the date of expiry, the licence is deemed to continue until the application is withdrawn by the applicant or determined by the licensing authority.

7.5. Representations on an Application

Any person wishing to object to an application must submit a written representation within the specified 28 day consultation period, setting out the grounds of objection.

Objections will be considered by the Sub-Committee of three Councillors. The Sub-Committee give both applicants and objectors an equal opportunity to state their case in accordance with our protocol which is available on our website at www.valeofglamorgan.gov.uk or from our licensing team.

The Vale of Glamorgan Council shall give applicants an opportunity of appearing before and of being heard by the relevant Sub-Committee of the Vale of Glamorgan Council:

- before refusing to grant a licence, to the applicant
- before refusing to renew a licence, to the holder; and
- before refusing to transfer a licence, to the holder and to the person to whom he desires that it shall be transferred

Additionally, the applicant and any persons who made representations and who wish to attend the hearing will have the opportunity to address the Sub-Committee before the application is determined.

Where the Vale of Glamorgan Council refuse to grant, renew or transfer a licence, it shall, if required to do so by the applicant or the holder of the licence, give him a statement in writing of the reasons for its decision within 7 days of his request.

7.6. Determining Applications

All applications for sex establishment licences will be referred to the relevant Sub-Committee for decision.

When considering applications, the Sub-Committee will have regard to:

- (a) the Local Government (Miscellaneous Provisions) Act 1982
- (b) Policing and Crime Act 2009
- (c) any supporting regulations

- (d) this Sex Establishment Policy

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.

When determining applications, the Sub-Committee will take account of any comments made by the Chief Officer of Police and any objections made. In all cases, the Vale of Glamorgan Council reserves the right to consider each application on its own merit.

7.7. Refusal of a Licence

- (1) A licence under this Schedule shall not be granted—
 - (a) to a person under the age of 18; or
 - (b) to a person who is for the time being disqualified under paragraph 17(3) below; or
 - (c) to 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; or
 - (d) to a body corporate which is not incorporated in the United Kingdom; or
 - (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.
- (2) Subject to paragraph 27 of the Local Government Miscellaneous Provisions Act 1982, the appropriate authority may refuse—
 - (a) an application for the grant or renewal of a licence on one or more of the grounds specified in sub-paragraph (3) below;
 - (b) an application for the transfer of a licence on either or both of the grounds specified in paragraphs (a) and (b) of that sub-paragraph.
- (3) The grounds mentioned in sub-paragraph (2) above 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 grant, renewal or transfer of such a licence if he made the application himself;
 - (c) that the number of sex establishments, or of sex establishment 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 consider is appropriate for that locality;
 - (d) that the grant or renewal of the licence would be inappropriate, having regard
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- (4) Nil may be an appropriate number for the purposes of sub-paragraph (3) (c) above.
- (5) In this paragraph “the relevant locality” means—
 - (a) in relation to premises, the locality where they are situated; and
 - (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

7.8. Cancellation of a Licence

The licence-holder may surrender the licence at any time and may request the Vale of Glamorgan 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 Vale of Glamorgan 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.

8. FURTHER INFORMATION

This document is available in Welsh, large print or audio.

If you wish to receive a copy of this statement in Welsh, large print, audio or if you have any comments please contact:

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Holton Road
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Fax: 01446 709808**

Email: Licensing@valeofglamorgan.gov.uk

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