

# HEREFORDSHIRE COUNCIL

## Licensing of Sex Establishments: Statement of Licensing Policy

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

**Further copies of this document can be obtained from:**

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## Executive Summary

The Policing and Crime Act 2009 amended the Local Government (Miscellaneous Provisions) Act 1982 section 2 and Schedule 3 to introduce a new classification of sex establishment, namely sexual entertainment venues. This includes lap dancing, pole dancing and other “relevant entertainment”.

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

On 26<sup>th</sup> September 2014 Herefordshire Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009. This applies to whole of the area of the County of Herefordshire.

The Council is mindful of possible concerns of the local community and that there can be conflict between applicants and objectors. The Policy will guide the Council when considering applications for licences in balancing the conflicting needs of commercial interests, patrons, employees, residents and communities.

The Council has had regard to what is appropriate for the licensing authority’s locality as referred to in paragraph 3.32 of the Home Office Guidance on Sexual Entertainment Venues (March 2010). Notwithstanding this, any application for a sexual entertainment venue will be received and considered on its individual merits.

Herefordshire Council has adopted this document as the policy and standard conditions to be applied when determining sex establishment licences within the County of Herefordshire.

This policy will:

- Set out the council’s approach for the benefit of operators.

- Guide and reassure the public and other public authorities.
- Ensure transparency.
- Ensure consistency.
- Guide and focus the Licensing Committee when making determinations under this legislation.

The policy will deal with:

- The mandatory and discretionary grounds for refusal
- Standard conditions
- The application processes.
- Waiver

## **1.0 INTERPRETATION**

### **1.1 The Act**

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

### **1.2 Advertisement**

Any word, letter, image, 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.

### **1.3 Authorised officer**

An officer employed by Herefordshire Council and authorised by the council to act in accordance with provisions of the Local Government (Miscellaneous Provisions) Act 1982.

### **1.4 The Council**

Herefordshire Council.

### **1.5 Character of the relevant locality**

The character or characteristics of the locality where the premises are situated will be instrumental in determining whether or not the grant of a licence will be appropriate. This is a proper matter for the Council to consider based on local knowledge, factors, and circumstances.

### **1.6 Display of nudity**

(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.

### **1.7 Entertainer**

Dancer, performer, or other such person employed, or otherwise, to provide relevant entertainment.

## **1.8 Licence**

Any sex establishment licence that the council can grant under this Act. This includes any associated consent of permission.

## **1.9 Licensee**

The holder of a sex establishment licence.

## **1.10 Licensed area**

The part of the premises marked on the plan where licensable activities are to take place.

## **1.11 The Organiser**

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

## **1.12 Permitted hours**

These are the hours of activity and operation that have been authorised under a sex establishment licence.

## **1.13 The Policy**

This refers to the sex establishment licensing policy.

## **1.14 Premises**

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

## **1.15 Relevant entertainment**

Any live performance or 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).

## **1.16 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 cover is a matter for

the local authority to decide. This Council has determined that each ward within the county represents a relevant locality for the purposes of decision making. The Council may have regard to the area of more than one locality/ ward.

#### **1.17 Responsible person**

The person nominated by the licensee who has personal responsibility for and be present on the premises whilst the premises is open to the public. This may be the manager or the relief manager.

#### **1.18 Sex Articles**

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.

#### **1.19 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 are concerned primarily with the portrayal of, or primarily deal with or relate to or intending to stimulate or encourage sexual activity or genital organs or urinary excretory functions.

#### **1.20 Sexual Entertainment Venue**

A sexual entertainment venue is any premises where any live performance or any live display of nudity is of such a nature that, regardless of financial gain, it must reasonably be assumed to have been provided solely or mainly for the purpose of sexually stimulating any member of the audience.

#### **1.21 Sex shop**

Any premises, 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 the purpose of stimulating or encouraging sexual activity.



### **1.22 Standard conditions**

Any terms, conditions or restrictions contained or referred to in the schedule to a licence granted under Schedule 3 but does not include any private dwelling to which the public is not admitted.

### **1.23 Vehicle**

A vehicle intended or adapted for use on roads.

## **2.0 THE PURPOSE OF THE POLICY**

**2.1** This policy is prepared under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009. It was approved by Herefordshire Council as the licensing authority for the County of Herefordshire on 10<sup>th</sup> April 2024. It will be reviewed every 5 years.

**2.2** This policy is concerned with the regulation of sex establishments, namely sexual entertainment venues, sex shops and sex cinemas.

**2.3** It was approved by the Planning and Regulatory Committee on 1<sup>st</sup> May 2024.

**2.4** The Authority does not take any moral stand in adopting this policy. The Authority recognises that Parliament has made it lawful to operate a sex establishment and that such businesses are a legitimate part of the retail and leisure industries.

**2.5** The council's licensing regime aims to ensure that if sex establishments are granted in Herefordshire that they operate in a safe, fair, and discreet manner and are sensitive to the local area in which they are situated. Specific attention has been taken to advertising, staff welfare, external appearance, locality and the number of licensed premises.

**2.6** In preparing this policy the council has consulted with and considered the views of a wide range of people and organisations including:

- Representatives of local business
- Representatives of the licensing trade (alcohol & entertainment)
- Local residents through Parish and town councils
- Ward Members
- West Mercia Police
- Herefordshire Council - Environmental Protection

- Herefordshire Safeguarding Children's Partnership
- Herefordshire Council - Planning
- Herefordshire Public Health

This Policy also has regard to the guidance issued by the Home Office.

**2.7** The council adopts the overall approach of encouraging the responsible promotion of licensed activities. However, in the interests of all its residents, it will not tolerate irresponsible licensed activity. The council will impose conditions where necessary to promote responsibility and will use effective enforcement to address premises where there are problems, in partnership with key agencies such as:

- West Mercia Police,
- Hereford & Worcester Fire and Rescue Service,
- Health and Safety Executive,
- Health Trusts in the County,
- Herefordshire Council Responsible Authorities
- Herefordshire Community Safety Partnership

### **3.0 THE SCOPE OF THE POLICY**

- 3.1** This policy covers licensable premises and activities as defined by the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 (the Act) within Herefordshire. Schedule 3 of the Act is concerned with the control of sex establishments. A sex establishment means a sexual entertainment venue, sex cinema or sex shop.
- 3.2** A sexual entertainment venue is a premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer. Relevant entertainment means any live performance or any live display of nudity which is provided solely or principally for the purpose of sexually stimulating any member of the audience. The full legal definition of a sexual entertainment venue can be found at section 2 and 2A of the Act.
- 3.3** A sex cinema means a premises used to a significant degree for the exhibition of moving pictures which primarily portray sexual activity or act of force or restraint which are associated with sexual activity. A full legal definition of a sex cinema can be found in section 3 of the Act.
- 3.4** A sex shop relates to a premises used to a significant degree for the selling, etc. of sex articles or other items intended for the use of stimulating sexual activity or acts of force or restraint. A full legal definition of a sex shop can be found ay section 4 of the Act.
- 3.5** Advice on whether a licence is required can be obtained from the Licensing Section of Herefordshire Council. E-mail [licensing@herefordshire.gov.uk](mailto:licensing@herefordshire.gov.uk), Telephone 01432 261761, Address: Licensing Section, Herefordshire Council, Plough Lane, Hereford HR4 0LE.

- 3.6** Throughout this policy the wording will refer to ‘applicants’ for licences. However, it should be noted that the principles set out within this policy apply equally to new applications, renewals, and transfers.
- 3.7** This policy seeks to provide advice to applicants about the approach they should take in making applications and the view the council is likely to take on certain key issues.

## **4.0 Herefordshire Council**

- 4.1** Herefordshire Council, along with its partners, has been working towards ensuring that Herefordshire has a great deal to offer those who live, work, or visit here, including a rich heritage, a beautiful natural environment and a wide range of cultural and leisure opportunities. It is a safe place to live and work, with low levels of crime.
- 4.2** Herefordshire is bordered by Shropshire to the north, Worcestershire to the east, Gloucestershire to the south-east, and the Welsh counties of Monmouthshire and Powys to the west. It has a population of 193,600 (mid-2020) and covers an area of 2180 square kilometres (842 square miles). 95% of the land is rural with over half the population living in these rural areas. At the centre of the County is Hereford City with a population of 61,400. The city is surrounded by the market towns of Leominster (12,200), Ross on Wye (11,400), Ledbury (10,100), Bromyard (3,361) and Kington (3,302).
- 4.3** It has an ageing population with 24% of the residents over 65, compared to the national average of 18%. Earnings in Herefordshire are significantly lower than the average in England and the West Midlands. In 2022, the median weekly earnings for people who work in Herefordshire were £454.00, compared to £536.60 in England.
- 4.4** Herefordshire has just over 2000 premises licensed under the Licensing Act 2003. The main centre for entertainment is within the Commercial Road, Commercial Street and Blueschool Street area of Hereford where there are a number of night clubs and large public house which operate until the early hours of the morning.

## **5.0 INTEGRATING OTHER GUIDANCE, POLICIES, OBJECTIVES AND STRATEGIES**

- 5.1** In preparing this licensing policy the council has had regard to other Herefordshire Council Policies and Government Guidance.
- 5.2** The council (through its Licensing Committee) may, from time to time receive reports on other policies, strategies and initiatives that may impact on licensing activity within the remit of the committee. Subject to the general principles set out in Section 6 it may have regard to them when making licensing decisions.
- 5.3** The Committee may, after receiving such reports, make recommendations to the council or other bodies about the impact of the licensing policy on such policies, strategies and initiatives. Equally the Committee may make recommendations relating to the impact of such policies, strategies, and initiatives on the licensing policy. This may include recommendations to amend the licensing policy itself.

## 6.0 **GENERAL PRINCIPLES**

6.1 In determining a licensing application the overriding principle will be that each application will be determined on its own merit, taking into account local knowledge, this licensing policy and the guidance issued by the Home Office. Where it is necessary to depart from the guidance or this Policy the council will give clear and cogent reasons for doing so.

### **Numbers of Sex Establishments**

6.2 The Council has had regard to what is appropriate for the licensing authority's relevant locality as referred to in paragraph 3.32 of the Home Office Guidance on Sexual Entertainment Venues (March 2010). Notwithstanding this, any application for a sexual entertainment venue will be received and considered on its individual merits.

### **Human Rights**

6.3 The European Convention on Human Rights makes it unlawful for a public authority to act in a way that is incompatible with a Convention right. The council will have particular regard to the following relevant provisions of the European Convention on Human Rights:

- **Article 3** Freedom from torture and inhuman or degrading treatment
- **Article 4** Freedom from slavery and forced labour.
- **Article 6** that in determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
- **Article 8** that everyone has the right to respect for his home and private life.
- **Article 10** that everyone has the right to freedom of expression.
- **Article 14** Protection from discrimination in respect of these rights and freedoms
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- **Article 1 of the first protocol** that every person is entitled to the peaceful enjoyment of his or her possessions, including for example a licence.

### **The Provision of Services Regulations**

**6.4** The Provision of Services Regulations 2009 implements the European Services Directive. These regulations ensure that any refusal of a licence is:

- **non-discriminatory** in regard to nationality,
- **necessary** for reasons of public policy, public security, public health or the protection of the environment and
- **proportionate** with regard to the objective pursued by the legislation.

**6.5** The council will consider these three issues in relation to the refusal of licence applications.

### **Crime and Disorder Act 1998**

**6.6** The Crime and Disorder Act 1998 places a duty on the council to exercise its functions with due regard to:

- Crime and disorder in its area (including ant-social and other behaviour adversely affecting the local environment.
- The misuse of drugs, alcohol, and other substances.
- Re-offending in its area.

**6.7** The council will have particular regard to the likely effect of the determination of licence applications on these issues and the need to do all that it reasonable can to prevent them.

### **Equality Act 2010**

**6.8** The Equality Act 2010 places a duty on the council to exercise its functions with due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010.
- Advance equality or opportunity between persons who share relevant protected characteristic and person who do not share it.
- Foster good relation between persons who share a relevant protected characteristic and persons who do not share it.

**6.9** The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

**6.10** The council is aware that sex establishments tend to be predominantly marketed to men and that the licensing of these establishments must not encourage discrimination against women, especially in regard to women who work at the premises, women who may wish to visit the premises or women who are using the area for other purposes, but who may feel intimidated by the presence of such premises.

**6.11** Accordingly, due regard has already been and will continue to be given during the review of this policy, to the determination of licences and the attaching of conditions.

### **Protection of Children and Vulnerable Adults**

**6.12** The Licensing Authority has a duty to protect and safeguard children and vulnerable adults. In these circumstances there are a number of pieces of legislation available which the authority may make use of:

- Safeguarding Vulnerable Groups Act 2006
- Health and Social Care Act 2012
- Mental Capacity Act 2005
- Children Act 1989
- Children Act 2004
- Children and Social Work Act 2017

## **Staff Training**

- 6.13** The council requires that all staff employed on licensed premises shall be trained to raise awareness of their responsibilities in relation to running such establishments and particularly of the offences contained within the Local Government (Miscellaneous Provisions) Act 1982. Such training shall be agreed with the licensing authority and a record shall be kept of all staff trained, which shall be immediately produced to an officer of the licensing authority on demand.
- 6.14** All persons employed on licensed premises should be provided with in-house training on basic public safety and the housekeeping arrangements relative to those premises. Depending on their job role, this may include training in first aid, age verification policies, basic health, and safety, and so on.
- 6.15** Licensed premises will be required to record training undertaken by staff in their staff records. These records will be made available for inspection on request by an authorised officer or the police.

## **Advertising**

- 6.16** As part of the standard conditions attached to licences there is a requirement that all advertising and the external appearance of the premises must be approved by council. This approval will be sought at the next available subcommittee hearing. Applicants will be entitled to attend the hearing.

## **Exemptions**

- 6.17** Under the Local Government (Miscellaneous Provisions) Act 1982 there is an exemption for sexual entertainment venues for premises which provide relevant entertainment on an infrequent basis. These are defined as premises where –
- no relevant entertainment has been provided on no more than 11 occasions within a 12-month period.
  - no such occasion has begun within a period of one month beginning with the end of the previous occasions; and

- no such occasion has lasted longer than 24 hours.
- other premises or types of performances or displays exempted by an order of the Secretary of State.

**6.18** This exemption does not apply to sex shops or sex cinemas.

### **Holders of licences/certificates under the Licensing Act 2003**

**6.19** Holders of premises licences or club premises certificates should check their licence conditions, particularly under the licensing objectives of the protection of children from harm, as many will contain the following condition:

No adult entertainment or services or activities must take place at the premises (Adult Entertainment includes, but is not restricted to, such entertainment or services which would generally include topless bar staff, striptease, lap-table, or pole-dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language).

**6.20** In these circumstances these premises should either seek a variation of their licence or a temporary event notice to enable them to make use of the above exemption.

## **7.0 THE APPLICATION PROCESS**

**7.1** Applications must be made to the council in the form prescribed.

**7.2** An operator's suitability will be checked before a licence for a sex establishment is granted. Depending on the individual circumstances this may be achieved by the following means:

- Application form
- DBS check
- Personal interview either in person, at hearing, by phone or in writing
- Accreditation/Training/Experience.

**7.3** In the first instance, the application will be sent to West Mercia Police who may conduct a check. The operator's suitability will be checked using the application form and the personal information forms. Applicants may be asked to provide an enhanced DBS check, or attend an interview, to support their application.

**7.4** The suitability of the applicant is important to ensure that the interests of the public are protected. The council will use the methods described above to ensure that the proposed operator:

- is honest.
- has a clear understanding of the conditions that may be attached to the licence.
- has a suitable business plan which will deliver compliance of the standard conditions.
- has no unspent conviction of a nature that deem him/her unsuitable. □  
will not pose a risk to vulnerable adults.

**7.5** Applications for sexual entertainment venue licences will also show they have:

- a clear employees welfare policy
- a clear code of practice for employees
- a clear code of conduct for customers
- a clear policy on pricing
- protects the interests of the customers.
- polices in relation to:  
Modern slavery and  
Human Trafficking

**7.5** The council will take all of these criteria into account when determining the licence. Non-compliance of one or more of the criteria will not necessarily exclude the operator from holding a sex establishment licence providing the applicant is able to prove to the council that the interest of the public is protected.

**7.6** In all cases there shall be at least a 28-day consultation period to allow for comments from all parties and no determination shall be made prior to the expiry of this period.

### **Third Party Beneficiaries**

**7.7** In order to protect the public interest it is important to establish the hierarchy of the operator's business. Information will be sought, and enquiries made into the operator's company structure to ensure that the operator is not working on behalf of an individual or company that would not be granted a licence in their own right.

**7.8** Enquiries may be made via the application form, checks with Companies House, West Mercia Police, personal interview or applicants may be asked to provide business records.

### **Fees**

**7.9** The council has set a reasonable fee. The fee is based on a full cost recovery of the costs incurred by the council in determining the application.

### **Notices**

**7.10** The applicant must advertise the application in three ways:

- Advertisement in a local newspaper within 7 days of the application
- Advertisement at the premises by way of a site notice for 21 consecutive days
- Notice of the application to be sent to the Chief Officer of Police for West Mercia within 7 days of the application.

**7.11** Proof that the applicant has advertised the application will be required.

### **Objections**

**7.12** Anyone can object to an application for a sex establishment. Objections should be received by the council no later than 28 days after the date of the application. These objections can be received from individuals or businesses and can be on any matter.

- 7.13** However the appropriate weight will be given to objections which relate to the purpose of the legislation which is the control of sex establishments.
- 7.14** Guidance on making an objection can be found on the council's website.
- 7.15** The council will notify the applicant in writing of the general terms of any objection it receives within 7 days of the application.
- 7.16** The Council will not redact any details of an objectors unless the licensing authorities consider that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation on this basis.

### **Hearings**

- 7.17** The council has appointed a Planning and Regulatory Committee of 15 Councillors. The Licensing functions will often be delegated to the licensing sub-committee of 3 councillors from the Planning and Regulatory Committee or, in appropriate cases to officers of the council.
- 7.18** All new applications and any contested renewals or transfers will be determined by a Licensing sub-committee.
- 7.19** It is the council's practice to provide notice of the hearing to all interested parties (applicants and objectors) five days before the hearing as laid down in Local Government Act 1972.
- 7.20** This notice will provide the date of the hearing, the procedure for the hearing, state any points on which the council requires clarification at the hearing, and will require the addressee to confirm their attendance and the attendance of any witnesses they may wish to call.



- 7.21** The hearing will take place in public except where the public interest requires otherwise.
- 7.22** All parties will be given an equal amount of time to present their case.
- 7.23** Councillors will have regard to the Herefordshire Council Code of Conduct for Members and guidance issued by the Standards Board for England. Where a Councillor who is a member of the Licensing Sub-Committee has a prejudicial interest in the application before them, in the interests of good governance they will disqualify themselves from any involvement in the decision-making process, in respect of that application. Members will not hear applications from within their own ward to avoid any appearance of bias.
- 7.24** A licensing sub-committee may refer an application to another sub-committee or to the Planning and Regulatory Committee where it is unable to deal with the application because of, the number of members unable to vote on the matter in question.
- 7.25** The Planning and Regulatory Committee will refer an application to the council where it is unable to deal with the application because of the number of members unable to vote on the matter in question.

### **Reasons for decisions**

- 7.26** In determining licence applications under the Local Government (Miscellaneous Provisions) Act 1982 the council will take into consideration the application before it, any objections received as well as local knowledge including local issues and cultural sensitivities.

**7.27** Every decision to refuse a licence made by the Planning and Regulatory Committee, subcommittee or officers will be accompanied by clear reasons for the decision.

**7.28** Every effort will be made to provide a decision verbally at the sub-committee hearing, with the written reasons to follow in due course. However, in exceptional circumstances the sub-committee may defer the decision in order to allow mature consideration of the respective case and a time for the reasoned condition will be drawn up and all parties notified.

### **Conditions**

**7.29** The council will impose standard conditions on all licences. However, if deemed necessary, the council may change, alter, or replace the standard conditions with conditions that are relevant to the application. Please see appendix 1 for the standard conditions.

**7.30** Any change to the standard conditions will be applied to licences at the time of renewal when all conditions are reviewed.

### **Refusal of applications**

**7.31** Applications for sex establishments can 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 non-resident in the UK,
- company not incorporated in the UK,
- or a previous refusal of the applicant at the same premises in the previous 12 months.

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

- if the applicant is unsuitable,
- if the business would be managed by or 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 sex establishments of a particular kind in the locality equals or exceeds the number considered appropriate,
- is inappropriate having regard to:
  - Character of the relevant locality
  - Use of premises in the vicinity
- Layout, character, condition or location of the premises.

**7.33** As stated at 6.1, the council will consider each application on its own merits, taking into account local knowledge, this policy and the guidance provided by the Home Office.

### **Right of Appeal**

**7.34** Only the applicant has the right to appeal the council's decision to the Magistrate's Court and only on limited grounds. There is no right of appeal for objectors or statutory authorities. Applicants and interested parties are referred to the Local Government (Miscellaneous Provisions) Act 1982, paragraph 27 for further details.

### **Period of licence**

**7.35** A sex establishment licence will remain in force for up to one year, or for a shorter period should the council think fit.

### **Grant, Renewals, Transfer**

**7.36** The process for applying for a renewal, transfer or variation of the licence is the same as when applying for a new licence. Guidance for applicants is available on the council's website.

## Variation

- 7.37** There are some matters required under the standard conditions for which the premises licence holder is required to notify the council. These matters include:
- Variation of standard conditions
  - Variation of any of the terms of the licence
  - Change in the external appearance of the premises.
  - Structural changes
  - Change in personnel.
  - Use of a vehicle for advertising purposes
  - Change of name of premises
- 7.38.** Application to vary conditions of the licence must be advertised by the licensee in the same way as for the application for grant, renewal, or transfer.
- 7.39** Other matters must be notified to the council in writing, enclosing the appropriate plans, or illustrations as may be required to evidence the application. Any variation of the licence will attract a fee which will be based on full cost recovery. Please contact Licensing prior to application to obtain the fee required.

## Revocation

- 7.40** Should information be received by the council that circumstances have changed in such a way that the applicant would be deemed unsuitable or that the manager or beneficiary would be unsuitable should they be applying for a new licence, the council may revoke the sex establishment licence.
- 7.41** Should the council consider revocation of the licence to be appropriate the licensee will be provided an opportunity to appear before the Licensing Committee and be heard by them.

**7.42** The licensee will be given a statement in writing of the reasons for revocation within seven days of the requirement being made.

**7.43** The revocation will take effect once the appeal period has expired, or if an appeal is lodged after the determination or abandonment of the appeal.

### **Waiver**

**7.44** Should the council decide that a licence would be unreasonable or inappropriate, it may waive the need for a licence, for example in the case of a medical book shop, sex clinic.

**7.45** The council would only waive the need for a licence where the activity is low risk and/or temporary. However, a waiver will not be considered in cases where a licence is required or where there is public interest.

**7.46** The application for a waiver uses the same form as an application for a new licence; however, it should be accompanied by a letter which describes the circumstances under which the need for a licence should be waived. There will be no requirement to advertise the application. There is a fee which will be based on full cost recovery. Please contact Licensing prior to application to obtain the fee required.

**7.47** The decision to waive the need for a licence will be taken at the next available licensing sub-committee hearing and a Notice of Waiver will be issued in due course.

**7.48** Unsuccessful applications for waivers will be notified accordingly and provision will be made for them to make a formal application for a sex establishment licence.

## 8.0 ENFORCEMENT

### Enforcement principles

- 8.1 The council will work closely with partners in accordance with a locally established joint enforcement protocol and will aim to promote the licensing objectives by targeting known high risk premises following government guidance around better regulation.
- 8.2 In carrying out its enforcement duties with regards to the inspection of premises; and the powers to institute criminal proceedings in respect of certain offences under the Act the council will endeavour to be:
- **proportionate**: regulators should only intervene, when necessary, remedies should be appropriate to the risk posed, and costs identified and minimised.
  - **accountable**: regulators must be able to justify decisions and be subject to public scrutiny.
  - **consistent**: rules and standards must be joined up and implemented fairly.
  - **transparent**: regulators should be open, and keep regulations simple and user friendly; and

- **targeted:** regulation should be focused on the problem and minimise side effects.

**8.3** The council will endeavour to avoid duplication with other regulatory regimes so far as possible.

**8.4** The council will also adopt a risk-based inspection programme in line with government recommendations around better regulation and the principles of the Hampton Review.

**8.5** The main enforcement and compliance role for the council in terms of the Local Government (Miscellaneous Provisions) Act 1982 as amended will be to ensure compliance with the conditions placed upon the licence.

**8.6** The council will also keep itself informed of developments as regards the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities.

**8.7** The council's enforcement/compliance protocols/written agreements will be available upon request.

### **Complaints**

**8.8** Any person aggrieved by the operation of a sexual entertainment venue, sex shop or sex cinema may complain to the council by email [licensing@herefordshire.gov.uk](mailto:licensing@herefordshire.gov.uk) or by writing to Licensing, Herefordshire Council, Plough Lane, Hereford HR4 0LE.

**8.9** Only complaints relating to the breach of the legislation or breach of licence conditions will be investigated. If appropriate the complaint may be shared with other authorities, such as the police. Complaints made on moral grounds will not be.

## **Appendix 1 - Standard Conditions**

These conditions may be dispensed with, added to, or modified by the council. Where, in these conditions, there is a reference to the consent of the council being required, the consent may include terms, conditions, and restrictions as appropriate.

### **Sexual Entertainment Venues**

#### **General**

1. Unless stated otherwise, the licence hereby granted will operate for one year from the date on the licence, after which it will cease to be in effect unless an application for renewal is submitted in the manner prescribed by the council.
2. The licence may be revoked by the council if at any time the holder is convicted of an offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
3. The licensee will provide (subject to the satisfaction of both the police and the licensing authority), a code of practice for entertainers and code of conduct for



customers, and these must be made available upon request to both the police and authorised officers.

4. All rules (code of practice for entertainers, code of conduct for customers, dispersal policies etc.) to be prominently displayed on the premises.
5. Price lists will be clearly displayed at each table and at each entrance to the premises.
6. All rules and price lists as described in conditions 4 and 5 must be printed in a manner which is clear and easy to read during the normal operation of the premises.
7. Suitable and sufficient training is to be provided to all staff including the responsible person as described in condition 28. The training of all staff is to be recorded and the training record must be made available upon request to both the police and authorised officers.
8. The name of the premises must be approved by the council in writing. Any change to the name of the premises must be approved by the council in writing.

### **Exhibition of the licence**

9. The licence, or a clear copy, will be prominently displayed at all times so as to be readily and easily seen by all persons using the premises, the police, the fire authority and authorised officers of the council. A copy of the conditions attached to the licence will be kept on the premises and be available for inspection by an authorised officer of the council, or the police or fire authority.

### **Hours of opening**

10. The premises will only be open to the public during the following hours:

Monday	?
Tuesday	?
Wednesday	?
Thursday	?

Friday	?
Saturday	?
Sunday	?

### **Conduct on the premises**

11. Entertainers will only perform on the stage area or in booths/areas for VIPs as identified on the plan attached to the licence.
12. Relevant entertainment will only be performed by the entertainer. There must be no audience participation.
13. There must be no physical contact between entertainers.
14. Customers will not touch the breasts or genital area of entertainers.
15. Entertainers will not directly or indirectly touch the breasts or genital area of customers.
16. Any performance will be restricted to dancing and the removal of clothes.
17. There will not be any other form of sexual activity or stimulation which, for the avoidance of doubt, includes kissing.
18. Sex toys must not be used and penetration of the genital area by any means must not take place.
19. Customers will not be permitted to throw money at the entertainers.

### **External appearance**

20. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following:

**Strictly No Admittance to Persons under 18 Years of Age.**

**This premises operates a Challenge 25 policy.**

**Persons under the age of 25 will be required to show proof of age.**

21. The external appearance of the premises must be approved by the council in writing.
22. Any change to the external appearance must be approved by the council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the council before work is undertaken.
23. Access to the licensed area of the premises should be through a lobby area which is constructed in such a way that the inside of the licensed premises where relevant entertainment takes place is not visible to passing members of the public when the doors of the premises are opened.
24. Signage will only be illuminated between 10pm and 2am, and movable signs placed outside the premises will be removed between 2am and 10pm or at the closing time of the premises, whichever is sooner.

### **Advertising**

25. Any written, visual, or auditory advertisement material, posters, signage or window display must not be of a sexually explicit or suggestive nature, will not contain images or text of a sexually explicit, obscene or offensive nature and must be approved by the council in writing.
26. Leafleting/distribution of flyers will only be permitted immediately outside the premises and in such a way where it does not cause public offence. The licensee will remove any leaflets from the Highways within a 100-metre radius of the premises by 2am or at the time the premises closes, whichever is sooner. The licensee will have a flyer distribution policy to be approved by the Council.

### **Layout of premises**

27. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.

28. No alterations (including temporary alterations) will be made to the structure and installations on the premises, without the prior written consent of the council. This condition will not require notice to be given in respect of routine maintenance works. Where there is any doubt, the licensee should seek advice from the council.

### **Management of the premises**

29. The licensee, or a responsible person nominated by him/her in writing for the purpose of managing the venue (“the manager”) will have personal responsibility for and be present on the premises whilst relevant entertainment is being performed. Any such nomination will be produced on demand to an authorised officer of the council or the police.
30. The licensee will ensure that any person nominated by him/her under the above:
- a) has been provided with a copy of the conditions relating to the premises and is fully conversant with them; and
  - b) is in possession of a written nomination referred to above at all times when they are in charge of and present on the premises.
31. The name of the person responsible for the management of the premises, whether the licensee or manager, will be displayed in a conspicuous position within the premises throughout the period during which he/she is responsible for the conduct of the premises.
32. 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 will be notified in writing to the council within 14 days of such a change. Such details as the council may require in respect of the change of personnel will be furnished within 14 days of a request in writing from the council.
33. Where the licensee, director, company secretary, or responsible person nominated for the purpose of managing the venue (“the manager”), is convicted of an offence, they must, as soon as practicable after the conviction, inform the council of the conviction giving details of the nature and date of the conviction, and any sentence imposed.

34. The licensee will retain control over all parts of the premises and will not let, licence or part with possession of any part of the premises. The council must be notified immediately in the event that any part of the premises is affected by the termination of a lease or other event affecting the licensee's control of the premises.
35. The licensee will ensure that the public is not admitted to any part or parts of the premises that has not been approved by the council.
36. No persons under the age of 18 will be admitted to the premises.
37. The licensee will operate a Challenge 25 age verification policy. People under the age of 25 will be required to show proof of ID. A notice to this effect, in accordance with condition 18 will be displayed on the premises. Such policy shall be written down, kept at the premises, and be made immediately available an authorised officer of the council or the police.
38. The licence holder will not employ any person under the age of 18 in any capacity.

### **Safety and security**

39. A suitable CCTV system will be operational at the premises at all times when licensed activities are being carried out. The system will cover all public areas including booths and corridors but not including staff changing rooms or toilets. The system will conform to West Mercia Police guidelines (as attached to the licence) in respect of business-related CCTV equipment. It will be adequately maintained and be capable of transporting recorded material onto removable media.
40. The siting of the CCTV system will be agreed with West Mercia Police prior to installation and will comply with that agreement at all times. Changes to the siting and standard of CCTV systems may only be made with the written consent of West Mercia Police.

41. CCTV security footage will be made secure and retained for a minimum period of 31 days' time to the satisfaction of West Mercia Police. CCTV footage will be supplied to the police and authorised officers of the Council on request.
42. At all times that the premises are open to the public there will be a member of staff on duty who is conversant with operating the CCTV system and who is able to download immediately any footage requested by the police or an officer from the licensing authority or authorised agent.
43. There shall be in place a risk assessment covering numbers of Security Industry Authority registered door staff (the risk assessment to be subject to police and licensing authority approval) will be present on the premises during the performance of relevant entertainment.

#### **Staff welfare**

44. Entertainers will be aged no less than 18 years.
45. All premises that provide relevant entertainment will be expected to provide new entertainers with a pack of information, free of charge, in their dressing room. This pack will include:
  - a. A copy of the Sex Establishment Licence, including the conditions applied by the Licensing Committee.
  - b. Details of any other conditions applied by management of the premises.
  - c. Details of how to report crime to the relevant authority.
  - d. Details of insurance (public liability/personal)
  - e. Details of unions, trade organisations or other bodies that represent the interests of dancers/entertainers.
  - f. A copy of the code of practice for entertainers
  - g. A copy of the code of conduct for customers
  - h. Fining policy
  - i. Pricing policy
46. In addition, literature and contact details will be provided of organisations that provide advice and counselling on matters relating to:

- (a) Modern slavery,
- (b) Domestic abuse,
- (c) Coercive control,
- (d) Rape/sexual assault
- (e) Sexual Violence
- (f) Sexual Health
- (g) Sexual Assault Referral Centre (SARC) and
- (e) Human trafficking

- 47. National helplines, the police and SARC should be able to help employees following any incident or where they feel uncomfortable or threatened.
- 48. All booths/areas for VIPs used for private dances must be visible to supervision and must not have closing doors or curtains that prevent performances from being observed.
- 49. All booths/areas for VIPs used for private dances must be directly supervised by either a SIA registered door supervisor, or a member of staff who has direct contact with SIA registered door supervisors working on the premises at all times the booths/areas are in use. Direct supervision does not include remote supervision by CCTV.
- 50. Entertainers will only be present in the licensed area in a state of nudity when they are performing on stage or providing a private dance.
- 51. Any person on the premises who can be observed from outside the premises will be properly and decently dressed.
- 52. The licensee will ensure entertainers have secure dressing rooms, facilities to secure valuables and proper sanitation facilities available to them.
- 53. The management will maintain a register which details any fines imposed on entertainers which will include the date, type of misdemeanour, and amount fined.

### **Vessels, stalls and vehicles**

53. Vehicles will not be used to obtain custom by means of personal solicitation or touting in such a way that causes concern or offence to the public or the licensing authority.
54. Any vehicle used to advertise the premises must comply with the advertising conditions.
55. All forms of advertising on vehicles must be approved by the council prior to use.
56. Vehicles used to transport customers to or from the premises may require a licence issued by Herefordshire Council Taxi and Private Hire Licensing or the Department for Transport. Details of any vehicles brought into service must be notified to the council in writing and details of any relevant licence issued by Herefordshire Council Taxi and Private Hire Licensing, or the Department for Transport must be produced in advance of the vehicle being used.

### **Variation of conditions**

57. The council may, at the time of grant or renewal of the licence, waive, modify, or vary these conditions or impose additional conditions as appropriate.
58. The licensee may apply to the council to vary any of the terms of the licence.
59. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the issue, renewal, or transfer of the licence.



## **Sex Shops**

### **General**

1. Unless stated otherwise, the licence hereby granted will operate for one year from the date on the licence, after which it will cease to be in effect unless an application for renewal is submitted in the manner prescribed by the council.
2. The licence may be revoked by the council if at any time the holder is convicted of an offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
3. The name of the premises must be approved by the council in writing. Any change to the name of the premises must be approved by the council in writing.

### **Exhibition of licence**

4. The licence, or a clear copy, will be prominently displayed at all times so as to be readily and easily seen by all persons using the premises, the police, the fire authority and authorised officers of the council. A copy of the conditions attached

to the licence will be kept on the premises and be available for inspection by an authorised officer of the council, or the police or fire authority.

### **Hours of opening**

5. The premises will only be open to the public during the following hours:

Monday	?
Tuesday	?
Wednesday	?
Thursday	?
Friday	?
Saturday	?
Sunday	?

### **Conduct on the premises**

6. The licensee, or any other person concerned in the conduct or management of the premises, shall not in person, solicit or tout for the business from the premises. All literature used in connection with the business will not contain images or text of a sexually explicit, obscene or offensive nature.

### **External appearance**

7. There will be a notice displayed on each entrance or doorway to the premises which states the following:

**Strictly No Admittance to Persons under 18 Years of Age**

**This premises operates a Challenge 25 policy.**

**Persons under the age of 25 will be required to show proof of age.**

8. The external appearance of the premises must be approved by the council in writing.

9. Any change to the external appearance must be approved by the council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the council before work is undertaken.
10. The frontage of the licensed premises will be of such a nature that the inside of the licensed premises are not visible and the contents of the licensed premises should not be visible when the doors of the licensed premises is open.
11. There will be no illuminated or protruding signs fixed to the premises and no signs placed outside the premises.

### **Advertising**

12. Any written, visual or auditory advertisement material, posters, signage or window display must not be of a sexually explicit or suggestive nature, will not contain images or text of a sexually explicit, obscene or offensive nature and must be approved by the council in writing.
13. Leafleting/distribution of flyers will only be permitted in such a way where it does not cause public offence. The licensee will remove any leaflets from the highways within a 100-metre radius of the premises. The licensee will have a flyer distribution policy to be approved by the council.

### **Layout of premises**

14. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
15. No alterations (including temporary alterations) will be made to the structure and installations on the premises without the prior written consent of the council. This condition will not require notice to be given in respect of routine maintenance works. Where there is any doubt, the licensee should seek advice from the council

## Management of the premises

16. The licensee, or a responsible person nominated by him/her in writing for the purpose of managing the venue (“the manager”), will have personal responsibility for and be present on the premises whilst the premises are open to the public. Any such nomination will be produced on demand to an authorised officer of the council or the police.
17. The licensee will ensure that any person nominated by him/her under the above:
  - a) has been provided with a copy of the conditions relating to the premises and is fully conversant with them; and
  - b) is in possession of a written nomination referred to above at all times when they are in charge of and present on the premises.
18. 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 will be notified in writing to the council within 14 days of such a change. Such details as the council may require in respect of the change in personnel will be furnished within 14 days of a request in writing from the council.
19. The licensee will retain control over all parts of the premises and will not let, licence, or part with possession of any part of the premises. The council must be notified immediately in the event that any part of the premises is affected by the termination of a lease or other event affecting the licensee’s control of the premises.
20. The licensee will ensure that the public is not admitted to any part or parts of the premises that has not been approved by the council.
21. The holder of the licence will keep a record of all employees who are asked to work on the premises which will include their full name, date of birth, current and previous address and any convictions recorded against that person (subject to the Rehabilitation of Offenders Act 1984).

22. An authorised and certified copy of the full personal record or a record of an individual will be produced on demand to an authorised officer of the council or the police.
23. No persons under the age of 18 will be admitted to the premises.
24. The licensee will operate a Challenge 25 age verification policy and people under the age of 25 will be required to show proof of ID. A notice to this effect in accordance with condition 8 will be displayed on the outside of the premises.
25. The licence holder will not employ any person under the age of 18 in any capacity.

#### **Video recordings**

26. No moving picture will 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 of films upon request, being no longer than 3 minutes in length.
27. Items sold, supplied for hire, exchange or used in any promotion/advertising must not contravene any current legislation i.e. Section 12 Video Recordings Act 1984, (as amended).

#### **Vessels, stalls and vehicles**

28. Vehicles will not be used to obtain custom by means of personal solicitation or touting.
29. Any vehicle used to advertise the premises must comply with the advertising conditions. All forms of advertising on vehicles must be approved by the council.
30. Vehicles used to transport customers to or from the premises may require a licence issued by Herefordshire Council Taxi and Private Hire Licensing or the Department for Transport. Details of any vehicles brought into service must be notified to the council in writing and details of any relevant licence issued by

Herefordshire Council Taxi and Private Hire Licensing, or the Department for Transport must be produced in advance of the vehicle being used.

### **Variation of conditions**

31. The council may, at the time of grant or renewal of the licence, waive, modify or vary these conditions or impose additional conditions as appropriate.
32. The licensee may apply to the council to vary any of the terms of the licence.
33. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the issue, renewal, or transfer of the licence.

### **Sex Cinemas**

#### **General**

1. Unless stated otherwise, the licence hereby granted will operate for one year from the date on the licence, after which it will cease to be in effect unless an application for renewal is submitted in the manner prescribed by the council.
2. The licence may be revoked by the council if at any time the holder is convicted of an offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
3. The name of the premises must be approved by the council in writing. Any change to the name of the premises must be approved by the council in writing.

#### **Exhibition of licence**

4. The licence, or a clear copy, will be prominently displayed at all times so as to be readily and easily seen by all persons using the premises, the police, the fire

authority and authorised officers of the council. A copy of the conditions attached to the licence will be kept on the premises and be available for inspection by an authorised officer of the council, or the police or fire authority.

### **Hours of opening**

5. The premises will only be open to the public during the following hours:

Monday	?
Tuesday	?
Wednesday	?
Thursday	?
Friday	?
Saturday	?
Sunday	?

### **Conduct on the premises**

6. The licensee, or any other person concerned in the conduct or management of the premises, will only obtain custom by means of personal solicitation or touting from the premises in such a way that it does not cause concern to the public or the licensing authority. All literature used will not contain images or text of a sexually explicit, obscene, or offensive nature.

### **External appearance**

7. There will be a notice displayed on each entrance or doorway to the premises which states the following:

**Strictly No Admittance to Persons Under 18 Years of Age**

**This premises operates a Challenge 25 policy.**

**Persons under the age of 25 will be required to show proof of age.**

8. The external appearance of the premises must be approved by the council in writing.
9. Any change to the external appearance must be approved by the council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the council before work is undertaken.
10. The frontage of the licensed premises will be of such a nature that the inside of the licensed premises are not visible and the contents of the licensed premises should not be visible when the doors of the licensed premises is open.
11. There will be no illuminated or protruding signs fixed to the premises and no signs placed outside the premises.

### **Advertising**

12. Any written, visual, or auditory advertisement material, posters, signage or window display must not be of a sexually explicit or suggestive nature, will not contain images or text of a sexually explicit, obscene or offensive nature and must be approved by the council in writing.
13. Leafleting/distribution of flyers will only be permitted in such a way where it does not cause public offence. The licensee will remove any leaflets from the highways within a 100-metre radius of the premises. The licensee will have a flyer distribution policy to be approved by the council.

### **Layout of premises**

14. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.



15. No alterations (including temporary alterations) will be made to the structure and installations on the premises without the prior written consent of the council. This condition will not require notice to be given in respect of routine maintenance works. Where there is any doubt, the licensee should seek advice from the council.

### **Management of the premises**

16. The licensee, or a responsible person nominated by him/her for the purpose of managing the venue (“the manager”), will have personal responsibility for and be present on the premises whilst the premises are open to the public. Any such nomination will be produced on demand to an authorised officer of the council or the police.
17. The licensee will ensure that any person nominated by him/her under the above:
  - a) has been provided with a copy of the conditions relating to the premises and is fully conversant with them; and
  - b) is in possession of a written nomination referred to above at all times when they are in charge of and present on the premises.
18. 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 will be notified in writing to the council within 14 days of such a change. Such details as the council may require in respect of the change in personnel will be furnished within 14 days of a request in writing from the council.
19. The licensee will retain control over all parts of the premises and will not let, licence or part with possession of any part of the premises. The council must be notified immediately in the event that any part of the premises is affected by the termination of a lease or other event affecting the licensee’s control of the premises.
20. The licensee will ensure that the public is not admitted to any part or parts of the premises that has not been approved by the council.

21. The holder of the licence will keep a record of all employees who are asked to work on the premises which will include their full name, date of birth, current and previous address and any convictions recorded against that person (subject to the Rehabilitation of Offenders Act 1984).
22. An authorised and certified copy of the full personal record or a record of an individual will be produced on demand to an authorised officer of the council or the police.
23. No persons under the age of 18 will be admitted to the premises.
24. The licensee will operate a Challenge 25 age verification policy and people under the age of 25 will be required to show proof of ID. A notice to this effect in accordance with condition 8 will be displayed on the outside of the premises.
25. The licence holder will not employ any person under the age of 18 in any capacity.

### **Vessels, stalls and vehicles**

26. Vehicles will not be used to obtain custom by means of personal solicitation or touting in such a way that causes concern or offence to the public or the licensing authority.
27. Any vehicle used to advertise the premises must comply with the advertising conditions. All forms of advertising on vehicles must be approved by the council.
28. Vehicles used to transport customers to or from the premises may require a licence issued by Herefordshire Council Taxi and Private Hire Licensing or the Department for Transport. Details of any vehicles brought into service must be notified to the council in writing and details of any relevant licence issued by Herefordshire Council Taxi and Private Hire Licensing, or the Department for Transport must be produced in advance of the vehicle being used.

### **Variation of conditions**

29. The council may, at the time of grant or renewal of the licence, waive, modify or vary these conditions or impose additional conditions as appropriate.
  
30. The licensee may apply to the council to vary any of the terms of the licence.
  
31. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the issue, renewal, or transfer of the licence.