



# **Surrey Heath Borough Council's**

## **Sex Establishments Licensing Policy and Procedure**

DRAFT FOR CONSULTATION



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The advice and guidance contained in the appendices attached to this Policy are intended only to assist readers in consulting the Policy and should not be interpreted as legal advice. Readers are strongly advised to seek their own legal advice if they are unsure of the requirements of the Local Government (Miscellaneous) Provisions Act 1982.

This Policy was approved and adopted by Council as the Sex Establishments Policy Statement for Surrey Heath Borough Council on the ..... (e.g. 1 September 2011).

This Policy takes effect from .....(e.g. 7 January 2012).

<b>Current Document Status</b>			
<b>Version</b>	V8	<b>Approving body</b>	Licensing Sub-Committee & Full Council
<b>Date</b>	23 February 2011	Date of formal approval (if applicable)	Licensing Committee – 9 March 2011 Full Council –
<b>Responsible officer</b>	Justine Fuller Environmental Health	<b>Review date</b>	<i>January 2014</i>
<b>Location</b>	http://www.[to be added in due course]		

<b>Equality Impact Assessment Record</b>					
<b>Date</b>	<b>Type of assessment conducted</b>	<b>Stage/level completed (where applicable)</b>	<b>Summary of actions taken decisions made</b>	<b>Completed by</b>	<b>Impact Assessment review date</b>
16 February 2011	Initial	Complete	NFA		January 2014

<b>Document retention</b>	
<b>Document retention period</b>	6 years in hard and electronic copies.

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## **Sex Establishments Licensing Policy and Procedure**

### **BACKGROUND TO THE COUNCIL'S AREA**

Surrey Heath covers 36.5 square miles in North West Surrey. It is an attractive mix of urban and rural environments and is one of the safest districts in the safest county in England. Surrey Heath shares boundaries with other Surrey authorities as well as those in Hampshire and Berkshire.

Much of the rural part of the Borough is within the green belt and includes extensive areas of heath and woodland and includes habitats for endangered bird species. These sites have been identified as part of the Thames Basin Heaths Special Protection Area.

Surrey Heath has a population of 83,400 with 20,900 under the age of 19 and 42,800 aged 40 and over. Surrey Heath has an ageing population which mirrors that of the country as a whole. Around 7% of the Borough's residents are from a range of ethnic minorities. Of the inflow of residents into Surrey Heath 21% are from overseas. The percentage of economically active disabled people in the Borough stands at 8.19%.

There are 34,499 homes with an average occupancy of 2.48. 80% of homes are 'owner occupied', significantly higher than the national average, with 10% social housing and 10% privately rented.

Surrey Heath is an affluent Borough with relatively low levels of unemployment when compared with the rest of the country. Household income is higher than the national average and the numbers of those claiming benefits for more than a year is lower than the Surrey average.

Surrey Heath has excellent leisure facilities and an abundance of open space and parkland. In addition to this the newly opened 9 screen cinema and bowling complex in Camberley makes Surrey Heath a great place to stay healthy and have fun.

Located within Surrey Heath is Frimley Park Hospital serving the community across Surrey, Hampshire and Berkshire. The hospital provides twenty four seven A&E facilities and was built in 1974. In 1996 a Ministry of Defence hospital unit was incorporated, substantially improving patient services. In 2005 it became the first hospital in this area to be awarded foundation trust status

In 2010 65,000 inpatients and day patients were treated and there were 250,000 outpatients' appointments. Substantial development work is presently being undertaken in regard to the provision of a new Emergency Department, a day surgery unit and a helicopter landing pad which will be used to admit and transfer some of the most critically ill and injured patients.

## **INTRODUCTION**

- 1.1 The Environmental Health Team of Neighbourhood Services is responsible for developing and implementing this policy.
- 1.2 This policy has been drafted as a result of new provisions that allow the Council to regulate Sex Establishments. This Policy will guide the Council when considering applications for licences, bearing in mind the spirit and intent of the legislation, government guidance and relevant case law. The Council will not follow this Policy inflexibly but shall consider each application on its merits.
- 1.3 Surrey Heath Borough 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 regulate sex shops, sex cinemas and sexual entertainment venues in the Borough. The Council is the Licensing Authority for its area.
- 1.4 The Standard Conditions appended to this policy (Appendices 2-4) do not form part of the policy document, although they may be referred to within the policy. These Standard Conditions could be subject to change during the duration of this policy, but such amendment may not result in review of this policy.
- 1.5 Should any change to the Standard Conditions make it necessary to update relevant parts of this policy document, the amended policy document will be consulted upon.
- 1.6 Appendix 5 of this policy relates to the Procedure for the Conduct of Sex Establishment Licensing Hearings and does not form part of the policy document, although it may be referred to within the policy. This procedure could be subject to change during the duration of this policy, but such amendment will not result in review of this policy.

- 1.7 Appendix 6 of this policy is the Schedule of Delegated Authority and does not form part of the policy document, although it may be referred to within the policy. This Schedule could be subject to change during the duration of this policy, but such amendment will not result in review of this policy.
- 1.8 Appendix 9 of this policy provides contact details for all relevant parties.

## **PURPOSE AND AIM OF THE POLICY**

- 2.1 The policy is intended to set out clear and concise guidance, procedure and principles for the benefit of the Licensing Authority, the community, applicants and other relevant organisations.
- 2.2 Due to the requirement that each application must be considered on its own merits, although the Licensing Sub-Committee must have regard to this policy as part of their decision making process, they are not rigidly bound by it. Should the Licensing Sub-Committee choose to depart from this policy, clear and concise reasons for doing so will be provided.
- 2.3 The policy also contains standard conditions which will be applied to the different types of sex establishment which forms part of any licence granted.
- 2.4 This Policy will be reviewed at least every 3 years. Its contents will be revised to incorporate any new relevant legislation and guidance as appropriate.

## **SCOPE**

- 3.1 The Council does not take a moral stance through the adoption of this policy. We recognise that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. It is our role as a licensing authority to regulate such premises in accordance with the law.
- 3.2 Definitions of each type of sex establishment and a glossary of terms can be found at Appendix 1.

## **POLICY PROCESSES AND PROCEDURES**

- 4.1 This policy relates to any premises wishing to operate as a Sex Shop, Sex Cinema or Sexual Entertainment Venue within the area of Surrey Heath Borough Council.
- 4.2 There are 3 types of sex establishments:
  - Sex Shops,
  - Sex Cinemas and
  - Sexual Entertainment Venues.
- 4.3 Not all of these premises automatically require a licence. This is due to certain provisions and exemptions within the legislation.
- 4.4 Notwithstanding matters contained within this policy document, consideration will be given to the provisions of the human rights and equalities legislation when considering applications for Sex Establishment licences.

## **APPLICATION PROCESS**

- 5.1 Applicants should be aware that planning permission to operate a premises as a sex establishment may not be in place. Planning is a separate process to obtaining a Sex Establishment licence. The Licensing Authority would recommend that potential licence applicants ensure that the appropriate planning permission is in place prior to submission of an application for a licence.
- 5.2 All applications for the Grant of a **new** Sexual Entertainment Venue Licence will be referred to a Licensing Sub Committee for determination to take into account the criteria as set out below with regards to the character, relevant locality and the appropriate number of Sexual Entertainment Venues for the relevant locality.
- 5.3 In determining the application the Licensing Sub-Committee will have regard to this Policy Statement, the application itself and any objections that may have been made. In all cases, each application will be determined on its own merits.



5.4 Applicants for a new licence or variation must complete and return the application form set out at Appendix 8 together with the following documents:

- 3 sets of plans as per the requirements set out below
- 3 sets of the 'House Rules', please see below.
- the correct fee
- Copy of the notice that is displayed on or near the premises;
- Copy of the local paper advertisement

5.5 A copy of the application and plan should be submitted to the Chief Officer of Police for the area within 7 days of making the application to the Council.

## **PLANS**

6.1 All plans shall be drawn at a scale of 1:100. The plan may include a legend through which the matters mentioned are sufficiently illustrated by the use of symbols on the plan. The plans to be submitted with the application must include all the following information:

- site plan showing the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises
- all means of entry and exit, the location of escape routes from the premises; any parts used in common with any other building and indicating how the premises lie in relation to the street. In a case where the premises is used for more than one existing activity the area within the premises used for each activity;
- showing the existing and front elevation of the premises depicting all signage
- showing the sex establishment in relation to the other commercial (including their uses) and residential premises within 100 meters

- showing the layout of the sex establishment and an outline of the area where relevant entertainment will take place
- showing fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
- showing in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
- showing in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
- showing the dressing room of performers;
- showing the area where performances take place;
- showing any private screened area where a performance(s) take place;
- showing in a case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
- showing the location and type of any fire safety and any other safety equipment; and
- showing the location of a kitchen, if any, on the premises.

6.2 Applicants are asked to note that they do need to satisfy the Licensing Authority that the interior of the premises are not visible to passers by as a result of the design of the exterior.

6.3 Applications may be submitted online. The application form can be used for grant, variation, transfer and renewal applications. In keeping with the Council's policy on the introduction of e-Government, the Council consents to applications and other notices being given electronically. Applications will not be processed until all the required documentation has been correctly submitted.

- 6.4 The address at which the Council will accept applications and notices is: -
- (a) By post/personal service to Neighbourhood Services, Surrey Heath Borough Council, Knoll Road, Camberley, Surrey, GU15 3HD;
  - (b) By e-mail to [environmental.health@surreyheath.gov.uk](mailto:environmental.health@surreyheath.gov.uk);
  - (c) By facsimile to 01276 707100;
  - (d) On-line
- 6.5 Applicants must provide their name, address and, where the applicant is an individual, their age, plus the premises address and the proposed licensed name of the premises.
- 6.6 Applicants for Sexual Entertainment Venues must also submit a copy of their "House Rules". Such House Rules must contain the required conduct of performers which shall include matters containing conditions of licence, i.e. no touching, no meeting customers outside of the licensed premises for any purpose, no sex acts, no giving or taking phone numbers (including exchange of business cards).
- 6.7 Such House Rules will form part of the licence (if granted) and may be subject to amendment by the Licensing Authority prior to approval.
- 6.8 Applicants must make provision for all performers to sign documentation to confirm their knowledge of and acceptance to adhere to the House Rules. Such documentation must be retained for the duration of the performers' employment and for a further 6 months from the date they last worked at the premises, whether they are employed directly or freelance.
- 6.9 The Environmental Health Team may, as part of the application process, visit the locality of the premises to establish whether there are any characteristics of the locality which may require consideration by the Licensing Sub-Committee.
- 6.10 Applicants (other than applicants for variation of licence) must also give public notice of the application by publishing an advertisement in a local newspaper which circulates in the area of the Licensing Authority to which the application has

been submitted. This must be published within 7 days of making the application. If the application relates to a premise then there is an additional requirement for notice of the application to be displayed for 21 days on or near the premises where it can be conveniently read by the public. The notice, the form of which is prescribed by the Licensing Authority, must contain certain information.

- 6.11 The Licensing Authority's prescribed notice is set out at Appendix 7.
- 6.12 Please note that with regard to online applications tacit authorisation does not apply to new grant/renewal or transfer applications for Sex Establishment licences. This means the Applicant must wait for the Licensing Authority to determine the application before a sex establishment can operate.

## **PUBLIC NOTICE OF APPLICATION**

- 7.1 Applicants are required to give public notice of the application by publishing an advertisement in a local newspaper circulating in the area where the premises are situated no later than 7 days after the date of the application and to display a similar notice on or near the premises for 21 days beginning with the date of the application. Public notices are required for all grants, renewal and transfer applications.
- 7.2 Where the premises cover an area of more than 50 metres square, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.
- 7.3 The notice must be on pale blue paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16. The notice must be laminated or suitably protected to ensure that it remains legible throughout the public notice period.
- 7.4 The notice must state:
- (a) details of the application and activities that it is proposed will be carried on or from the premises,
  - (b) the full name of the applicant,

- (c) the postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,
- (d) the date, being 28 days after that on which the application is given to the Council, by which objections may be made to the Council and that the objections should be made in writing,
- (e) a similar notice must be published in a local newspaper or similar document within 7 days of giving the application to the Council.

## **COMMENTING ON LICENCE APPLICATIONS**

- 8.1 Unlike some other licensing regimes (such as for alcohol, entertainment, or gambling), a wide range of people can raise objections about Sex Establishment licences. The police are a statutory consultee for all applications.
- 8.2 Although applicants are only required to provide notice of the application to the police, Environmental Health will publish a list of current sex establishment premises applications on the Council's website, to allow the public to view basic details and provide a contact number for the office processing the application.
- 8.3 Objectors should limit their objection to matters which are relevant to the statutory grounds for refusal as set out in the 1982 Act. The grounds relevant to the majority of objectors are as follows:
  - that the grant or renewal of the licence would be inappropriate, having regard to the character of the relevant locality or to the use to which any premises in the vicinity of the premises, vehicle, vessel or stall in respect of which the application is made.
- 8.4 Any objections received by the Licensing Authority which do not relate to the grounds set out in the Act must be rejected by the Environmental Health Team. Where objections are rejected, the objector will be given written reasons.

- 8.5 Objectors can include residents'/tenants' associations, community associations and trade associations. Councillors and MPs may also raise objections.
- 8.6 The Licensing Authority will not consider objections that are frivolous or vexatious, or which relate to moral grounds (as these are outside the scope of the 1982 Act). Decisions on whether objections are frivolous or vexatious will be made objectively by Licensing Services officers and not on the basis of any political judgement. Where objections are rejected, the objector will be given written reasons. A report will be made to the Licensing Sub-Committee determining the application (if appropriate), indicating the general grounds of the representation and the reasons for rejection.
- 8.7 A vexatious objection is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice. A frivolous objection is generally taken to be one that is lacking in seriousness.
- 8.8 Valid objections will be considered by the Licensing Sub-Committee at the hearing to consider the application. Applicants will be given an opportunity to state their case in accordance with the Licensing Sub-Committee's Procedure For The Conduct of Sex Establishment Licensing Hearings in relation to applications for Sex Establishment licences, which is shown at Appendix 5.
- 8.9 The Licensing Authority accepts that in terms of the legislation it has no power to restrict either the duration of the applicant's presentation to Committee, or the content thereof.
- 8.10 Objections must be made in writing (email is acceptable) and should include the following:
- the name and address of the person or organisation making the objection
  - the premises to which the objection relates
  - the proximity of the premises to the person making the objection; a sketch map or plan may be helpful to show this
  - the reasons for making the objections, which are clearly set out in relation to the grounds for refusal (as above).

- 8.10 Petitions must clearly state the name and address of the premises application being objected to. The full objection that people are signing to say they agree with must be at the top of the petition. The objection must be in line with the requirements of the legislation (as detailed above). The names and addresses of those signing the petition should be provided and should be legible, together with a signature.
- 8.11 The Licensing Authority must be confident that those signing the petition were aware what they were signing for; so in the interest of clarity for those signing best practice would be to have the objection at the top of each page, especially where several people are involved in collecting signatures.
- 8.12 It should be noted that submissions to the Licensing Authority may also be in support of an application. These should also contain the same information as stated above.

## **DETERMINATION OF APPLICATIONS**

- 9.1 **Mandatory Reasons for Refusal:** The Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 Section 12 (1)(a-e) prohibits the Licensing Authority from granting a licence:
- (a) to a person under the age of 18; or
  - (b) to a person who is for the time being disqualified from holding a licence following revocation of such a licence; or
  - (c) to a person, other than a body corporate, who is not resident in an EEA state or was not so resident throughout the period of 6 months immediately preceding the date when the application was made; or
  - (d) to a body corporate which is not incorporated in an EEA state;
  - (e) to a person who had, 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.

**Please note there is no right of appeal against refusal on these grounds.**

9.2 All applications even where there are no objections and there are no other statutory grounds for refusal, including that the application does not exceed any permitted numbers, will be determined by the Licensing Sub-Committee.

9.3 **Discretionary Grounds for Refusal:** Under the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 Section 12 (3)(a-d) the Licensing Authority may refuse an application for the grant or renewal of a licence on one or more of the following grounds:

- (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 establishments of a particular kind, in the relevant locality at the time the application is made (determined) 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.

An application for the transfer of a licence can only be refused by virtue of the (a) & (b) above.

9.4 An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence or a transfer the Council will in most cases take into account:

- (a) previous knowledge and experience of the applicant;
- (b) any evidence of the operation of any existing or previous licence held by the applicant, including any licence held in any other borough;
- (c) any report about the applicant and management of the premises from statutory objectors; and



- (d) any unspent criminal convictions or cautions of the applicant. Consideration of any criminal convictions and cautions will include, but is not limited to, the nature and seriousness of the offence and the time that has elapsed since commission of the offence.
- 9.5 Each application will be decided upon its own merits. The Licensing Authority will give clear reasons for its decisions.
- 9.6 The Licensing Authority will aim to determine all applications within 12 weeks of the date of submission of a valid application.
- 9.7 When issuing a Sex Establishment licence the Licensing Authority is permitted to issue it on such terms and conditions and subject to restrictions as specified at the time the licence is issued.
- 9.8 In addition to this the Licensing Authority has the power to make standard conditions applicable to all licences for sex establishments.
- 9.9 It is an offence to breach the Conditions and the penalty for this is a fine not exceeding £20,000.
- 9.10 Standard Conditions and any additional Conditions that the Licensing Sub-Committee consider appropriate will be attached to all licences granted. Details of the standard conditions relating to each type of licence are contained in Appendices 2, 3 and 4. Should these standard conditions be amended at any time in the future, they will apply to all licences already issued as if the conditions had been in place at the time they were granted.
- 9.11 All standard conditions will be reviewed as part of the full Policy review.

## **REVOCATION OF LICENCE**

- 10.1 The Licensing Authority is given jurisdiction to revoke a Sex Establishment licence by virtue of Schedule 3 paragraph 17(1) of the Local Government (Miscellaneous Provisions) Act 1982.
- 10.2 The Licensing Authority may call a hearing, without requiring a third party to request such a hearing, and give the licence holder an opportunity to appear before them.

- 10.3 The Licensing Authority may revoke the licence on any of the mandatory grounds which are detailed above at Section 9 or in respect of (a) or (b) detailed at section 9.3 (above), namely that the licence holder is unsuitable or that the manager or beneficiary of the licence is unsuitable.
- 10.4 Should the Licensing Authority revoke a Sex Establishment licence then full reasons for the revocation would be provided to the licence holder within 7 days of the decision.
- 10.5 Revocation of a Sex Establishment licence would disqualify the licence holder from holding or obtaining another Sex Establishment licence in the Licensing Authority's area for a period of 12 months. However, this does not prevent the licence holder from holding a Sex Establishment licence in another Licensing Authority's area.

## **DURATION OF LICENCE**

- 11.1 Licences will generally be granted for the duration of 1 year but can be issued for any shorter period as felt appropriate.

## **RIGHT TO APPEAL A DECISION**

- 12.1 If an application is refused, or revoked, following a hearing, then the applicant will be informed of the decision and whether there is any right of appeal.
- 12.2 Appeals must be made to the local Magistrates' Court within 21 days, starting from the date the applicant is notified of the Licensing Authority's decision. The notice will advise the address of the appropriate Magistrates' court to which such an appeal should be submitted. It should be noted that a fee may be payable to the Magistrates to lodge such an appeal.
- 12.3 Applicants can appeal against the refusal of a grant, renewal, variation or transfer application, or against the decision to revoke a licence. They can also appeal against conditions or restrictions imposed.
- 12.4 Please note that you cannot appeal against the Licensing Authority's decision if the application was refused on the grounds that:

- the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality; or
- the grant of the licence would be inappropriate considering the character of the area, the nature of other premises in the area, or the premises themselves.

12.5 The Magistrates' Court will determine the appeal application. If you do not agree with the decision made by the Magistrates' Court, you can appeal to the local Crown Court. The decision made by the Crown Court will be final.

12.6 The Licensing Authority must comply with a decision made by the Magistrates' or Crown Court.

## **WAIVERS**

13.1 The Licensing Authority does not consider it would be appropriate to permit waivers from the requirements to hold a Sex Establishment licence in respect of Sexual Entertainment Venues, particularly as the legislation allows relevant entertainment on an infrequent basis of no more than eleven occasions within a 12-month period, providing there is at least one month between each period of entertainment which itself does not last for more than 24 hours.

## **FEES**

14.1 The appropriate fees for applications can be found on the Council's website. Application fees must be paid in full at the time of submission of the application.

14.2 The fees for all Sex Establishments (Sex Cinema, Sex Shop and Sexual Entertainment Venue) will be determined annually by the Council.

14.3 The fees set are deemed to be reasonable to cover the cost of administration, enforcement and the cost of any hearings and are not refundable.

## **POLICY CONSIDERATIONS**

15.1 In deciding the appropriate number of premises to be licensed, the Council must consider the character of the relevant locality, the use of the premises in the vicinity and the layout, character, condition or location of premises and what is the appropriate number of Sexual Entertainment Venues for the relevant locality. The number can be 'nil'.

## **LOCATION OF PREMISES (Paragraph 12 of Schedule 3)**

16.1 In considering whether the grant, renewal or variation of the licence would be inappropriate, having regard to the character of the relevant locality or to the use of which any premises in the vicinity are put, the Licensing Sub-Committee shall consider, among other considerations, whether the grant of the application would be inappropriate, having regard to:

- (1) the proximity of schools, nurseries, crèches, youth hostels and other similar educational or recreational facilities attended by children and other vulnerable groups;
- (2) the proximity of parks and children's play areas;
- (3) the proximity of primarily residential areas, and areas of sheltered accommodation and accommodation specially provided for vulnerable groups;
- (4) the proximity of religious, community and civic buildings and historic monuments and military establishments;
- (5) the proximity of alcohol or entertainment licensed premises;
- (6) other retail units (and their uses) including markets and covered markets;
- (7) the proximity of shops used by or directed to families or children, or on frontages frequently passed by the same;
- (8) in an area earmarked for regeneration; and

- (9) access routes to and from schools, play areas, nurseries, children's centres, facilities for other vulnerable groups or similar premises.
- 16.2 When hearing an application for the grant of a Sexual Entertainment Venue licence, the Licensing Sub-Committee shall have regard to the Policy Statement provisions set out above but subject to the overriding principle that each application will be determined on its merits.
- 16.3 Applications in respect of premises must state the full address of the premises. Applications in respect of a vehicle, vessel or stall must state where it is to be used as a Sexual Entertainment Venue and if the vehicle, vessel or stall is to move, details of the route must be detailed in the application
- 16.4 The Council would normally expect that applications for licences for permanent commercial premises should be from businesses with planning consent for the property concerned.

#### **OTHER POLICY MATTERS:**

##### 17.1 ID Checks

To ensure customers are over the age of 18 premises should operate a "Challenge 25" policy, whereby if a customer appears to be under that age an adequate ID check is carried out. This would require photographic ID to be checked and only current passports and photo driving licences should be accepted for this purpose. If customers are unable to provide such forms of ID to establish their age then they must be refused entry.

##### 17.2 Protection of Children and Vulnerable persons from Harm

This includes protection from physical, mental or emotional harm.

##### 17.3 SIA Registered Door Supervisors

Only door supervisors who hold a valid Door Supervisors licence issued by the Security Industry Authority (SIA) should be employed.

#### 17.4 Tacit Authorisation

The term “tacit authorisation” relates to online submission of applications. Tacit authorisation means that if the timescale set for determining applications is exceeded any application will be deemed acceptable (granted) and Tacit Authorisation given. However this does **not** apply to Sex Establishment licences.

#### 17.5 Suitable number of trained staff

Conditions require that the Licensee must ensure that a suitable and sufficient number of trained staff are employed to supervise the interior of the Premises (“floor supervisors”) to ensure that conditions of licence are complied with, in particular the no touching conditions, and to ensure the safety of customers, performers and persons working in the premises.

- 17.6 A suitable and sufficient number should be determined by carrying out a risk assessment of all activities, design of the premises (including accessibility to all areas), and number of performers. This should be linked to the capacity of the premises.

#### 17.7 Adequate non-public changing rooms for performers

Conditions require that the Licensee shall provide adequate non-public changing rooms for performers.

This means that there should be separate changing rooms for all genders and that different genders should not share changing rooms at the same time.

Non-public means that the Licensee should ensure that the public do not have access to these changing facilities at any time and appropriate measures should be employed to ensure this.

### **GUIDANCE DOCUMENTATION**

#### 18.1 **Form of Notice – Indecent Displays (Control) Act 1981**

The Council's Standard Conditions require that a warning notice be displayed in accordance with the above legislation. The legislation states at 1(4)(e):

"(a) The warning notice must contain the following words, and no others -

**"WARNING**

Persons passing beyond this notice will find material on display which they may consider indecent. No admittance to persons under 18 years of age."

- (b) The word "WARNING" must appear as a heading.
- (c) No pictures or other matter shall appear on the notice.
- (d) The notice must be so situated that no one could reasonably gain access to the shop or part of the shop in question without being aware of the notice and it must be easily legible by any person gaining such access."

## **CCTV**

19.1 The Licensing Authority will require CCTV to be installed to a standard set out as per the requirements in Appendix 10.

## **POLICY DETAILS**

20.1 In developing this policy the Council has had regard to the legal requirements of the Local Government (Miscellaneous Provisions) Act 1982 and the Policing and Crime Act 2009 and its duties under:

- (a) section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder within the County;
- (b) the Regulators' Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the regulations we set out and to particularly consider the impact of regulations on small businesses; and

- (c) the Provision of Services Regulations 2009 to ensure requirements are:
  - (i) non-discriminatory
  - (ii) justified by an overriding reason relating to the public interest
  - (iii) proportionate to that public interest objective
  - (iv) clear and unambiguous
  - (v) objective
  - (vi) made public in advance, and
  - (vii) transparent and accessible.

## **CONSULTATION AND ENGAGEMENT**

- 21.1 Details of applications and objections which are referred to the Licensing Sub-Committee for determination will be published in reports that are made publicly available in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000. It should, however, be noted that certain items or information may have to be excluded from the public domain as permitted by Local Government Act 1972.
- 21.2 The names and address of objectors will not be disclosed to applicants, or published in public reports, in accordance with Section 8 (17) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. Such details will be made available to Councillors on the Licensing Sub-Committee.

## **PERFORMANCE AND RISK MANAGEMENT**

- 22.1 The policy will be regularly reviewed and monitored to ensure that it reflects current legislation, is effective, up to date and achieving a responsible regulatory framework for Surrey Heath.
- 22.2 This will be achieved by monitoring the outcome of hearings, appeals through the Magistrates' Courts, developments in legislation, by having regard to stated cases, local needs and economic impacts. In this regard a report of all applications and outcomes will be presented by the Licensing Authority to the Licensing Committee on a quarterly basis.
- 22.3 The Council will ensure that Members and Council Officers involved in the development and implementation of this



policy, enforcement of licensing regime and day-to-day operation of the service receive adequate training.

- 22.4 Training will be carried out following any review and amendment of the policy, alterations to legislative requirements or fundamental changes to the provision of the licensing service.
- 22.5 Three-yearly policy reviews would normally be included in the Environmental Health Service Plan.

## **BREACHES AND NON-COMPLIANCE**

- 23.1 The Licensing Authority will monitor and implement, as appropriate, developments in the work of the Better Regulation Executive and other central government bodies in its consideration of the regulatory functions of local authorities.
- 23.2 The Council recognises that sex establishments are not generally a source of crime or disorder. The Licensing Authority will therefore adopt a light touch inspection regime, carrying out simple inspections of premises no more than once a year unless exceptional circumstances require otherwise.
- 23.3 It is further recognised that Sexual Entertainment Venues are also regulated by other legislation due to the nature of those operations, and therefore may require more frequent inspection. However, it is anticipated that, wherever possible, consolidated enforcement inspections will be undertaken.
- 23.4 The Licensing Authority's approach to enforcement is set out in enforcement policies which are available on request.
- 23.5 Breach of conditions or legislative requirements may result in formal action being taken by the Licensing Authority. Should such breaches be dealt with by way of Fixed Penalty Notice or prosecution through the Magistrates' court, then licence holders may be liable to a financial penalty.

## **EXCHANGE OF INFORMATION**

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

## **INFORMATION**

25.1 The following can be viewed at [www.opsi.gov.uk](http://www.opsi.gov.uk)

- The Local Government (Miscellaneous Provisions) Act 1982
- The Policing and Crime Act 2009
- Crime and Disorder Act 1998
- Provision of Services Regulations 2009
- Legislative and Regulatory Reform Act 2006
- Human Rights Act 1998
- Equality Act 2010

If you would like this information in another format please contact:

Environmental Services  
Surrey Heath Borough Council  
Surrey Heath House  
Knoll Road,  
Camberley,  
GU15 3HD

Telephone: 01276 707100

Email: [environmental.health@surreyheath.gov.uk](mailto:environmental.health@surreyheath.gov.uk)

## **VARIATION OF A LICENCE**

26.1 The holder of a Sex Establishment licence may apply at any time for any variation of the terms, conditions or restrictions on or subject to which the licence is held.

26.2 The process of applying for a variation is the same as that for applying for an initial grant.

## **RENEWAL OF A LICENCE**

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

## **TRANSFER OF LICENCE**

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

## **CONSULTATION WITH STATUTORY AGENCIES AND OTHER ORGANISATIONS**

- 29.1 In most cases the Council will consult with all relevant services within the Council and all relevant services outside the Council such as the County Council's Social Services, Education and Trading Standards departments together with the Fire Authority and the Health and Safety Executive to ensure that all relevant information is available when considering an application.

## **CONSULTATION WITH WARD COUNCILLORS**

- 30.1 Relevant Ward Councillors will be notified in writing of all applications for grant, renewals and transfer of licences and the variation of conditions within their Ward, and also those on or near the Ward boundary. In considering any application for the grant, renewal or transfer of a licence the Council is also obliged to have regard to any observations submitted by the Chief Officer of Police and any objections received from members of the public in response to public advertisement of the application.

## **APPEALS**

31.1 There is no right of appeal:

- (i) Against the grounds of refusal as detailed in **Section 9.1 (a), (b), (c), (d), and (e)** (Mandatory **grounds** for refusal) above, unless the applicant can prove that the ground of refusal does not apply to them, and
- (ii) Against the grounds as detailed in Section 9.3 (c) and (d)

31.2 The grounds for refusal under Section 9.3 (c) and (d) above can only be challenged by the applicant by way of judicial review.

31.3 All relevant grounds for appeal, other than those detailed at point (i) and (ii) above can be made to the Magistrates' Court within 21 days from the date on which the person is notified in writing of the decision.

## **PRE-APPLICATION DISCUSSIONS**

32.1 The Council recognises that a partnership approach is more likely to ensure the licensing objectives are achieved and maintained. Pre-application discussions between the applicants, the Council and the other relevant agencies will be encouraged so that the licensing process itself can be as trouble free as possible.

## **OFFENCES**

33.1 Offences are set out in paragraphs 20 to 23 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and include:

- Knowingly causing or permitting the use of any premises as a sex establishment without a licence;
- Being the holder of a licence, knowingly employing a person in a sex establishment who is disqualified from holding a licence;
- Being the holder of a licence, knowingly contravenes, or without reasonable excuse knowingly permits the

contravention of, a term, condition or restriction specified in a licence;

- Being the servant or agent of the holder of a licence, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in a licence;
- Being the holder of a licence, without reasonable excuse knowingly permits a person under the age of 18 years to enter the establishment;
- Being the holder of a licence, employs a person known to them to be under 18 years of age in the business of the establishment.

33.2 A person guilty of any of the above offences is liable on summary conviction to a fine not exceeding £20,000.

34.3 It is also an offence for the holder of a licence, without reasonable excuse to fail to exhibit a copy of the licence and any standard conditions applicable to the licence in a suitable place as specified in the licence. A person guilty of this offence shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **CRIME AND DISORDER**

34.1 Under the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of the exercise of their functions on, and do all that they can to prevent, crime and disorder in their area. This policy will have regard to the likely impact of such licences on related crime and disorder in the borough.

## **HUMAN RIGHTS**

35.1 The Human Rights Act 1998, incorporates the European Convention on Human Rights, and makes it unlawful for a local Council to act in a way which 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 6 that in the 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, including, for example, the right to a “good night sleep”;
- Article 1 of the first protocol that every person is entitled to the peaceful enjoyment of his or her possessions. It should be noted that the Courts have held that a licence is a person’s possession.

## **DISCRIMINATION AGAINST PROTECTED CHARACTERISTICS**

- 36.1 The Equalities Act 2010 establishes both a general equality duty and specific duties in regard to protected characteristics which are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 36.2 The Equalities Act states that meeting different needs involves taking steps to take account of disabled people’s disabilities. It describes fostering good relations as a means of tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favourably than others.
- 36.3 The general equality duty therefore requires organisations including licencees as service providers to consider how they could positively contribute to the advancement of equality and good relations. It requires equality considerations to be reflected in the delivery of services, and for these issues to be kept under review.
- 36.4 This policy will have regard to the likely impact of licensing of sex establishments particularly when considering the operation and management of the premises, on the three aims of the general equality duty which are: -
- removing or minimising disadvantages suffered by people due to their protected characteristics;
  - taking steps to meet the needs of people from protected groups where these are different from the needs of other people;
  - encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.