

LICENSING BOARD

Venue: Town Hall, Moorgate
Street, Rotherham S60
2TH

Date: Thursday 8 December 2022

Time: 9.30 a.m.

A G E N D A

1. To determine if the following matters are to be considered under the categories suggested in accordance with the Local Government Act 1972
2. To determine any item(s) which the Chair is of the opinion should be considered later in the agenda as a matter of urgency
3. Apologies for absence
4. Declarations of Interest
5. Minutes of the previous meeting held on 25th February, 2022 (Pages 3 - 5)
6. Licensing Service Update (Pages 7 - 131)



Chief Executive

Membership 2021/22

Councillor Ellis – Chair

Councillor Hughes – Vice-Chair

Councillors Barker, Bennett-Sylvester, Browne, Castledine-Dack, Clark, T. Collingham, Cooksey, Haleem, Hoddinott, Jones, McNeely, Mills, Monk, Pitchley, Sansome and Wyatt.

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LICENSING BOARD
25th February, 2022

Present:- Councillor Hughes (in the Chair); Councillors Baker-Rogers, Bennett-Sylvester, Browne, Castledine-Dack, Clark, T. Collingham, Griffin, Jones, McNeely, Mills, Monk, Pitchley, Reynolds, Taylor, Sansome and Wyatt.

Apologies for absence were received from Councillors Ellis, Ball and Barker.

1. DECLARATIONS OF INTEREST

There were no Declarations of Interest made at the meeting.

2. TAXI AND PRIVATE HIRE LICENSING PERFORMANCE UPDATE (Q1 - Q3 2021/22)

Consideration was given to the report, presented by the Licensing Manager, which provided detailed performance in relation to the Licensing Team's performance against the Taxi and Private Hire Licensing Performance Framework for quarters 1-3 of the 2021/22 financial year.

In addition, an overview of the general performance of the Service during the current financial year was also included.

The Licensing Manager guided the Licensing Board through the detail in the report and provided further information on the areas of:-

- The number of on-the-spot inspections of taxis
- The percentage of taxis found to be compliant with the licensing regime during on the spot inspections
- Performance against the Licensing Service Performance Management Framework
- The performance of the Council's Licensing Team in relation to quality assurance and administrative aspects of the Service

The submitted report also provided details in the appendices of the performance against the Licensing Performance Management Framework for and Enforcement Data for quarters 1-3 2021/22 which was implemented to address the concerns raised in Louise Casey's report.

The report provided a summary of enforcement action that had taken place between April and December, 2021 including details of actions taken by Enforcement Officers along with enforcement actions taken by other officers within the Licensing Service and the outcomes of Licensing Board Sub-Committee hearings. It highlighted:-

- 63 vehicles and drivers had been inspected during the first 3 quarters of 2021/22 of which 76% of vehicles (48) and 86% (54) were found to be compliant with licensing requirements. This was updated at the

LICENSING BOARD- 25/02/22

meeting to include a further 19 inspections carried out in January, 2022 of which all the drivers were compliant and 8 of the vehicles found to be non-compliant. This gave a total of 89% of drivers and 72% of the vehicles compliant with the requirements so far for 2021/22

- The vast majority of vehicle non-compliance related to signage and dealt with by way of formal warning
- The majority of drivers found to be non-compliant was due to the driver not wearing their ID badge
- Targets had been set against 16 performance measures of which 3 were off target
- There were an additional 4 measures that were being monitored but no target set
- Between April and December, 2021, 10 appeals had been listed for consideration by the Magistrates Court in relation to decisions made by Licensing Officers and/or the Licensing Board Sub-Committee. 3 of the appeals had been withdrawn by the appellant prior to the hearing, 2 appeals were discharged by way of a Consent Order and of the remaining 5, 4 were successfully defended by the Council

During discussion on the report and supporting appendices the following issues were clarified:-

- If information was received from a member of the public/Councillor about their personal experience in a taxi, it would be recorded as a complaint and investigated separately, however, it would inform the general intelligence about licenced vehicles
- There were a number of different ways random checks on taxis were carried out; Council Officers walking around the Town Centre and an inspection carried out on waiting taxis; visit to the operating base with a list of vehicles that were working that day; evening inspections in areas where there tended to be high taxi activity and joint inspections with the Police of out-of-town vehicles
- Grading of non-compliance i.e. would the issue have an impact on public safety and if so it was given a very high priority and usually resulted in the vehicle or driver being suspended. Missing signage/non-wearing of badge would be dealt with through advice or a warning. If it related to tyres or cameras, the licence would be suspended
- MOT requirements did not apply to licenced vehicles as long as the licence was in place and the vehicle had been inspected at the Council's garage as part of the licensing process. If a licence was

suspended, the vehicle did not have a licence in place and, therefore, did not have a MOT

- If the Council won an appeal at Court it would pursue costs but it was largely at the discretion of the Court as to what level the costs were
- Due to the pandemic and Riverside House reception being closed, the method of issuing licence plates had changed. Whereas previously the driver would have visited the reception at Riverside House with a slip of paper and a plate issued, the Licensing Service was reliant on the drivers sending documents through by email. This had created a backlog which had been cleared by the secondment of Council officers. A Kickstart apprentice was now assigned this duty
- Often other authorities who licensed taxis did not have the same standards as Rotherham with regards to the age of vehicles or cameras
- Under the revised Licensing Policy, if an operator had its licence revoked they could not operate under that name for 12 months
- Following receipt of notification from the Licensing Service that a licence has been revoked, the driver had 21 days to submit an appeal; during that time they may continue driving until such time as the appeal was heard. If unsuccessful, the driver still had the right of appeal to Crown Court and again could continue driving until that was concluded
- The majority of requests for taxi camera downloads were from the Police/insurance companies
- There were significant recruitment challenges within the Licensing Team with a number of vacancies and long term sickness
- Local Government Association review of the action plan
- Looking to enhance the relationship with the taxi licensing trade
- The current Hackney Carriage and Private Hire Licensing Policy would expire in 2023
- The potential need to review the House to House Collection Policy

Resolved:- That the report be received and the contents noted.

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Committee Name and Date of Committee Meeting

Licensing Board – 08 December 2022

Report Title

Licensing Service Update

Is this a Key Decision and has it been included on the Forward Plan?

No

Report Author(s)

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01709 254955 or alan.pogorzelec@rotherham.gov.uk

Ward(s) Affected

Borough-Wide

Report Summary

This report provides an update in relation to the Licensing Service's performance against the Taxi and Private Hire Licensing Performance Framework and information regarding the general performance of the service.

The report also seeks the views of the Licensing Board in relation to the current House to House Collections Policy and Sex Establishment Policy – both of which are the subject of consultation as part of the formal review of the policies.

Recommendations

1. That Members of the Licensing Board note the content of the update report.
2. That the Licensing Board provide feedback to the Licensing Manager in relation to any proposed revisions to the House to House Collection Policy.
3. That the Licensing Board provide feedback to the Licensing Manager in relation to any proposed revisions to the Sex Establishment Policy.

List of Appendices Included

- Appendix 1 Licensing Performance Management Framework
- Appendix 2 Licensing Enforcement Data
- Appendix 3 Licensing Admin Data
- Appendix 4 Rotherham MBC House to House Collection Policy
- Appendix 5 National Association of Licensing Enforcement Officers (NALEO)
Guidance on Door to Door Collections
- Appendix 6 Institute of Fundraising - guidance on use of percentages
- Appendix 7 Rotherham MBC Sex Establishment Policy

Background Papers

Rotherham MBC Hackney Carriage and Private Hire Licensing Policy

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Not applicable

Council Approval Required

No.

Exempt from the Press and Public

No

Licensing Service Update

1. Background

1.1 The performance of the licensing service is demonstrated by quarterly reporting to the Directorate Leadership Team in relation to the following measures:

- The number of on the spot inspections of taxis
- The percentage of taxis found to be compliant with the licensing regime during on the spot inspections
- Performance against the Licensing Service Performance Management Framework.
- The performance of the Council's licensing team in relation to quality assurance and administrative aspects of the service.

1.2 This report provides a summary of enforcement action that have taken place between April 2022 and November 2022 (inclusive). It includes details of actions taken by enforcement officers (what could be considered to be traditional enforcement actions) along with enforcement actions taken by other officers within the licensing service, and the outcomes of Licensing Board Sub-Committee hearings.

1.3 In addition to the above, the report also details some of the current challenges being faced by the service, outlines key areas of work and introduces the review of two key policies that govern the work of the licensing service:

- The House to House Collection Policy
- Sex Establishment Policy

Both of these policies are due for formal review in 2023, and the meeting today will be used as an opportunity to seek the views of the Licensing Board as part of the review consultation.

2. Key Issues

2.1 Unannounced inspections of vehicles and drivers

2.1.1 The Licensing service have proactively inspected 68 vehicles and drivers since April 2022. Of these, 96% of vehicles (65) and 100% of drivers were found to be compliant with licensing requirements.

2.1.2 The vehicle non-compliances related to a missing licence plate, an absence of a first aid kit and a malfunctioning taxi camera system (which resulted in the vehicle licence being suspended). The first aid kit and licence plate were rectified within 24 hours. The issue with the taxi camera was resolved within 2 working days, and the suspension was lifted once the camera installer had confirmed that the issue with the cameras had been rectified.

2.1.4 Licensing enforcement officers will continue to undertake unannounced random checks in order to assess and ensure compliance with the requirements of the licensing policy and licence conditions.

2.2 Licensing Service Performance

2.2.1 The overall judgement outlined in the Louise Casey's inspection report (February 2015) stated that:

“Inspectors have found that Rotherham has not taken, and does not take, sufficient steps to ensure only fit and proper persons are permitted to hold a taxi licence. As a result, it cannot provide assurances that the public, including vulnerable people, are safe.”

2.2.2 In order to ensure the Council's Licensing Service is effective, fit for purpose, and has addressed the concerns raised in Louise Casey's report; it is considered that the following outcomes must be demonstrated:

Outcome 1 All licence holders are “fit and proper” to hold licences.

Outcome 2 Trained decision makers must make high quality, appropriate and timely decisions that protect the public from risk of harm.

Outcome 3 The Licensing Service uses all available statutory powers appropriately, proactively and reactively, to disrupt criminal activity (including CSE and related activity).

Outcome 4 The licensing team must consistently provide high quality, timely processing of licensing applications.

Outcome 5 The Council's Private Hire and Hackney Carriage Licensing Policy will be effectively implemented.

2.2.3 In order to address each of these outcomes, the Licensing Service has implemented a Performance Management Framework. The framework gives detail on a number of measures that will indicate whether the desired outcomes are being met.

2.2.4 Full detail on the performance against each of the measures is given in Appendix 1 to this report. Explanatory narrative is provided where there is an element of underperformance against the stated targets.

2.2.5 Targets have been set against a total of 16 performance measures, there are an additional four measures that are being monitored but a target has not been set in relation to them. The measures without a target are detailed below, along with explanatory narrative.

2.2.6 Of the 16 measures with targets, 2 were off target at the time of measurement – further detail on the reason for underperformance is given in Appendix 1, along with any management action that will / has been taken to address the underperformance. The measures without targets are detailed below.

2.2.7 Delivery against individual training and development plan for each individual member of staff (contributing to Outcome 1).

The training and development of staff is routinely monitored by the Principal Officer and Team Manager via monthly 1:1s and the Corporate PDR process. At the time of writing this report, all but two members of the Licensing Team had been through the PDR process. These two staff members will receive a full PDR as soon as possible.

2.2.8 Data sharing concerns (when apparent) to be escalated by Assistant Director in a timely manner (contributing to Outcome 3).

There have not been any data sharing concerns raised during the period covered by this report. This is an improvement on previous years and is testament to the work that has been carried out by service management with regard to the relationship between the Council's Licensing Service and the National Crime Agency and South Yorkshire Police.

2.2.9 Documented processes provided to and understood by all staff (contributing to Outcome 4).

Documented procedures remain in place in relation to key processes within the team, with several being refreshed / reviewed by the Principal Officers and Licensing Manager due to changes in the way that we interact with customers and in which work is allocated to individual officers.

2.2.10 Processes are reviewed and (if appropriate) refreshed as required (contributing to Outcome 4).

Processes are continually reviewed and where appropriate amended and reissued. During financial year so far, we have made amendments to working practices relating to:

- The allocation of work to individual licensing officers.
- The requirements regarding service history for vehicles being assessed for "exceptional condition".

2.3 Enforcement actions undertaken by the licensing service (including current position in relation to Court appeals).

- 2.3.1 The Council's General Enforcement Policy sets out the Council's approach to enforcement and demonstrates how individual enforcement services are adhering to the Principles of Good Regulation.

This report outlines the enforcement work undertaken in relation to the licensing function, and provides detail on how the services ensure that such activity complies with the requirements of the Council's General Enforcement Policy.

- 2.3.2 Enforcement relating to the Council's licensing function takes two forms:

- Enforcement related to the issuing of driver, vehicle and operator licences. This includes the appropriate application of the 'fit and proper' test (further details are contained within the Hackney Carriage and Private Hire Licensing Policy). The correct application of the policy will result in the grant, refusal, suspension or revocation of a licence. This process is administered by the licensing admin team in conjunction with the Licensing Board. Action may be taken as a result of information provided by the licensing enforcement team, police, National Crime Agency or other statutory / non-statutory agency.
- Reactive investigations and proactive operations to establish / evaluate compliance with regulatory provisions and licence conditions. This takes the form of complaint investigations, pre-arranged enforcement operations (such as vehicle safety checks) and observations to identify non-compliance with licensing requirements. Action may ultimately lead to the referral of licence holders to a sub-committee of the Council's Licensing Board and / or the instigation of legal proceedings in the criminal courts.

- 2.3.3 The Council is required to undertake enforcement in relation to its licensing function, however the way in which enforcement activity is undertaken is at the discretion of the Council. The vast majority of complaints are dealt with on an informal basis which means that they do not result in criminal proceedings.

- 2.3.4 The Licensing Service exercises its regulatory activities in a way which is:

- Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
- Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
- Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities.
- Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.

- Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

In undertaking its enforcement activities, the Council's licensing service needs to demonstrate compliance with these elements.

- 2.3.5 Information in relation to the activities of the licensing enforcement team is attached to this report as Appendix 2.
- 2.3.6 Information in relation to the activities of the licensing admin team is attached to this report as Appendix 3 (please note that this also includes enforcement actions undertaken as a result of decisions made following consideration of a matter by a sub-committee of the Council's Licensing Board).
- 2.3.7 Any person aggrieved by such a determination has the right of appeal to the Magistrates' Court, which must be exercised within 21 days of receipt of written notification of the decision.
- 2.3.8 Between April and November 2022 (inclusive), five appeals were listed for consideration by the Magistrates Court. These were in relation to decisions made by licensing officers and / or the Licensing Board (all of these relate to driver matters only).
- 2.3.9 One of these appeals was withdrawn by the appellant in the days prior to the hearing (Mr MM) – and was therefore not considered by the Court, but the Council's decision became effective as soon as the appeal was withdrawn.
- 2.3.10 One appeal was discharged by way of a Consent Order – this is where the Council agrees not to defend the appeal subject to certain conditions being met. This case related to a decision by licensing officers to revoke an individual's licence with immediate effect, but information was subsequently provided by South Yorkshire Police which satisfied licensing officers that although the decision to revoke the licence was the correct course of action at the time, the additional information meant the officers no longer had concerns that the driver was not fit to hold a licence (Mr SS).
- 2.3.11 Of the remaining three cases, all but one (Mr MD) were successfully defended by the Council (i.e. the Court agreed with the Council's decision in relation to the licence), although on one occasion the Court chose to impose a different sanction (but still considered the driver not to be a fit and proper to hold a licence).
- 2.3.12 The Licensing Officer presenting this report will provide further information during the meeting in relation to the appeal case that the Council was not successful. This feedback is brought to the attention of the Board so that any lessons can be learned from this case.

- 2.3.13 The Council has successfully defended 66% of the three appeals that have been before a Court since April 2022. This level of performance is lower than in previous years, but the number of cases considered is also lower (meaning a failed case has a more significant impact on the perceived performance). In the financial year 2021/22 six cases were considered by a Magistrates Court, with the Council being successful in five of them (i.e. 83%). The overall performance in relation to appeals heard since April 2021 is therefore 78%.
- 2.3.14 At the time of writing this report, four other appeal cases are awaiting consideration by the Magistrates Court (two of which have yet to be given hearing dates). Three of these relate to Licensing Board decisions (Mr AA-G, Mr NS and Mr UM), and one relates to an officer decision (Mr MAK).
- 2.3.15 Further detail in relation to individual appeals is available on request. If members wish to discuss any of these cases in further detail then this may be dealt with in the confidential part of the agenda.
- 2.3.16 Initial enforcement in relation to costs that are awarded is via the sundry debtors' process. Thereafter any costs remaining unpaid are pursued by via civil enforcement processes available through the County Court.

2.4 Service Challenges

2.4.1 Recruitment and staff retention:

There are currently four vacancies within the licensing team:

- Senior Licensing Enforcement Officer. This post has been vacant since July 2022, and has been the subject of three rounds of recruitment since then (one of which is currently live). The closing date for applications is 27th November 2022, an update will be provided at the meeting in relation to applications received.
- Licensing Enforcement Officer (two posts). These posts have been vacant since August / September 2022 and the recruitment process is currently at the interview stage. The applicants for the roles were generally of a good standard and we are confident that appointments will be made following the interviews.
- Licensing Support Officer. This post has been vacant since October 2022. Recruitment is currently at the interview stage and again we are confident that an appointment will be made following the interviews.

2.4.2 Training and development of new staff:

A number of staff within the team are relatively new to their role, and therefore require more support, supervision and guidance than more experienced colleagues.

In addition, it is unlikely that any individuals that are appointed as part of the current recruitment campaigns will have the necessary skills and knowledge to undertake their roles effective from day one.

Whilst this mixture of new and more experienced staff is considered to be beneficial to the service, it also creates additional pressure for existing team members – particularly those in a senior role.

The service is committed to providing appropriate levels of training and support to members of the team, but this can often be at the expense of lower priority work and can lead to a general increase in the workload of all officers within the team.

2.4.3 IT system:

The Licensing Service currently use two different IT systems for the administration, processing and recording of licence applications and activity.

Although these systems have been designed specifically for licensing, they are limited in relation to their future development and are hindering developments in the way that the service is delivered.

With this in mind, the service is currently seeking a replacement to the existing systems and is working closely with colleagues within the Council's ICT and Procurement teams to ensure that a suitable replacement system is obtained at the earliest opportunity.

2.5 Key pieces of work

2.5.1 Local Government Association action plan:

A small number of actions detailed within the LGA action plan remain ongoing, primarily in relation to Member training, business support and liaison with the licensed trade. The service remains committed to the delivery of the action plan and is confident that all actions will be delivered during the current financial year.

2.5.2 Taxi / Private Hire Licensing Policy review:

The Taxi and Private Hire Licensing Policy is due for review in 2023. This review is likely to be a significant piece of work, and discussions have already commenced with the licensed trade with regard to proposed amendments to the current policy. Members can be assured however that the high standards will remain, and the view of the Licensing Board will be taken into consideration during the policy review.

2.5.3 Private Hire Operators:

Licensing officers are focussing attention on operators within the Borough to ensure that working practices remain lawful and continue to uphold the standards and expectations set out in the Council's Policy. This work is particularly important as we are seeing an increase in the amount of bookings that are sub-contracted to operators outside of Rotherham who are then sending vehicles licensed by other Councils into Rotherham to carry out private hire work.

2.5.4 Out of Town Vehicles:

As detailed above, the number of out of town vehicles working in Rotherham is increasing. Licensing Officers are working with neighbouring authorities and exploring all options that can be used to reduce the number of out of town vehicles working in Rotherham, which although lawful exposes Rotherham residents to vehicles and drivers that do not meet the standards that we expect.

2.5.5 Scrap Metal Dealers:

The Scrap Metal Dealers Act 2013 introduced licensing requirements for those involved in the scrap metal industry. Licences issued under the Act are valid for 3 years, and many licences are now falling due for renewal. As part of the renewal process, officers are carrying out visits and inspections to sites within Rotherham providing advice and guidance as required.

Officers have also been working closely with South Yorkshire Police and British Transport Police to tackle unlicensed scrap metal dealers and those licensed dealers that are failing to adhere to licence requirements.

2.5.6 Licensed clubs:

The Service has engaged with a number of licensed clubs within the Borough that are in reality are operating outside of the terms of their club certificates (primarily due to the admission of non-members). Licensing officers recognise the valuable role that clubs play in local communities, but it is essential that the clubs operate within the terms of their certificates in order that they can continue to enjoy the more relaxed licensing regime that applies to clubs.

2.5.7 Taxi camera system review:

Taxi cameras have been required in all RMBC licensed vehicles since 2015/16. Despite initial reservations from the trade, it is now generally accepted that the benefits of the cameras are significant – not least in relation to the protection of drivers and members of the public. Indeed, there are numerous examples where the footage from taxi cameras has assisted police enquiries, provided irrefutable evidence in relation to driver behaviour and has on several occasions protected drivers from malicious allegations.

However, the specification of the systems has not changed since the cameras were introduced. Advances in technology mean that it would be appropriate for this to be reviewed to ensure that the systems continue to protect passengers and drivers, and to make the process of downloading footage as efficient as possible.

2.6 Review of House to House Collection Policy

2.6.1 The Council's House to House Collection Policy was introduced in 2019, and is now due for a formal review. The current policy is attached to this report as Appendix 4, and the views of the Licensing Board are being sought in relation to this policy along with any suggestions for potential amendments.

2.6.2 In order to assist discussion, two documents are attached to this report that provide further information in relation to the consideration of House to House Collection applications. Although now some years old, this guidance nonetheless remains relevant to the consideration of applications, and provides useful background information in relation to House to House collections. Guidance provided by the National Association of Licensing Enforcement Officers is attached as Appendix 5, and a guidance from the Institute of Fundraising on the use of percentages is attached as Appendix 6.

2.6.3 Whilst the general views of the Licensing Board are welcome, officers are particularly keen to establish the Board's view in relation to the following:

- Is the information required to be provided with the application appropriate and sufficient to allow a decision to be made?
- Do the Licensing Board agree with the current policy position that all applications must be considered by the Licensing Board (or Sub-Committee)?
- The current policy specifies that there is an expectation that at least 80% of the value of the total proceeds of the collection are allocated to the collection beneficiary. Do the Licensing Board consider this to be appropriate (taking into consideration the information provided as Appendix 5 and 6)?
- Is the application form provided as an Appendix the policy easy to follow and does it ensure the provision of all relevant information required as part of an application?

2.6.4 The approval of the final policy is a decision for Cabinet, but the views expressed by the Licensing Board, along with all other consultation responses, will be considered as part of the review.

2.7 Review of Sex Establishment Policy

2.7.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009, provides for local authorities to adopt a policy and standard conditions relating to the regulation of Sex Establishments, these are:

- Sexual Entertainment Venues
- Sex Shops
- Sex Cinemas

2.7.2 The Council adopted the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) on 22nd May 2019, and introduced a Sex Establishment Policy that took effect on 1st July 2019.

2.7.3 This policy sets out the Council's approach to the regulation of the premises detailed above under the provisions of the 1982 Act, and is attached to this report as Appendix 7.

2.7.4 Again, whilst the general views of the Licensing Board are welcome, officers are particularly keen to establish the Board's view in relation to the following:

- The policy lists a number of locations that are found throughout the Borough, which of these locations do the Board consider would be suitable for the siting of any of the three categories of Sex Establishment?
- The policy lists a number of **sensitive** locations that are found throughout the Borough, which of these locations do the Board consider would be suitable for the siting of any of the three categories of Sex Establishment?
- Do the Licensing Board consider it to be appropriate that the standard conditions attached to Sex Entertainment Venues include safeguards in relation to worker's rights?
- The policy details a number of discretionary grounds for the refusal of a sex establishment licence, do the Board consider that these grounds are appropriate and / or should any amendments be made to them?
- The policy details a number of criteria that should be used when assessing the suitability of an applicant for a sex establishment licence. Do the Board consider that these criteria are appropriate and / or should any amendments be made to them?
- Do the Licensing Board consider the approach to limiting the numbers of Sex Establishments in Rotherham to be appropriate?
- Do the Licensing Board consider the standard conditions that are attached to licences to be appropriate and / or should any amendments be made to them?
- Do the Licensing Board consider the policy / licensing requirements in relation to the following to be appropriate?
 - Advertising
 - Staff training
 - Fining
 - Whistleblowing policy

Should any amendments be made to the approach detailed in the policy in relation to any of the above?

- 2.7.5 As with the House to House Collection Policy, the approval of the final policy is a decision for Cabinet, but the views expressed by the Licensing Board, along with all other consultation responses, will be considered as part of the review.

3. Options considered and recommended proposal

- 3.1 The report is for information only, and therefore no options / proposals are recommended. However, in relation to enforcement work, the service has a number of options available to it:

3.2 Compliance Advice, Guidance and Support

- 3.2.1 The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation / licence condition that are identified. Advice is provided, sometimes in the form of a warning letter, to assist licence holders in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence and will illustrate a graduated, proportionate response in relation to enforcement.

3.3 Refusal / Suspension / Revocation of Licences

- 3.3.1 Licence applications will be refused where applicants are not considered to meet the standards / requirements that are required by the Council.
- 3.3.2 Where a licence holder fails to adhere to certain standards, acts inappropriately or breached a licence condition, the Council will review the licence by referring the matter to a sub-committee of the Council's Licensing Board. If it shown, on the balance of probabilities, that the licence holder is no longer considered to be a 'fit and proper' person to hold a licence then the review may lead to a revocation or suspension of the licence.
- 3.3.3 When considering future licence applications, the Council may take previous breaches and enforcement action into account.

3.4 Prosecution / simple caution

- 3.4.1 Licence holders that are shown to have committed significant breaches of licence condition (or unlicensed individuals that have undertaken licensable activity) may be the subject of legal proceedings by the Council. This may take one of two forms, a simple caution or a prosecution. Either of these options may be considered in conjunction with a revocation or suspension of a licence.
- 3.4.2 Simple cautions (previously known as 'formal cautions') are issued as an alternative to prosecution for some less serious criminal offences, where a person admits an offence and consents to the simple caution. Where a simple

caution is offered and declined, the Council will proceed to a prosecution of the individual.

- 3.4.3 A simple caution for a criminal offence will appear on the offender's criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.
- 3.4.4 Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.
- 3.4.5 The Council may prosecute in respect of more serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute, the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.
- 3.4.6 Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).
- 3.4.7 Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:
- Seriousness of the offence committed
 - The level of culpability of the suspect
 - The circumstances of, and the harm caused to the victim?
 - Was the suspect under the age of 18 at the time of the offence?
 - What is the impact on the community?
 - Is prosecution a proportionate response?
 - Do sources of information require protecting?
- 3.4.8 A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence.
- 3.4.9 The conviction of an individual for an offence will require proof beyond reasonable doubt.
- 3.4.10 The selection of the most appropriate enforcement option in relation to a particular situation is determined by the investigating officer. That said, all enforcement cases are signed off by the Principal Licensing Officer prior to the investigation being closed. In addition, a sample of completed investigations is evaluated by service management as part of the Performance Management Framework in order to confirm that the correct action has been taken in all cases.

4. Consultation on proposal

- 4.1 Extensive consultation took place in relation to the development of the policy requirements and the implementation of those requirements.
- 4.2 Further consultation will take place in relation to any future policy developments / reviews.

5. Timetable and Accountability for Implementing this Decision

- 5.1 This report is for information and comment only, no decision is required.

6. Financial and Procurement Advice and Implications

- 6.1 There are no financial or procurement implications directly associated with this report.
- 6.2 There is, however, the risk of financial penalties (as outlined below) resulting from potential legal challenges if the Council does not provide an effective licensing service.

7. Legal Advice and Implications

- 7.1 Failure of the licensing service to effectively implement and administer the requirements of the Council's policy may result in a legal challenge being made against the Council.
- 7.2 A successful legal challenge will have a financial and reputational impact on the Council – it is therefore essential that the policy is implemented effectively and administered appropriately.
- 7.3 The Council must be able to demonstrate effectiveness of the policy and provide confidence and reassurance regarding its implementation.

8. Human Resources Advice and Implications

- 8.1 In order to ensure the effective implementation and application of the policy and the ability to meet the performance measures, it is essential that all staff involved have the necessary knowledge and capability to undertake their role.
- 8.2 Staff understanding and awareness of the policy and its effective application will be monitored by team / service management at team meetings and periodic 1:1 meetings. Any development needs will be identified at these meetings and action taken as appropriate.
- 8.3 Effective communication within the team, particularly in relation to policy and performance matters, will ensure that the Council delivers a consistent approach to the implementation of the policy. This will also provide a common understanding and appreciation of any issues that arise as a result of the policy (and its implementation) – allowing the Council to clarify or amend requirements as required.

- 8.4 In order to ensure the effective delivery of the Council's licensing enforcement function it is essential that all staff involved have the necessary skills, knowledge and capability to undertake their role in accordance with legislative requirements, published guidance and the Council's General Enforcement Policy.
- 8.5 Competency is maintained via the undertaking of appropriate training and continued professional development, and assessment of competency as 1:1 / supervision meetings which complement the annual Performance and Development Review cycle.
- 8.6 Any issues identified in relation to the enforcement work that is carried out are discussed with individual officers and corrective actions undertaken where necessary.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 Both the Jay report into Child Sexual Exploitation (CSE) in Rotherham and the subsequent Corporate Governance Inspection led by Louise Casey CB identified issues, amongst which was the importance of having an effective taxi licensing service.
- 9.2 In order to ensure the Council's Licensing Service is effective, fit for purpose, and has addressed the concerns raised in Louise Casey's report; the following outcomes must be demonstrated:
- All licence holders are "fit and proper" to hold licences.
 - Trained decision makers must make high quality, appropriate and timely decisions that protect the public from risk of harm.
 - The Licensing Service uses all available statutory powers appropriately, proactively and reactively, to disrupt criminal activity (including CSE and related activity).
 - The licensing team must consistently provide high quality, timely processing of licensing applications.
 - The Council's Private Hire and Hackney Carriage Licensing Policy will be effectively implemented.
- 9.3 In order to address this, the service has developed a performance management framework and improvement plan to provide assurance that the outcomes identified above are achieved.
- 9.4 At the heart of the new policy, service improvement plan and the performance framework lies a commitment to the protection of the public, safeguarding children and the vulnerable and the prevention of crime and disorder. The effective implementation of the licensing policy and the standards that it contains plays an important part in the protection of children and vulnerable people in Rotherham.

- 9.5 Since the publication of the report, the licensing team have been working with colleagues in Children's Services to ensure that those involved in the care and support of looked after children are aware of the key contacts within licensing, the nature of information that can be passed on to the licensing team and the action that the team can take as a result. This has been achieved by identifying single points of contact within the Business Regulation Service and Children's Services, and an agreed protocol for the sharing of information between services (making use of the formal, documented Local Authority Designated Officer procedures within Children's Services)
- 9.6 In addition, action has been taken to repair and formalise the information sharing processes within the Council and between its partners. This includes the regular attendance of a senior manager from the Council's regulatory service at the weekly CSE Intelligence Sharing Meetings that are chaired by South Yorkshire Police. Information that is discussed at the weekly meetings includes detail on offenders, victims and locations of concern. These meetings also provide a forum where a multiagency approach to a problem can be discussed – if need be with formation of a separate task and finish group consisting of the various Council services and partner agencies.
- 9.7 The service has also developed an excellent working relationship with the National Crime Agency, this sees the regular exchange of information in relation to potential concerns around licensed individuals / premises – and on more than one occasion has resulted in the revocation of driver licenses with immediate effect.
- 9.8 The Council's Hackney Carriage and Private Hire Licensing Policy makes it clear that non-conviction information can be taken into consideration when making decisions regarding licensing matters (there had previously been a criticism that officers acted only when a licence holder had actually been convicted of an offence). The policy confirms that the safety of the travelling public must be the paramount concern.

10. Equalities and Human Rights Advice and Implications

- 10.1 In undertaking its licensing function, the Council comply with relevant legislative requirements including the Human Rights Act 1998.
- 10.2 The policy (along with the Council's General Enforcement Policy) will ensure the consistent and fair determination of licences – recognising that every individual is entitled to dignity and respect.
- 10.3 When making licensing decisions the Council and its officers aim to ensure there is no discrimination on the grounds of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status, or previous criminal conviction or caution which is not relevant to the current issue.
- 10.4 Adherence to these requirements are assured by means of officer awareness, observation, case reviews and both customer satisfaction and complaints received into the service. In addition, those affected by licensing decisions have the legal right to challenge that decision in the Magistrates Court.

11. Implications for CO₂ Emissions and Climate Change

- 11.1 There are no specific implications for CO₂ Emissions and Climate Change introduced by this report.

12. Implications for Partners

- 12.1 It is recognised that enforcement and compliance activity often cannot be carried out in isolation by the Council. Its key partnerships with other agencies e.g. South Yorkshire Police, HM Revenue and Customs and the Driver and Vehicle Standards Agency are critical to ensure a comprehensive approach to regulation.

13. Risks and Mitigation

- 13.1 Failure of the Council to effectively discharge its licensing function may compromise public safety.
- 13.2 The Hackney Carriage and Private Hire Licensing Policy and draft performance framework must give confidence to licence holders and the public of the effective performance management of Council processes and the transparency and fairness of the Council's approach to enforcement.
- 13.3 Responsibility for ensuring compliance with the policy rests with team and service management, with appropriate overview and scrutiny by the Cabinet Member for Jobs and the Local Economy and members of the Licensing Board.
- 13.4 Failure of the Council to effectively discharge its licensing enforcement functions may compromise public safety.
- 13.5 Compliance with the General Enforcement Policy gives confidence to business and individuals of the transparency and fairness of the Council's approach to enforcement, without which the Council's reputation might be at risk.

Accountable Officer(s)

Alan Pogorzelec, Licensing Manager

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This report is published on the Council's [website](#).

Performance against the Licensing Performance Management Framework (1/4/22 to 31/11/22)

| Performance Measures | Target | Outturn | Comments |
|--|--------|---------|--|
| Outcome 1. All licence holders are “fit and proper” to hold licences. | | | |
| % of applications that are determined only after all required checks have been undertaken. | 100% | 100% | Target has been met in full. |
| % of complaints / information referrals where the initial response meets service standards (response within 3 working days). | 100% | 100% | Team / Service Management have reviewed 50 cases over the year and have identified that all of them had been responded to within the required target time. |
| % of complaints / service requests where no formal action has been taken that have been appropriately investigated. | 100% | 100% | <p>Team / Service Management have reviewed 40 cases over the first six months of the year and have confirmed that all of them have been investigated appropriately.</p> <p>All enforcement cases are reviewed by a senior officer prior to being “closed off” – there is therefore a high level of confidence that investigations are undertaken to an appropriate standard.</p> |

Performance against the Licensing Performance Management Framework (1/4/22 to 31/11/22)

| Performance Measures | Target | Outturn | Comments |
|---|--------|---------|--|
| Outcome 2. Decision makers make high quality judgements that protect the public from risk of harm. | | | |
| % of case hearing information provided to Committee Services by to the agreed deadline. | 100% | 100% | The Licensing Board Sub-Committee has met 8 times during the financial year to date. Reports for all of these hearings were provided within the required timescale. |
| % of Licensing Board members that have received training in the role. | 100% | 100% | The Licensing Board consists of 20 Councillors. Formal training was arranged for all Councillors and took place on 21 st June 2022. Seven Councillors attended this training. Of the remaining 13 Councillors, all but two have previously received formal training in 2021. The two Councillors that have not received training in the last two years are new to Licensing Board and to date have not attended any hearings where they have sat in a decision making capacity. Training for these two Councillors will be provided as soon as possible. |
| % of Licensing Board decisions that are made in accordance with the Council's policy. | 100% | 100% | Target has been met in full. |
| % of licensing decisions that are made in accordance with the scheme of delegation to officers and members / commissioners. | 100% | 100% | Target has been met in full. |

Performance against the Licensing Performance Management Framework (1/4/22 to 31/11/22)

| Performance Measures | Target | Outturn | Comments |
|--|-----------------------|-----------|--|
| Outcome 3. The licensing service make maximum use their statutory powers (where appropriate) to disrupt criminal activity (including CSE and related activity). | | | |
| Attendance of licensing team at weekly Child Exploitation Tasking Group (chaired by South Yorkshire Police). | 80% | 48% | <p>There have been 31 meetings so far this financial year, and the Licensing Manager attended 15 of these. The reasons for non-attendance are as follows:</p> <ul style="list-style-type: none"> • Annual leave (7 occasions) • Meeting conflict (8 occasions) • Training (1 occasion) <p>All information for discussion at the meeting is provided to the Licensing Manager in advance of the meeting. The Chair of the meeting has previously confirmed that it would not be appropriate to send a delegate to the meeting in normal circumstances, and that any actions / relevant information will be provided directly to the Licensing Manager as appropriate. In addition, the meeting is attended by other RMBC officers, and information would be fed back to the Licensing Manager by them as an additional safeguard. It has been confirmed that an RMBC officer attended on all of the occasions that the Licensing Manager did not – where appropriate this officer provided an update to the Licensing Manager following the meeting.</p> |
| Circulation of key contacts to partners for use in cases of referrals and for data sharing. | Once every six months | Completed | Target has been met. |

Performance against the Licensing Performance Management Framework (1/4/22 to 31/11/22)

| Performance Measures | Target | Outturn | Comments |
|---|---------------|----------------|---|
| Number of multiagency operations undertaken | 4 (annually) | 2 | <p>The target of 4 is an annual target based on one multiagency operation per Quarter. The operations may be proactive or reactive in nature and will include partners such as South Yorkshire Police, Her Majesty's Revenue and Customs and the Vehicle and Operator Standards Agency.</p> <p>There have been two multi agency operations, both conducted with South Yorkshire Police (one of which was the Police lead Operation Duxford).</p> |
| Number of proactive operations undertaken | 6 (annually) | 4 | <p>The target of 6 is an annual target based on one RMBC led proactive operation every two months. Operations may involve RMBC in isolation or may be multiagency operations involving RMBC and partners.</p> <p>Two operations were undertaken in relation to vehicle and driver compliance with licence conditions.</p> <p>Officers also undertook two late night enforcement operations targeting licensed premises and vehicles that were operating within the night-time economy.</p> <p>An operation in relation to Private Hire Operators was cancelled due to officer ill health.</p> |

Performance against the Licensing Performance Management Framework (1/4/22 to 31/11/22)

| Performance Measures | Target | Outturn | Comments |
|---|-------------|-------------|--|
| Outcome 4. The licensing team consistently provides high quality processing of licensing applications. | | | |
| <p>% of applications that are processed in accordance with:</p> <p>licensing policies</p> | <p>100%</p> | <p>100%</p> | <p>All licence applications are reviewed by a senior officer prior to the licence being issued. Amongst other things, the senior officer is responsible for ensuring that the licence is not issued unless all relevant policy requirements have been met.</p> <p>Service management have undertaken a sample of the applications of the applications that have resulted in licenses being issued. None of the cases sampled revealed any information that would indicate that the licence had been issued where policy requirements had not been met. The service is therefore confident that 100% of applications are processed in accordance with the Council's policies.</p> |
| <p>service standards.</p> | <p>100%</p> | <p>81%</p> | <p>Service standards require a licence to be determined within 3 working days of all required checks being completed (the determination will either be for the licence to be issued, or the application referred to a case hearing meeting at a future date).</p> <p>During the 2022/23 year so far (to 26/11/22):</p> <p>321 driver licenses have been issued, 238 of which were renewal applications with the remainder (83) being new grants. Only 49% (156) of driver licence applications were issued within 3 working days of all necessary checks being completed.</p> |

Performance against the Licensing Performance Management Framework (1/4/22 to 31/11/22)

| Performance Measures | Target | Outturn | Comments |
|--|-------------|-------------|---|
| | | | <p>610 vehicle licences were issued, with 607 of these being determined within 3 working days of all relevant checks being completed.</p> <p>43 Private Hire Operator Licences were issued, 63% (27) of which were determined within 3 working days.</p> <p>The performance in relation to driver and operator licences is significantly lower than it has been in previous years. This is thought to be due to an increase in the number applications that have been received, an increase in high priority work that senior officers are involved with and improvements in the efficiency with which applications are processed (meaning that the application process is often completed well before the expiry date of the current licence). This has unfortunately meant that the “signing off” of licences has been deprioritised by senior officers unless they are due to expire within a short space of time.</p> <p>Despite these lower performance levels, 99% of licences were renewed prior to the expiry date of the previous licence (where relevant checks had been completed prior to the expiry date).</p> |
| <p>% of licensing records that contain all required information in a secure but accessible format.</p> | <p>100%</p> | <p>100%</p> | <p>Management have reviewed 20 driver and vehicle records throughout the year. No instances were identified where officers had failed to record information on Lalpac.</p> |

Performance against the Licensing Performance Management Framework (1/4/22 to 31/11/22)

| Performance Measures | Target | Outturn | Comments |
|---|-------------|-------------|---|
| Outcome 5. The Council's private hire and hackney carriage licensing policy will be effectively implemented. | | | |
| <p>% of licensed vehicles that have a taxi camera fitted in accordance with the Council's policy.</p> | <p>100%</p> | <p>100%</p> | <p>This figure represents the number of licensed vehicles that require a camera and have had one installed.</p> <p>Licences (and intermediate plates) are not issued unless a camera system has been fitted into the vehicle.</p> |
| <p>% of driver licence holders that are required to have maintained a subscription to the DBS online update service and have done so.</p> | <p>100%</p> | <p>100%</p> | <p>This figure indicates the number of eligible licence holders that have subscribed to the DBS online update service. The subscription is an annual subscription; however there are a number of licence holders that have been required to renew their subscription within the year. Any licence holders that fail to maintain their subscription will be required to undertake another DBS check and subscribe to the update service.</p> |

Performance against the Licensing Performance Management Framework (1/4/22 to 31/11/22)

| Performance Measures | Target | Outturn | Comments |
|---|--|--|---|
| <p>% of licence holders that demonstrate adherence to the requirements of the Council's policy.</p> | <p>Figures for each sub-indicator: 1) 100% 2) 100%</p> | <p>Figures for each sub-indicator: 1) 100% 2) 100%</p> | <p>Adherence to the policy is demonstrated by compliance levels in relation to four sub-indicators. Two of these sub-indicators are dealt with above, with the remaining two being as follows:</p> <p>1) % of drivers that have completed the Council's safeguarding awareness course.</p> <p>100% of drivers have attended the Council's Safeguarding Awareness Course.</p> <p>2) % of drivers that have obtained the BTEC / NVQ qualification.</p> <p>100% of drivers have demonstrated that they obtained the BTEC / NVQ qualification (either by provision of the certificate or via confirmation from the training provider that they have passed the course).</p> |

2022 / 23 Enforcement Data (to 26/11/22) – Licensing Enforcement Team

| Detail | Number | Prosecution | Immediately revoked / suspended | Warning | Advice Given | No further action | Insufficient evidence to proceed | Allegation disproven | Investigation ongoing | Disclosed to SYP | Disclosed to another Authority/Agency | Referral to Licensing Board | Not licensed by RMBC |
|--------------------------------------|---------------|--------------------|--|----------------|---------------------|--------------------------|---|-----------------------------|------------------------------|-------------------------|--|------------------------------------|-----------------------------|
| Operator complaint | 8 | | | 7 | 1 | | | | | | | | |
| Dangerous Driving | 4 | | | 4 | | | | | | | | | |
| Poor driving | 8 | | | 6 | | | | | 2 | | | | |
| Indecency - adult | 2 | | 1 | | | | | | 1 | | | | |
| Conduct of driver | 59 | | | 38 | 6 | 1 | | 7 | 7 | | | | |
| Parking issue | 2 | | | | 2 | | | | | | | | |
| Using phone whilst driving | 4 | | | | 2 | | 2 | | | | | | |
| Condition of vehicle | 15 | | | 4 | 10 | | 1 | | | | | | |
| Taxi camera download request | 39 | | | | | 3 | | | | 17 | 19 | | |
| School transport enquiry/complaint | 3 | | | 2 | | | | | | | | | 1 |
| Licensed premises complaint | 88 | | | 12 | 33 | 7 | 20 | | 12 | | | 4 | |
| Unlicensed premises complaint | 2 | | | | 1 | 1 | | | | | | | |
| Unlicensed scrap metal | 3 | | | 1 | | | | | 2 | | | | |
| Action taken following Police arrest | 1 | | 1 | | | | | | | | | | |
| Unlicensed vehicle | 2 | | | | | | | | | | | | 2 |
| Unlicensed driver | 2 | | | | | 2 | | | | | | | |

2022 / 23 Enforcement Data (to 26/11/22) – Licensing Enforcement Team

| Detail | Number | Prosecution | Immediately revoked / suspended | Warning | Advice Given | No further action | Insufficient evidence to proceed | Allegation disproven | Investigation ongoing | Disclosed to SYP | Disclosed to another Authority/Agency | Referral to Licensing Board | Not licensed by RMBC |
|-------------------------------------|---------------|--------------------|--|----------------|---------------------|--------------------------|---|-----------------------------|------------------------------|-------------------------|--|------------------------------------|-----------------------------|
| Unlicensed operator | 0 | | | | | | | | | | | | |
| Failing to comply with Policy | 5 | | | | 5 | | | | | | | | |
| Operating unlicensed vehicle | 1 | | | 1 | | | | | | | | | |
| Overdue intermediate test | 30 | | | | 30 | | | | | | | | |
| Charging complaint | 2 | | | 1 | | 1 | | | | | | | |
| Scrap metal site complaint | 6 | | | | 5 | | | | 1 | | | | |
| Operating without gambling permit | 1 | | | | 1 | | | | | | | | |
| Driver plying for hire | 2 | | 1 | | | | | | 1 | | | | |
| Failing to carry disabled passenger | 1 | | | | 1 | | | | | | | | |
| Total | 290 | 0 | 3 | 76 | 97 | 15 | 23 | 7 | 26 | 17 | 19 | 4 | 3 |

APPENDIX 3**2022 / 23 Enforcement Data (1/4/22 to 26/11/22) – Licensing Admin Team**

| | Licensing Board | Officer | Total |
|---|-----------------|-----------------------------------|-------|
| Driver licences granted | 11 | 310 | 321 |
| Driver Licences Granted with additional conditions | 0 | 2 | 2 |
| Driver licences suspended | 1 | 0 ^a | 1 |
| Driver licences revoked | 3 | 0 ^a | 3 |
| Driver licences immediately ^b revoked or suspended for: | | | |
| - Medical reasons | 0 | 3 | 3 |
| - Driver conduct | 0 | 4 | 4 |
| Driver licence – formal warning issued | 0 | 0 ^a | 0 |
| Driver licence – licence reviewed, no further formal action taken | 0 | 0 ^a | 0 |
| Driver Licence – application refused | 2 | 0 ^a | 2 |
| PH Operator licences issued | 0 ^c | 43 | 43 |
| PH Operator licences refused / revoked | 0 | 0 | 0 |
| Vehicle licences issued: | | | |
| - Hackney Carriage | 0 ^d | 38 | 38 |
| - Private Hire | 0 ^d | 572 | 572 |
| Current licence numbers (at time of report drafting): | | | |
| Hackney Carriage / Private Hire Driver Licences ^e | | 1099 | |
| Private Hire Vehicle Licences ^f | | 864 | |
| Hackney Carriage Licences ^f | | 53 (1 of which is a hire vehicle) | |
| Private Hire Operator Licences ^g | | 66 | |

2022 / 23 Enforcement Data (1/4/22 to 26/11/22) – Licensing Admin Team

Footnotes:

- a Officers do not have the delegated authority to attach conditions, suspend or revoke a licence (except if the circumstances require a revocation or suspension to take effect immediately).
- b Suspensions or revocations of a licence may take effect immediately if it is considered necessary in the interests of public safety. In any other circumstance a revocation or suspension will take effect at the end of 21 days beginning on the day on which the suspension or revocation notice is issued.
- c Only referred to a hearing if the removal / amendment of a condition is required – officers do not have the delegated authority to amend licence conditions.
- d The determination of vehicle licences is largely an administrative process as there is no subjective assessment of fitness. As such, vehicle licence applications are almost always determined by officers using delegated authority.
- e Licences typically valid for a three year period.
- f All vehicle licences issued are valid for a period of 12 months.
- g Licences are valid for a one year period.

Rotherham Metropolitan Borough Council
HOUSE TO HOUSE COLLECTIONS POLICY
October 2019

Contents

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1. Introduction

Aim of this Policy

This policy aims to ensure that residents in the Rotherham Borough boundary area who want to donate to a charitable or good cause through house to house collections are able to do so secure in the knowledge that an adequate proportion of what they donate will directly benefit the named charity or good cause.

The effectiveness of the policy will be reviewed one year after its introduction to determine its impact, and whether the aim of the policy is being achieved.

General Information Regarding House to House Collections

House to house collections involve the collection of either money or items directly from a person's property. They are a vital source of funds for many charities as they offer a positive opportunity for the public to support charities. However, they need to be carried out for the benefit of the charity and in accordance with the law.

There has been an increase in the number of house to house collectors in the Borough over the last few years and as such it is vital that permits are issued to legitimate applicants. This can give the public confidence that if the collection is licensed an adequate proportion of their donations are being given to the appropriate charity.

House to house collections are currently regulated by the House to House Collections Act 1939 and the House to House Collections Regulations 1947. Permits for collections that are carried out within the Rotherham Borough boundary are issued by the Council. There are National Exemption Orders that are available to charities who have undertaken a high number of collections across local authority areas nationally in the preceding two years. These are issued to the charity by the Cabinet Office directly.

The intention of this policy is to give clear guidance to members of the Licensing Board, applicants and officers, on the factors to be taken into account when determining applications for a House to House Collection permit.

All decisions regarding the implementation of the House to House Collections Policy (such as determination of applications) are made by the Licensing Board, although the Licensing Board may delegate this to officers if the Board considers this to be necessary or appropriate. The Policy itself is a decision for Cabinet.

Any applicant that is aggrieved by a decision of the Council may appeal to the Secretary of State/Minister for the Cabinet Office, Cabinet Office, 70 Whitehall, London, SW1A 2AS, within 21 days of being given notice of the decision.

The Regulatory Framework for House to House Collections

House to house collections, as defined by the House to House Collections Act 1939, are required to be licensed by local authorities. House to house collections are defined as 'an appeal to the public, made by means of visits from house to house, to give, whether for consideration or not, money or other property'. They include, therefore, collections of money, or any other items that may be sold for money, where the proceeds are given to

any charitable, benevolent or philanthropic purpose (for example, charity clothing collection bags).

For the purpose of the House to House Collection Act 1939, the term 'house' also includes places of business. This provision, therefore, also covers collections made within places such as shops, offices and public houses where the collectors go from premises to premises collecting money, or other property, and the proceeds of such collections are given to charity (for example, rose sellers in public houses and restaurants).

Unless those who wish to conduct a collection possess an Exemption Certificate issued by the Secretary of State, it is an offence for any person to promote or make collections from door to door for charitable purposes without the promoter first obtaining a licence from this Council to do so.

Some larger charities (particularly those that operate nationally) have secured Exemption Certificates from the Secretary of State; however, most of the smaller charities operating locally do not have Exemption Certificates and, therefore, they need to apply for, and be granted, a permit before they can collect money door to door within the Borough boundary of Rotherham. There is no application fee associated with an application for a house to house collection permit.

There are two circumstances where the need for a permit from the Council can be waived following the intervention of other authorities.

1. If the Secretary of State is satisfied that a person pursues a charitable purpose throughout the whole of, or a substantial part of, England and Wales, and wants to promote collections for that purpose, he/she may then direct by Order that the promoter shall be exempt from the requirement to obtain licences from this Council. All collections exempt from licensing requirements would be described in the Order.
2. Where the chief constable for a police area is satisfied that the purpose of a collection is local in character and that the collection is likely to be completed within a short period of time, he/she may grant the promoter of the collection a certificate in the prescribed form. Where such a certificate is granted, a permit from the Council is not required and the provisions of the Regulations shall not apply to a collection made in conformity with such certificate. An example of this would be where the collection is taking place as part of an event occurring in a clearly defined locality over a short period of time (a maximum of a few days).

Any applications made for a permit will be processed and considered in accordance with Section 2 of this policy.

2. Applications for a House to House Collection Permit

The application process

Applicants are advised to contact the Council at their earliest opportunity, preferably before an application is made. This will allow Council Officers to provide appropriate advice, as well as clarifying any areas of uncertainty.

All applications must be made on the Council's prescribed application form (see Appendix A).

Applications should normally be made at least two calendar months before the first proposed collection date, the application will not be considered as complete unless the applicant provides all of the information that is specified on the application form and accompanying notes.

Any application received with less than one calendar months' notice prior to the first proposed collection date is unlikely to be considered, save for exceptional circumstances at the Council's discretion.

In addition to completing the Council's application form, the applicant must also supply information relating to:

1. Whether the collection beneficiary is a registered charity (with charity number), and the objectives of the charitable cause as supplied to the Charity Commission. The collection beneficiary is the term used to describe the organisation on whose behalf the collection is being undertaken.
2. A statement of the collection beneficiary's aims, and any literature to support this.
3. Full details of the collection beneficiary – this must include date of formation, names of trustees, directors etc.
4. If the collection is being undertaken by an individual or organisation other than the beneficiary of the collection then full details of this individual / organisation must be provided – this will include details of directors / trustees / owners (in the case of an organisation).
5. Relevant accounts and financial statements of the promoter, collection company / agent and the charity (if different)
6. The details of how the amounts to be allocated to the charity, collectors and promoter are calculated. The following must be clear from the information provided:
 - 6.1. The expected value of the money / items collected before any expenses are deducted ('the gross collection amount').
 - 6.2. Full details of any deductions that will be applied to the 'gross collection amount' and how these will be calculated.

7. A written agreement between the applicant and the charity as required by the Charities Act 1992.
8. Declaration of any previous refusals for House to House Collections
9. A basic Disclosure Certificate relating to the promoter or the director of the collection company / agent if different (this must be dated within the last six months).
10. It must be clear from the application how much the collection beneficiary will receive as part of the collection, the proportion of this as a percentage of the cost of running the collection and a clear set of returns if the organisation has operated collections before. Although each case will be considered individually, the Council considers it reasonable that a charity can expect to receive at least 80% of the total proceeds from a collection (i.e. before any deductions are made for expenses associated with the collection).
11. The times that collections are expected to take place (the Council's default position is that collections will not take place before 8am or later than 7pm).
12. Written assurance from collectors that they will not deliver bags to households that clearly state they do not wish to receive house to house collections.

The Council encourages collectors to use recyclable / environmentally friendly collection bags wherever practicable and applicants may wish to refer to their use when completing the application.

All applications for a House to House Collection Permit will be referred to the Council's Licensing Board for consideration. The applicant will have the opportunity to address the Board should they wish to do so, they may also provide a written submission to the Licensing Board for consideration along with their application.

Licensing Officers and / or the Licensing Board may request additional information from applicants in order to fully consider applications that are received by the Council. In cases where additional information is requested, the application will not be processed by the Council until such time as the requested information has been provided.

Grant of a House to House Collection Permit

If the Licensing Board are satisfied that it would be appropriate to issue a permit for a House to House Collection then one will be issued for the times and dates specified on the application. The Council will issue a Certificate for the Information of the Stationery Office under the House to House Collections Act 1939. This document will allow the promoter to obtain the prescribed badge and prescribed Certificate of Authority. These documents must be carried by all collectors involved in the House to House Collection.

If the dates specified on the application have passed, then the permit will run from the date that the Licensing Board make the decision to issue the permit.

In any event, a permit authorising a house to house collection will not be valid for a period longer than twelve months.

Permits will not be issued retrospectively, therefore a permit must be in place before the collection commences. Collections undertaken without a valid permit or exemption will be unlawful and the promoter of such a collection risks prosecution by the Council.

The House Collections Act 1939 and the House to House Collections Regulations 1947 specify the obligations of all those involved in house to house collections. A copy of the House to House Collections Regulations 1947 is appended to this policy as Appendix B.

Key obligations placed on the person / organisation to whom a permit is issued are as follows:

1. the necessary written permission has been obtained from the Council;
2. no collection must be undertaken in a manner which will inconvenience or annoy any person such collections taking place at an unreasonable hour. The Council would consider that collections taking place later than 7pm would be unreasonable;
3. every collector must wear a standard badge and carry a Certificate of Authority;
4. collectors must produce their badge, on demand, to the occupant of any house, any police officer or authorised officer of the Council;
5. all collectors must be aged sixteen years or more;
6. must only collect between the hours that are specified on the permit;
7. if a collector is carrying a collecting box, it must be sealed, numbered and clearly display the name of the charity or fund which is to benefit.

The key obligations following a collection are as follows:

1. collectors must not be given access to the contents of collection boxes prior to their being returned to the promoter for opening and counting;
2. boxes should only be opened in the presence of the promoter and another responsible person. Once the boxes have been opened, the contents should be counted immediately and the amount collected in each box recorded;
3. after the collection the promoter must complete a prescribed returns form and return it to the Council within one month of the expiry of the permit. The promoter must certify the return and have it countersigned by a qualified accountant.

The prescribed forms are detailed in Regulation 6 of the House to House Collections Regulations 1947 (as amended by the House to House Collections Regulations 1963) – an extract of these Regulations is attached as Appendix B to this policy.

The “combined badge and certificate of authority for collector performing house to house collection” (ISBN 9780113407422) is available from The Stationery Office (www.tsoshop.co.uk). Further information is available from the licensing office.

Refusal to issue a House to House Collection Permit

The statutory reasons why a licensing authority may refuse to grant a permit, or where a permit has been issued may revoke it, if it appears to the authority that:

1. The total amount likely to be applied for charitable purposes as the result of the collection (including any amount already so applied) is inadequate in proportion to the value of the proceeds likely to be received (including any proceeds already received);
2. Remuneration which is excessive in relation to the total amount aforesaid is likely to be, or has been, retained or received out of the proceeds of the collection by any person;
3. The grant of a Licence would be likely to facilitate the commission of an offence under Section Three of the Vagrancy Act 1824, or that an offence under that section has been committed in connection with the collection;
4. The applicant or the holder of the Licence is not a fit and proper person to hold a Licence by reason of the fact that he has been convicted in the United Kingdom of any of the relevant offences specified below, or has been convicted in any part of Her Majesty's dominions of any offence conviction for which necessarily involved a finding that he acted fraudulently or dishonestly, or of an offence of a kind the commission of which would be likely to be facilitated by the grant of a Licence. The relevant offences referred to above are as follows:
 - 4.1. Offences under sections 47 to 56 of the Offences against the Person Act 1861
 - 4.2. Robbery, burglary or blackmail
 - 4.3. Offences in Scotland involving personal violence or lewd, indecent, or libidinous conduct, or dishonest appropriation of property
 - 4.4. Offences under the Street Collections Regulation (Scotland) Act 1915
 - 4.5. Offences under section 5 of the Police, Factories etc. Miscellaneous Provisions) Act 1916
5. The applicant or the holder of the Licence, in promoting a collection in respect of which a Licence has been granted to him, has failed to exercise due diligence to secure that persons authorised by him to act as collectors for the purposes of the collection were fit and proper persons, to secure compliance on the part of persons so authorised with the provisions of regulations made under this Act, or to prevent prescribed badges or prescribed certificates of authority being obtained by persons other than persons so authorised; or
6. The applicant or holder of the Licence has refused or neglected to furnish to the Authority such information as they may have reasonably required for the purpose of informing themselves as to any of the matters specified in the foregoing

paragraphs.

Where a House to House Collection Permit has previously been granted, the Council will ordinarily revoke the permit if it is of the opinion that any of the circumstances listed above subsequently apply.

Consideration of financial information

All financial information provided as part of an application for a House to House Collection Permit will be handled in accordance with the Council's Information Security Policy.

The proportion allocated to the collection beneficiary must be clearly detailed by the applicant, this includes the calculations that have been used to determine the way that funding is allocated to each party involved in, or benefiting from, the collection.

The Council must be satisfied that the amount to be given to the charity is adequate in relation to the proceeds received. The cost of collection needs to be taken into account and balanced against the perception of the public that all of the items or money they donate will be given to charity.

It is common practice for collectors to be paid by organisations to collect money and products. When determining the remuneration and whether this is excessive the nature of the business and the overheads should be taken into account and balanced against the amount being given to the charity. The remuneration received by individuals involved in the collection process at all levels, should also be considered as part of this assessment.

It is anticipated that in most cases, the amount allocated to the collection beneficiary should exceed 80% of the total amount collected (i.e. the amount collected before the deduction of any expenses and / or running costs).

If no previous returns have been supplied to the Council after previous licensed collections by the same organisation or individual within the Council's area then the application should be refused. In addition, any action taken as a result of not complying with regulations on operating House to House collections would also be grounds for refusal unless there are extenuating circumstances.

3. Enforcement

Enforcement activity available to the Council is prescribed in legislation and is limited to the criteria for refusals or revocations of licences, and breaches of conditions, described in section 2 of the Policy. Failure to comply with this Policy in itself is not an offence, however, the Policy clearly identifies the issues that are prescribed as offences.

The Council considers that collections should be undertaken in accordance with the Fundraising Regulator's Code of Fundraising Practice. Where the Council believes that a collector has not adhered to this Code, the Council will refer the matter(s) to the Fundraising Regulator who will then pursue the breach via their own processes.

It is recognised that well-directed enforcement activity by the Council benefits not only the public but also those responsible for organising charitable collections. In implementing this Policy, the Council will operate in accordance with the General Enforcement Policy and

any other service specific enforcement policies or processes.

The provisions of this policy are discharged by the Council through the Licensing Board.

The responsibility for enforcement of the House to House Collections Act (and associated Regulations) has been delegated to the Assistant Director of Community Safety and Street Scene. The Assistant Director has authorised officers to enforce the requirements of the legislation relevant to House to House Collections.

Appendix A: House to House Collection Permit Application Form

| |
|---|
| APPLICATION FOR A HOUSE TO HOUSE COLLECTION PERMIT |
|---|

This application must be completed by the individual or organisation that is promoting the collection ('the promoter'). The role and obligations of the promoter are outlined in the Council's House to House Collection Policy, and all applicants are advised to consult this document prior to making an application for a permit within the Rotherham Borough boundary.

The information below (including that which is detailed in the notes at the end of this form) is the MINIMUM that must be provided in order to make an application for a permit within the Rotherham Borough boundary. You may provide additional information in support of your application if you consider that this would assist your application.

If there is not enough space on the form for you to provide the requested information then please continue on additional sheets and attach these to your application.

| | |
|---|--|
| Name of Promoter | |
| Address and daytime telephone number of Promoter. | |
| Details of charitable purpose to which proceeds of the collection are to be applied (full details are to be enclosed with this application, including a copy of the authorisation from the charity to whom the proceeds will be sent). The additional information referred to in the notes below must also be included. | |
| Dates and times on which you are wish to undertake the collection(s) (Please include alternative dates should your first choice not be available) | |

| | | | | | |
|---|--|--|--|--|--|
| <p>Localities within which you wish to make the collection (if the application is to undertake a collection across the whole Borough then please state this, otherwise indicate the specific localities and the dates of each collection).</p> | | | | | |
| <p>Are you intending to collect money or personal financial information? (if yes then please provide details)</p> | | | | | |
| <p>Is it proposed to collect other property, if so, of what nature?</p> <p>Is it proposed to sell such property, give it away or use it for other purposes (please give details)?</p> | | | | | |
| <p>How many people will you authorise to undertake collections?</p> | | | | | |
| <p>How will the collectors be selected / appointed?</p> | | | | | |
| <p>How will the collections be undertaken? Please give details of any vehicles that will be used along with any literature / envelopes / collection bags that will be used as part of the collection.</p> | | | | | |
| <p>Will any person or organisation receive payment from the proceeds of the collection?</p> <p>If so then please give details of the payments that are made (see notes below for additional information) – continue on additional sheets of this is required.</p> <p>Payments to collectors:</p> <p>Payments to other persons:</p> | <table border="1" style="width: 100%; height: 100%;"> <tr> <td style="width: 50%; height: 50%;"></td> <td style="width: 50%; height: 50%;"></td> </tr> <tr> <td style="width: 50%; height: 50%;"></td> <td style="width: 50%; height: 50%;"></td> </tr> </table> | | | | |
| | | | | | |
| | | | | | |

| | |
|---|--|
| <p>Payments to an organisation (other than the charitable purpose for which the collection is being undertaken):</p> <p>Payments to the charitable organisation:</p> | |
| <p>Are you intending to apply for House to House Collection Permits from other local authorities?</p> <p>If so, please list the other authorities to which applications have been or will be made (attaching a separate sheet if required).</p> | |
| <p>Has the applicant or anyone associated with the promotion or undertaking of the collection, ever has an application under the Act refused or revoked?</p> <p>If so, please give full details.</p> | |
| <p>Is it proposed to promote the collection in conjunction with a street collection?</p> | |
| <p>If so, is it desired that the accounts of this collection should be combined wholly or partly with the accounts of the street collection?</p> | |
| <p>If the collection is for a War Charity, state if such a charity has been registered or exempted from registration under the War Charities Act 1940, and give the name of the registration authority and the date of registration or exemption.</p> | |
| <p>Please state if your charity holds an Order of Exemption under Section 3 of the House to House Collections Act 1939, as issued by the Secretary of State.</p> <p>If so, please enclose a copy of the Order.</p> | |

| | |
|---|--|
| <p>Please provide any additional information in support of your application (enclosing additional sheets if required).</p> | |
| <p>Declaration</p> | <p>I / we declare that to the best of my / our knowledge and belief that the foregoing information is correct and, if a permit is granted, I / we undertake to comply strictly with the Council's House to House Regulations as listed in the Council's House to House Collections Policy.</p> <p>I / we consent to the Council sharing this information with regulatory partners for the prevention and / or detection of crime.</p> <p>I / we confirm that we have reviewed the Council's House to House Collection Policy and the important notes and the end of this form, and have taken this information into consideration when making my / our application.</p> |
| <p>Signature of person(s) making this application</p> | |
| <p>Name(s) of person(s) making this application</p> | |
| <p>If you are not the promoter then please state the capacity in which you are making this application and provide confirmation of your authority to make this application on behalf of the promoter.</p> | |
| <p>Date of signature(s)</p> | |

Please tick to confirm inclusion of the following information (see notes at the end of this form)

| | |
|--|--|
| Details of the objectives of the charitable cause. | |
| A statement of the collection beneficiary's aims, and any literature to support this. | |
| Full details of the collection beneficiary. | |
| Full details of this individual / organisation making the application. | |
| Relevant accounts and financial statements. | |
| Details of how the amounts to be allocated to the charity, collectors and promoter are calculated. | |
| A basic Disclosure Certificate relating to the promoter. | |

Your application will not be considered to be complete if any of the above information or anything detailed in the Important Notes is missing or unclear.

IMPORTANT NOTES:

1. All sections of this application form must be completed – if any section is not relevant to your circumstances then please state 'not applicable' or 'n/a'.
2. The following information must also be provided with the application:
3. Whether the collection beneficiary is a registered charity (with charity number), and the objectives of the charitable cause as supplied to the Charity Commission.
4. A statement of the collection beneficiary's aims, and any literature to support this.
5. Full details of the collection beneficiary – this must include date of formation, names of trustees, directors etc.
6. If the collection is being undertaken by an individual or organisation other than the beneficiary of the collection then full details of this individual / organisation must be provided – this will include details of directors / trustees / owners (in the case of an organisation).
7. Relevant accounts and financial statements of the promoter, collection company / agent and the charity (if different)
8. The details of how the amounts to be allocated to the charity, collectors and promoter are calculated. The following must be clear from the information provided:
 - 8.1. The expected value of the money / items collected before any expenses are deducted ('the gross collection amount').
 - 8.2. Full details of any deductions that will be applied to the 'gross collection amount' and how these will be calculated.
9. A written agreement between the applicant and the charity as required by the Charities Act 1992.

10. Declaration of any previous refusals for House to House Collections
11. A basic Disclosure Certificate relating to the promoter or the director of the collection company / agent if different (this must be dated within the last six months).
12. It must be clear from your application how much the collection beneficiary will receive as part of the collection, the proportion of this as a percentage of the cost of running the collection and a clear set of returns if the organisation has operated collections before.
13. You are advised to review and consider Rotherham MBC's House to House Collection Policy and the legislative extract prior to submitting your application.

Appendix B: Extract from the House to House Collections Regulations 1947 (as amended by the House to House Collections Regulations 1963) forming the Regulations for House to House Collection Licences pursuant to section 4 of the House to House Collections Act 1939

1. Title and extent

1.1 These regulations may be cited as the House to House Collections Regulations 1947, and shall come into operation on the twenty-ninth day of December 1947.

1.2 These regulations shall not extend to Scotland.

2. Interpretation

2.1 In these regulations, unless the context otherwise requires: '*The Act*' means the House to House Collections Act 1939;

2.1.1 '*chief promoter*', in relation to a collection, means a person to whom a licence has been granted authorising him to promote that collection or in respect of whom an order has been made directing that he shall be exempt from the provisions or subsection (2) or section 1 of the Act as respects that collection;

2.1.2 '*collecting box*' means a box or other receptacle for monetary contributions, securely closed and sealed in such a way that it cannot be opened without breaking the seal;

2.1.3 '*licence*' means a licence granted by a licensing authority under section 2 of the Act;

2.1.4 '*order*' means an order made by the Secretary of State under section 3 of the Act;

2.1.5 '*prescribed badge*' means a badge in the form set out in the Fourth Schedule to these regulations;

2.1.6 '*prescribed certificate of authority*' means a certificate in the form set out in the Third Schedule to these regulations;

2.1.7 '*receipt book*' means a book of detachable forms of receipt consecutively numbered with counterfoils or duplicates correspondingly numbered;

2.1.8 '*street collection*' means a collection or sale to which regulations made under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916 apply;

2.1.8.1 A mark shall for the purposes of these regulations be deemed to have been made on a collecting box if it is made on a wrapper securely gummed to the collecting box.

2.1.8.2 The Interpretation Act 1889 applies to the interpretation of these

regulations as it applies to the interpretation of an Act of Parliament.

3. Local collections of a transitory nature

- 3.1. Every certificate granted under subsection (4) of section 1 of the Act shall be in the form set out in the First Schedule to these regulations, and sections 5 and 6 and subsections (4) and (5) of section 8 of the Act shall be set forth on the back of every such certificate.
- 3.2. Where such a certificate is granted as aforesaid, the provisions of these regulations shall not apply, in relation to a collection made for the purpose specified on the certificate, within the locality and within the period so specified, to the person to whom the certificate is granted or to any person authorised by him to act as a collector for the purposes of that collection.

4. Applications for licences and orders

- 4.1 An application for a licence shall be in the form set out in the Second Schedule to these regulations, and shall give the particulars there specified.
- 4.2 An application for a licence or for an order shall be made not later than the first day of the month preceding that in which it is proposed to commence the collection.

5. Responsibility of promoters as respects collectors

- 5.1 Every promoter of a collection shall exercise all due diligence:
- 5.1.1 to secure that person authorised to act as collectors for the purposes of the collection are fit and proper persons; and
- 5.1.2 to secure compliance on the part of persons so authorised with the provisions of these regulations.

6. Certificates of authority, badges, collecting boxes and receipt books

- 6.1 No promoter of a collection shall permit any person to act as a collector, unless he has issued or caused to be issued to that person:
- 6.1.1 a prescribed certificate of authority duly completed (except as regards the signature of the collector) and signed by or on behalf of the chief promoter of the collection;
- 6.1.2 a prescribed badge, having inserted therein or annexed thereto a general indication of the purpose of the collection; and
- 6.1.3 if money is to be collected, a collecting box or receipt book marked with a clear indication of the purpose of the collection and a distinguishing number, which indication and number shall, in the case of a receipt book, also be marked on every receipt contained therein in addition to the

consecutive number of the receipt.

6.2 Every promoter of a collection shall exercise all due diligence to secure:

6.2.1 that no prescribed certificate of authority, prescribed badge, collecting box or receipt book is issued, unless the name and address of the collector to whom it is issued have been entered on a list showing in respect of any collecting box or receipt book the distinguishing number thereof; and

6.2.2 that every prescribed certificate of authority, prescribed badge, collecting box or receipt book issued by him or on his behalf is returned when the collection is completed or when for any other reason a collector ceases to act as such.

6.3 In case of a collection in respect of which a licence has been granted:

6.3.1 every prescribed certificate of authority shall be given on a form obtained from Her Majesty's Stationery Office, and every prescribed badge shall be so obtained; and

6.3.2 every prescribed certificate of authority shall be authenticated, and the general indication on every prescribed badge of the purpose of the collection shall be inserted therein or annexed thereto, in a manner approved by licensing authority for the area in respect of which the licence was granted.

7. Duties of collectors in relation to certificates and badges

7.1 Every collector shall:

7.1.1 sign his name on the prescribed certificate of authority issued to him and produce it on the demand of any police constable or of any occupant of a house visited by him for the purpose of collection;

7.1.2 sign his name on the prescribed badge issued to him and wear the badge prominently whenever he is engaged in collecting; and

7.1.3 keep such certificate and badge in his possession and return them to a promoter of the collection on replacement thereof or when the collection is completed or at any other time on the demand of a promoter of the collection.

8. Age Limits

8.1. No person under the age of sixteen years shall act or be authorised to act as a collector of money.

9. Importuning

9.1. No collector shall importune any person to the annoyance of such person, or remain in, or at the door of, any house if requested to leave by any occupant thereof.

10. Collecting of Money

10.1. Where a collector is collecting money by means of a collecting box, he shall not receive any contribution save by permitting the person from whom it is received to place it in a collecting box issued to him by a promoter of the collection.

10.2. Where a collector is collecting money by other means than a collecting box, he shall, upon receiving a contribution from any person, forthwith and in the presence of such a person enter on a form of receipt in a receipt book issued to him by a promoter of the collection and on the corresponding counterfoil or duplicate the date, the name of the contributor and the amount contributed, and shall sign the form of receipt, the entries and signature being in ink or indelible pencil, and shall hand the form of receipt to the person from whom he received the contribution.

11. Duty of collectors to return boxes and books

11.1. Every collector, to whom a collecting box or receipt book has been issued, shall:

11.1.1. when the collecting box is full or the receipt book is exhausted, or

11.1.2. upon the demand of a promoter of the collection, or

11.1.3. when he does not desire to act as a collector, or

11.1.4. upon the completion of the collection, return to a promoter of the collection that collecting box with the seal unbroken or that receipt book with a sum equal to the total amount of the contributions (if any) entered therein.

12. Examination of boxes and books

12.1. Subject as provided in paragraph (2) of this regulation, a collecting box when returned shall be examined by, and, if it contains money, be opened in the presence of, a promoter of the collection and another responsible person.

12.2. Where a collecting box is delivered unopened to a bank, it may be examined and opened by an official of the bank in the absence of a promoter of the collection.

12.3. As soon as a collecting box has been opened, the contents shall be counted and the amount shall be entered with the distinguishing number of the collecting box on a list, which shall be certified by the persons making the examination.

12.4. Every receipt book when returned and all sums received therewith shall be examined by a promoter of the collection and another responsible person, and the amount of the contributions entered in the receipt book shall be checked with the money and entered with the distinguishing number of the receipt book on a list, which shall be certified by the persons making the examination.

13. Provision for envelope collections

13.1. Where the promoter of a collection to whom an order has been granted informs

the Secretary of State that he desires to promote an envelope collection, and the Secretary of State is of opinion that the collection is for a charitable purpose of major importance and is suitably administered, the Secretary of State may, if he thinks fit, give permission for the promotion of an envelope collection.

13.2. Where an envelope collection is made in accordance with this regulation:

- 13.2.1. every envelope used shall have a gummed flap by means of which it can be securely closed;
- 13.2.2. no collector shall receive a contribution except in an envelope which has been so closed; and
- 13.2.3. these regulations shall have effect subject to the following modifications:
 - 13.2.3.1. sub-paragraph (c) of paragraph (1) of regulation 6 shall not apply;
 - 13.2.3.2. regulation 10 shall not apply;
 - 13.2.3.3. regulations 11 and 12 shall have effect as if each envelope in which a contribution is received were a collecting box;
 - 13.2.3.4. in regulation 11 for the words 'with the seal unbroken' there shall be substituted the word 'unopened';
 - 13.2.3.5. in paragraph (3) of regulation 12 for the words 'As soon as a collecting box has been opened' there shall be substituted the words 'As soon as the envelope has been opened' and the words 'with the distinguishing number of the collecting box' shall be omitted.
- 13.2.4. In this regulation 'envelope collection' means a collection made by persons going from house to house leaving envelopes in which money may be placed and which are subsequently called for.

14. Promoters to furnish accounts

- 14.1. The chief promoter of a collection in respect of which a licence has been granted shall furnish an account of the collection to the licensing authority by which the licence was granted within one month of the expiry of the licence:
- 14.2. Provided that if licences are granted to the same person for collections to be made for the same purpose in more than one licensing area a combined account of the collections made in all or any of those licensing areas may, by agreement between the chief promoter and the respective licensing authorities be made only to such of the respective licensing authorities as may be so agreed.
- 14.3. The chief promoter of a collection in respect of which an order has been made shall furnish an account annually to the Secretary of State so long as the order remains in force, and if the order is revoked a final account shall be furnished

within three months of the date of the revocation of the order.

- 14.4. The licensing authority or the Secretary of State may extend the period within which an account is required to be furnished to the authority or to him, as the case may be, if satisfied that there are special reasons for so doing.
- 14.5. The chief promoter of a collection which is made in connection in whole or in part with a street collection of which an account is required to be furnished to a licensing authority by regulations made under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916, may, if the said licensing authority agrees, combine the accounts of the house to house collection, in so far as it is made in connection with the street collection, with the accounts of the street collection, and the amount so included in the combined account shall not be required to form part of the account required to be furnished under paragraph (5) or, as the case may be, paragraph (2) of this regulation, so, however, that in the case of an account furnished under said paragraph (2) the account shall show, in addition to an account in respect of moneys received from house to house collections not made in connection with a street collection, a statement showing the total proceeds of all combined collections, the total expenses and the balance applied to charitable purposes.

15. Form and certification of accounts

15.1. The account required by the preceding regulation:

- 15.1.1. where money has been collected, shall be furnished in the form set out in the Fifth Schedule to these regulations and, where property has been collected and sold, shall be furnished in the form set out in the Sixth Schedule to these regulations, and in either case shall be certified by the chief promoter of the collection and by an independent responsible person as auditor; and
- 15.1.2. where property (other than money) has been collected and given away or used, shall be furnished in the form set out in the Seventh Schedule to these regulations and shall be certified by the chief promoter and by every person responsible for the disposal of the property allocated.

16. Vouching of accounts

- 16.1. Every account furnished under paragraph (a) of regulation 15 of these regulations shall be accompanied by vouchers for each item of the expenses and application of the proceeds and, in the case of a collection of money, by every receipt book used for the purposes of the collection and by the list referred to in paragraph (2) of regulation 6 of these regulations and the list referred to in regulation 12 of these regulations.
- 16.2. Paragraph (1) of this regulation shall not apply to an account certified by an auditor who is a member of an association or society of accountants incorporated at the date of these regulations or is on other grounds accepted as competent by the authority to which the account is submitted, but where in such case the vouchers, receipt books and lists mentioned in the said paragraph (1) are not

submitted with an account, the chief promoter shall ensure that they are available for three months after the account is submitted and shall, if the authority to which the account was submitted so requires at any time within that period, submit them to that authority.

17. Disposal of disused certificates of authority, etc

17.1. The chief promoter of a collection shall exercise all due diligence to secure that all forms of prescribed certificates of authority and prescribed badges obtained by him for the purposes of the collection are destroyed when no longer required in connection with that collection or in connection with a further collection which he has been authorised to promote for the same purpose.

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National Association of
Licensing and Enforcement Officers

Guidance for Licensing Officers issuing licences for charitable door to door collections – England and Wales

September 2011

Update October 2011

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Statement of intent

This document should give clear guidance to licensing officers on which factors to be taken into account when determining applications for Charitable House to House Collections. If officers are minded to refuse an application then one should bear in mind the Cabinet Office's recent decision to review the way in which it will handle appeals against refusals to issue licences. This document is for guidance only. However, licensing authorities are ultimately responsible for their own decisions and should therefore ensure that they apply the law in accordance with any relevant advice from their legal advisors.

Scope

This guidance covers applications made for Charitable House to House Goods Collections and does not cover cash, direct debit or other monetary collections. The following section provides guidance on how to determine applications for house to house collections. This guidance applies to England and Wales only.

1 Introduction

1.1 Quick Check List

If you want to make sure that you handle an application for a charitable door to door collection properly and fairly, but do not want to spend too much time evaluating every little detail, the Quick Check List in Appendix 1 can help.

If you have checked every point listed and you are confident of the information that has been provided by the applicant, you should be able to make a reasonably confident decision on whether to grant, refuse or refer onwards.

1.2 Charitable House to House Collections

Charitable house to house collections involve the collection of goods directly from a householder's property. They are a vital source of funds for many charities as they offer a positive opportunity for the public to support charities.

1.3. The Benefits.

The benefits of any legitimate charitable door to door collection are clear.

Apart from being able to raise substantial sums of money for the benefitting charity, they are popular, easy to use, produce clear environmental benefits, support the Government's Waste Strategy, provide substantial benefits for local tax payers, help local authorities meet their legal recycling targets, and can help to support hundreds of local jobs.

For further information on the benefits of supporting all legitimate charitable door to door clothing collections see Appendix 2.

1.4 The Institute of Fundraising's House to House Collections Code of Fundraising Practice

http://www.institute-of-fundraising.org.uk/Codes_and_regulation/Codes/codes-directory

The Institute of Fundraising (IoF - which represents the fundraising interests of all charities) launched its revised House to House Collections Code of Fundraising Practice containing information on goods collection in April 2011. The revised code specifically addresses issues pertaining to charitable door to door collections. Organisers of charitable door to door collections that sign up to the revised code,

must be able to demonstrate that they conduct their collections to high professional standards and uphold all relevant legislation.

A publicly available document, which explains in an unbiased way how charities can benefit from the different forms of charitable door to door collections and published on the IoF website is contained within Appendix 3.

Charity Retail Association

<http://www.charityretail.org.uk/ccr2011.pdf>

The Code of Charity Retailing promotes good practice and high standards for charity retailing. Compliance with the Code is a mandatory part of membership of the Association for UK charity members.

1.5 Review by Cabinet Office of the way in which it handles appeals against decisions by licensing departments to refuse granting of a Charitable Door to Door Collections.

Historically, the Cabinet Office (and before it the Home Office), under the House to House Collections Act (1939), would look at how the local authority went about reaching its decision. Provided that the licensing authorities' decision was one that could reasonably have been reached on the facts presented to it, and the process it followed was fair, the Cabinet Office have not up until now considered the merits of the licence application.

However they now consider that in order for the Minister to be able to comply with their statutory function, the Minister must now look at each appeal afresh and the Minister must make their own decision on the basis of all the evidence presented to them.

For further information on the outcome of their review and consultation see Appendix 4.

2 How Charitable Door to Door collections work?

2.1 The majority of charitable door to door collections operate in similar ways to each other, but the information provided by operators can vary significantly depending on who undertakes the collections. There are three main scenarios to consider.

- 1. Charities which undertake collections in partnership with commercial door to door collection businesses.**
- 2. Charities that undertake their own door to door collections without the use of a commercial collection partner and do not sell the items through a charity shop.**
 - 1. Charities that undertake their own door to door collections and which sell the collected items through their charity shops.**

See Appendix 3 for further details.

A limited number of collections may be arranged by individuals. It is important that applications of this nature are handled in exactly the same way as if they are being

organised by a commercial party, commercial arm of charity or the charitable purpose itself.

3 The Law

(See also section 4 “What is a Charitable Purpose?” and point 4.5 “What is not a Charitable Purpose?” below)

1939 House to House Collections Act and the 1947 House to House Collections Regulations.

3.1 The licensing of Charitable Door to Door Collections is principally governed by the 1939 House to House Collections Act together with the 1947 House to House Collections Regulations. With the exception of a limited number of major national charities which hold national exemptions issued by the Cabinet Office, the majority of charitable door to door collectors must first of all obtain a licence from the relevant licensing authority.

3.2 Under the 1939 Act, a licensing authority may refuse to grant a Licence, or, where a Licence has been issued may revoke it, if it appears to the authority that: -

1. The total amount likely to be applied for **charitable purposes** as the result of the collection (including any amount already so applied) is inadequate in proportion to the value of the **proceeds** likely to be received (including any proceeds already received);
2. Remuneration which is excessive in relation to the total amount aforesaid is likely to be, or has been, retained or received out of the **proceeds** of the collection by any person;
3. The grant of a Licence would be likely to facilitate the commission of an offence under Section Three of the Vagrancy Act 1824, or that an offence under that section has been committed in connection with the collection;
4. The applicant or the holder of the Licence is not a fit and proper person to hold a Licence by reason of the fact that he has been convicted in the United Kingdom of any of the offences specified in the Schedule to this Act, or has been convicted in any part of Her Majesty's dominions of any offence conviction for which necessarily involved a finding that he acted fraudulently or dishonestly, or of an offence of a kind the commission of which would be likely to be facilitated by the grant of a Licence;
5. The applicant or the holder of the Licence, in promoting a collection in respect of which a Licence has been granted to him, has failed to exercise due diligence to secure that persons authorised by him to act as collectors for the purposes of the collection were fit and proper persons, to secure compliance on the part of persons so authorised with the provisions of regulations made under this Act, or to prevent prescribed badges or prescribed certificates of authority being obtained by persons other than persons so authorised; or
6. The applicant or holder of the Licence has refused or neglected to furnish to the Authority such information as they may have reasonably required for the purpose of informing themselves as to any of the matters specified in the foregoing paragraphs

3.3 In respects to the Charities Acts 1992 and 2006, there are 3 relevant obligations for charitable collections.

1. The trustees have a legal duty to act in the best interest of the organisation.
2. If a partnership is formed with an external organisation, a contract is required, setting out the benefits and obligations of each party.
3. If a commercial party gains financially from the partnership, a solicitation statement is needed. The statement must name the benefitting charity and outline a financial amount that the charity will receive. This statement can be written or verbal, but must be made before a donation is made.

These obligations are there to protect charities interests and ensure that the public are aware of the true benefit to the charity and can make an informed decision of who to donate to.

The 2006 Act also outlined a new licensing regime, which would change how and when collectors need to apply for a licence. However, this has not yet been implemented and it is uncertain if or when it will be brought in.

4 What Constitutes a Charitable Purpose?

4.1 Under the 1939 House to House Collections Act, a licence can be refused if the proportion of proceeds going for “charitable purpose” is inadequate.

4.2 It is important to understand what constitutes a “charitable purpose” and equally importantly what is **not** a “charitable purpose”.

4.3 *The 1939 Act*

1939 House to House collections act defines “charitable purpose” means any charitable, benevolent or philanthropic purpose, whether or not the purpose is charitable within the meaning of any rule of law;

4.4 *The 2006 Charities Act (2006)*

S2 of the Charities Act 2006 also defines 13 purposes which are considered charitable in England and Wales and can be found at the following link.

<http://www.legislation.gov.uk/ukpga/2006/50/contents>

4.5 What is not a Charitable Purpose?

Profit making businesses (including fundraising arms of charities) are not charitable purposes.

5 Relevance of percentages when considering applications.

5.1 In the case of door to door collections and Cabinet Office advice that each case must be considered on its own merit, setting an arbitrary minimum percentage of the total value of the goods going to the charity is problematic. For reasons explained in paragraphs 5.2 to 5.6, such figures usually bear no resemblance to the amount of proceeds raised for the actual charitable purpose. At the point at which the goods have been collected, it is unlikely that the value of the proceeds generated for charitable purpose will be much more than 20%, whoever has undertaken the collection.

5.2 Typically, the cost of collecting door to door is substantial compared to the actual value of the goods at its point of collection. However there is still some scope for

efficient charitable door to door collections to raise substantial sums of money for charity, albeit on relatively small profit margins per tonne of goods collected.

5.3 Where the collection is undertaken by a commercial third party, the charity is guaranteed an income (usually based on a per tonne basis), even if it turns out the commercial partner's collect costs are more than the revenue gained through the value of the goods collected. If the charity undertakes its own collection it is likely to raise more per tonne but incurs more risk.

5.4 Published accounts indicate that around 80% of all revenue generated by a charity's trading subsidiary is ploughed back into the running of the trading arm. So even if the trading arm passes all its profits onto its affiliated charity, it usually means that around 20% of the total revenue generated goes for charitable purpose.

In any case, the process of adding value by sorting donated goods and passing them through charity shops or sending for export, is a separate activity from the door to door collection, and is not covered by the 1939 House to House Collections Act. See special note in Appendix 1.

6 How can one be sure that the amount of proceeds going for charitable purpose is adequate?

6.1 As mentioned in 3.3, trustees are under a duty to ensure that all actions are in the best interest of the organisation. This will involve considering financial and reputation aspects before entering into a contract. Charity employees are well versed on standard returns from partnerships so will often be aware of what is considered standard and can use this when considering a new agreement.

6.2 Local authorities may wish to consider requesting a "statement of due diligence" from the charity associated with the collection as part of the supporting documentation, (See Appendix 1, Quick Check list, para 4.)

7 Model Application

House to House Collections Regulations 1947 (Schedule 2)

7.1 The attached model application form in Appendix 6 must be used by licensing authorities to assess whether a charitable door to door goods collection should be granted a licence. All applicants, whether they are a charity themselves, the commercial arm of a charity or a third party such as a commercial collection partner must all be asked the same questions and must provide answers to all the questions.

7.2 For reasons explained below, it is very important that licensing officers understand how much is going for charitable purpose and that they are able clearly to distinguish this from the income received by whoever undertakes the collection.

7.3 Supplementary information may be requested to support the application. Please see the checklist in Appendix 1

8 Important issues for Consideration (Summary).

When considering applications the financial information given is sometimes difficult to interpret. Unless the applicant is able to clearly identify the proportion that will be

donated to a charitable purpose and the licensing department is confident in the calculations the applicant should be asked to clarify the information that they have provided. If they are unable to clarify information requested, they should first be invited to withdraw the application. If they refuse to withdraw the application following a request for clarification then you may be minded to recommend refusal of the licence.

1. It is particularly important that an application provide clear information about who is undertaking the collection (e.g. whether it is an individual, a commercial collection partner, a charity's commercial collection arm or a registered charity itself). It is also important that the application makes a clear distinction between the revenue received by the collector and the proceeds that are actually applied to the charitable purpose.
2. The collection costs incurred by the collector will vary dependant upon the method of collection and should be taken into account and deducted before the amount being sent for charitable purpose can be derived.
3. If the proportion allocated to the charitable purpose is clear, the licensing authority must be satisfied that the amount to be given to the charitable purpose is adequate in relation to the proceeds received. The 1939 House to House Collections Act does not make any stipulation as to what constitutes an adequate proportion and it is up to individual licensing authorities to make their own decision. This guidance is intended to help them make such a decision.
4. In deriving this, licensing authorities need to be mindful that although the costs of collecting a tonne of clothing can be substantial in relation to the actual value of the clothing, this in itself should not be seen as an automatic reason for refusing a licence. Efficiently run charitable door to door goods collections can make substantial sums of money charities despite high collection costs and remove what could otherwise become significant amounts of waste from the household refuse stream.
5. When assessing an application to undertake a charitable door to door collection, Licensing authorities should assess whether the proceeds actually going for charitable purpose (after all remuneration/collection costs have been deducted) and should adopt a default position where they only consider refusals if it is apparent that these proceeds of a particular collection, are significantly lower than those being achieved by other similarly modelled collections operating in the same area at about the same time.
6. Licensing officers should also be mindful of the outcome of the 2010 judicial review involving Birmingham Council, the Minister for the Cabinet Office and Clothes Aid where the Minister accepted he made an error of law when considering the appeal and that a full merit assessment of Clothes Aid's licence application should have been carried out. As a result, Cabinet Office is currently reviewing the way that appeals are viewed as a result of this case and a full merit assessment of licensing applications will be carried.
7. As well as appraisal being given to the proportion of proceeds being applied for charitable purpose and remuneration or costs incurred as a result of the collection, licensing officers should also consider whether any of the other grounds for refusal stipulated in the 1939 House to House Collections Act and

highlighted in paragraph 3.2 of this guide are relevant to the application being considered.

8. If it is known that there will be a too high concentration of charitable door to door collections taking part in the particular area at around the same time, as the proposed collection being considered, the Licencing Authority may want to consider undertaking the following (in order of preference);
 1. Arrange by mutual agreement with the collector to grant a licence to operate a collection on alternative dates;
 2. If this is not possible, make a recommendation to the collector to withdraw the licence application;

9 Policy outcomes

Outcomes and links to the corporate outcomes

If this policy is adopted it should contribute to the following outcomes:

- Good reputation with customers and regulators
- Good quality of life – helping to create cleaner, safer, prosperous, healthier and sustainable local environment.
- Effective partnership working – Helping to support and create jobs both locally and nationally, and to raise funds for local and national charitable purposes.
- Members and staff with the right knowledge, skills and behaviours
- Help individuals, businesses and local authorities to reduce waste and recycle more, reducing landfill and making better use of resources

10 References

House to House Collections Act 1939
House to House Collections Regulations 1947 & 1963
Police, Factories, &c. (Miscellaneous Provisions) Act 1916
Metropolitan and City Policy Districts Regulations 1979
& (Amendment) Regulations 1986
The Charitable Collections (Transitional Provisions) Order
1974. As Amended in Council, 1992 Model Regulations
1992 Charities Act
2006 Charities Act.

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Appendix 1.

Quick Check List
for handling charitable door to door goods collection licence applications.

Below is a quick check list, which has been developed to help licensing officers make decisions on a day to day basis, as to whether a licence should be granted for a charitable door to door goods collection.

This check list forms part of the guidance developed by NALEO in conjunction with the Institute of Licensing, Institute of Fundraising and trade representatives. The guidance expands on the issues dealt with below. It is recommended that licensing officers ensure that they familiarise themselves with the contents of the full guidance as well as make use of the quick check list.

1. Has the applicant answered all the questions in the “Model Application Form” (see below)?

- If yes, go to question 2
- If no, return application form and ask applicant to complete.

2. Who is applying for the licence?

It is important to be aware of who is undertaking the collection to ascertain that applicants are fit and proper.

3. Has the collector clearly identified all tangible costs that they have been asked to provide in the “Model Application Form”?

- If yes, go to question 4.
- If no, return form to applicant.

4. Has a statement been provided by the benefiting charitable purpose stating that they are aware of their legal requirements, that they have exercised due diligence and that the collection will raise the maximum possible benefit for the charitable purpose?

- If yes, go to question 5.
- If no, return form to applicant.

The statement can be signed by someone from the fundraising department, management team or the trustees.

This statement is important as it ensures that the charitable purpose has stated that they have considered whether they have got the best deal. It also means that licencing officers have dealt with their duty to ensure that appropriate returns are going to the charitable purpose, without second guessing or overruling decisions made by the charitable purpose.

5. Is it clear what proceeds (in terms of Pounds Sterling/for every tonne collected) will be going to the charitable purpose?

- If yes, go to question 6.
- If no, see special costs considerations note below.

If you think that the proceeds going for charitable purpose may be too low, then you may wish to consider talking to the applicant to see if this can be reviewed. However, it is important to bear in mind that the commercial or fundraising arm of a charity is not likely to be considered a charitable purpose and collection costs must be considered and deducted, whoever undertakes the collections.

6. Are there any other licensed charitable door to door goods collections proposed to be taking place at around the same time in the same area?
 - If yes, you may wish to consider deferring the collection to a later date if there is too high a concentration of collections in the area over the period.
 - If no, go to question 7.

7. Are there any other reasons listed under 1939 House to House Collections Act, section 2, paragraph 3 for refusing a licence? (See Section 3.2)
 - If no to question 7, and you are happy with the answers to the other questions and the model form then you should be minded to grant a licence. See special cost considerations below.
 - If no to question 7 but you are not happy around amounts going to charity, please see special costs considerations note below.
 - If yes to question 7 then you should approach the applicant to see if the matter(s) can be resolved.

Special Cost Considerations Note.

Sometimes it may be difficult to establish what proceeds are being applied for charitable purpose. However, the 1939 House to House Collections Acts requires licensing officers to consider how much is being applied for charitable purpose. For reasons shown below it is important to establish what the associated costs of running the collections are and deduct these so that the amount applied for charitable purpose can be worked out.

Basic formula for working out profit

In economics to work out the profit of any venture, the following formula is applied.

Profits = Revenue Generated – Total Costs incurred by profit making venture.

To work out the amount of money being applied for charitable purpose, the following terms could be substituted and applied to the above formula, so that it would now read.

Profits applied for Charitable Purpose = Revenue Generated (through sales of clothing) – total costs incurred through collections.

Therefore, in order for licenses offices to be able to establish how much money is applied for charitable purpose, they need to know how much revenue is generated and what the collection costs are.

The 1939 House to House Collections Act requires any applicant by law to declare such refusals or revocations truthfully. However, the refusals process has always been done one way and because it was very complex, it was very difficult for to successfully appeal against a decision to refuse a licence. Any refusals which were issued before the review by the Cabinet Office into the appeals process and the issuing of this NALEO guidance should be considered with this in mind.

Appendix 2.

The Benefits of Supporting Legitimate Door to Door Charitable Goods Collections

They are popular.

Surveys have shown that there are many members of the public who support door to door collections citing much greater convenience as a key factor.

There are clear environmental benefits.

Clothing is also the fastest growing household waste stream and it is estimated that the clothing industry accounts for about 5 to 10% of all environmental impacts within the EU. The Government have identified textiles as a priority waste stream and a recent report commissioned by DEFRA made an explicit recommendation to encourage higher collection rates through the expansion of local authority approved door to door goods collections.

They benefit local authorities and the local tax payer.

In addition to this, all local authorities have been set legally binding recycling targets, which they have to achieve. By licensing all legitimate charitable door to door goods collections, local authority recycling departments can use the data contained within returns submitted by the charity collectors and include this in their overall figures.

Furthermore, licensing of these collections makes direct financial sense for local taxpayers. They can make direct financial savings. Local Authorities have to pay a levy on all waste that they send to landfill. By diverting more textiles away from the waste stream these costs to the local authority are reduced. One should also consider that Waste Collection Authorities (usually borough or district councils) can make a Waste Collection Credit claim to Waste Disposal Authorities for all the waste that is diverted away from disposal in their area.

They can help to support local jobs.

It is important that local authorities are seen to support local job opportunities as well as charities that operate in their area. Many charities choose to engage the services of a commercial partner to undertake collections on their behalf, often because the charity is simply not prepared to undertake the financial or logistical burdens associated with undertaking collections themselves or they simply do not have the resources. Textile collectors and charity organisations employ hundreds of people and these organisations rely on a regular supply of affordable quality clothing in order to maintain their operations.

APPENDIX 3



House to House Clothing Collections Guidance.

What information does this document provide?

This document outlines the three main ways in which legitimate charitable door to door clothing collections take place. They are as follows:

- 1) Charities which undertake collections in partnership with commercial door to door collection businesses.
- 2) Charities that undertake their own door to door clothing collections without the use of a commercial collection partner and do not sell the items through a charity shop.
- 3) Charities that undertake their own door to door clothing collections and which sell some of the collected items through their charity shops.

All three types of collection have their relative merits and help raise significant funds for charity. Unfortunately, this method is under threat from bogus collectors, who pretend to represent charities, but in fact will keep all monies for themselves. Bogus collectors are taking goods that the public wish to see go to charity, and depriving the charity sector of much needed goods and income. This briefing also provides guidance and tips on how to spot bogus collectors.

This document was produced by the Institute of Fundraising, The Fundraising Standards Board, The Textile Recycling Association (TRA), The Charity Retail Association (CRA) and Kidney Research UK.

Why should people support charitable door to door clothing collections?

- 1) *They are good for the environment, the economy and charitable fundraising.*

We currently buy over 2 million tonnes of new clothing and textiles every year in the UK, and according to DEFRA it is UK's fastest growing household waste stream. At the same time we are dumping over 1 million tonnes of used textiles in the bin and collecting only about 550,000 tonnes for re-use and recycling annually. More needs to be done to increase re-use and recycling and decrease dumping.

- 2) *They are popular with the public and convenient to use.*

Up until recently door to door collections of clothing have been a relatively underutilised method of collecting clothing, but they are becoming increasingly popular with the public and charities alike. According to the results of a survey undertaken on behalf of the "Professional Fundraiser", door to door clothing collections are popular because the public feel that there is a lack of pressure to give. Many respondents said that "it is a great way to

get rid of serviceable items”, they offer greater convenience than other collection methods and make it easier for the public to recycle clothing.

3) They help charities to raise significant funds and support employment opportunities in the UK.

All legal charitable Door to Door clothing collections not only provide a valuable service to the public and highly significant environmental benefits, but they also provide opportunities for all participating charities to raise significant funds, and support employment opportunities for thousands of people here in the UK.

There are in principal three different ways in which charitable door to door clothing collections can operate. These are outlined below. All of them can provide significant income for the benefiting charity, can divert significant amounts of clothing and textiles away from the waste stream and be tailored to suit the individual set up of the benefiting charity. All the different collection methods have their relative merits.

It is the actual net profit that the charity receives for each tonne collected and the weight of clothing that can be collected and processed which is of key importance to a charity.

There is statutory protection to keep charities from entering agreements that may not be advantageous. The House to House Collections Act 1939 allows local authorities to refuse a licence to a collection that they feel does not provide a reasonable level of benefit to a charity. Trustees and charity managers also operate under a fiduciary duty to ensure that any agreements are in the best interests of the charity. This legislation and best practice guidance (including the Institute’s House-to-House Collections Code and also Charities Working with Businesses Code) can assure donors and licencing officers that legitimate charity collections, no matter who undertakes them, result in the charity benefitting financially.

What are the different collection methods?

1. Charities which undertake collections in partnership with commercial door to door collection businesses.

Under such arrangements the commercial collection partner meets all the costs of setting up and promoting the scheme and undertakes all the work. The collection partner can then prepare the clothing for export at the prevailing global market prices.

The benefiting charity then receives a payment from the commercial collection partner. The rest of the operating profit goes to the participating textile collection business.

The profits generated by the business helps to secure paid jobs for the thousands of people employed in the UK textile reclamation industry.

Such arrangements offer charities a risk free way to fundraise. The commercial collection partner undertakes all burdens. The benefiting charity does not incur any costs, commercial risks or the inconvenience that running such a scheme incurs. If there is a downturn in the market, the losses that would be incurred are met completely by the commercial collection partner. Under this type of arrangement, there can be a very high turnover of clothing and the potential to generate large sums of money every year for the charity is significant.

2. Charities that undertake their own door to door clothing collections without the use of a commercial collection partner and do not sell the items through a charity shop.

Some charities may choose to undertake their own door to door clothing collection without the use of a commercial collection partner so as to try and increase their profit margins.

Charities that choose to pursue this model may have the staff and/or resources to undertake such collections and may be prepared to accept the commercial risks associated with such collections. Unlike the collection method described above, if there is a downturn in the market, any resulting financial losses that are incurred would have to be met by the charity.

Once the charity has undertaken the collection itself, it can then sell the clothing at the prevailing market price in the same way as commercial collection partners sell the clothing in the method above. However, the charity will have incurred the costs associated with collecting the clothing, which will be higher if paid staff are used.

3. Charities that undertake their own door to door clothing collections and which sell the collected items through their charity shops.

A small number of charities have charity shops, through which they can sell clothes. Charity shops provide good quality, affordable clothing and other items.

Some of these charities choose to undertake door to door clothing collections, using either paid staff or volunteers. They then retail a percentage of the better quality items in their shops as a means to increasing their potential profit on every tonne of clothing that they collect. The remainder is sold on to merchants at the prevailing commercial market rate, before being exported for re-sale in a similar manner to clothing collected via methods' 1 and 2 above.

The charity itself will be bearing additional costs and physical burdens when undertaking door to door clothing collections of this nature. They will also be realising additional financial risks. By using volunteers as opposed to paid staff a charity can reduce its costs.

What is the situation with bogus collections?

Unfortunately, there are a number of clothing collectors who give the impression that they are collecting for a charitable or philanthropic cause, but all monies go to commercial operations. Some collectors will put out leaflets pretending to be a legitimate charitable collection, or will simply take bags that were intended for legitimate charity collections.

How can the public distinguish between legitimate and bogus collection materials?

There are a few simple things that you can do to check whether the collection leaflet or bag that you have received is a genuine charitable collection. You can:

- Check to see if the collection purports to support a genuine UK registered charity (with the registration number given). This should not be confused with other numbers like "Company Numbers" or "Export Numbers".
- Check that there are genuine contact details for the Charity on the bag.
- See if the collection organiser bears accepted kitmarks, such as the Fundraising Standards Board (FRSB) tick, the Charity Retail Association (CRA) logo or Institute of Fundraising (IoF) membership logo.
- Check with the local authority to see whether the collection is licensed. With the exception of a few big national collection charities, most charitable door to door collectors are required to obtain a licence from the local authority where they collect.
- Contact the charity that the collection will supposedly benefit, as they can tell you if a genuine collection is being done in your area or not.

The Charity Commission (www.charity-commission.gov.uk) and the Charity Retail Association (www.charityretail.org.uk) provide further guidance on giving to legitimate collections.

How can bogus collections be reported?

When it comes to tackling bogus collections, there are a number of options available for both reporting and understanding the issues. From a legal point of view, bogus collections generally fall into one of two categories of crime:

- 1) **Fraudulent collections** are collections where individuals/companies mislead the public into thinking that charities will benefit, when in fact all the money will go to private individuals or companies. This can be done either by using details of a charity that does not exist, or replicating information of a genuine charity without permission.

Fraudulent collections should be reported to the National Fraud Intelligence Bureau (NFIB) charity desk on 0207 601 6999 or Charity.fraud@cityoflondon.police.uk. Organisations or individuals can also send copies of complaints to the relevant Local Authority or Trading Standards (if a company is involved), and if the collection is purporting to be for the benefit of an existing charity, it may be best to also notify them.

- 2) **Theft** occurs when bags are left out with the intention that specified charities will benefit, but they are taken by people with no link to the charity. Theft should be reported to the local police force, as they are the only ones with jurisdiction to deal with it. Again, for information, it may be best to send a copy of the complaint to the NFIB, the Local Authority and the relevant charity, to ensure as many people have the information as possible.

The sector and enforcement agencies have created an array of information and tools to tackle the problem of bogus collections, including standardised reporting tools by the CRA and TRA and a Trading Standards toolkit for enforcement professions on how to proceed.

The IoF and the CRA have also produced Codes on how to run legitimate collections, making it easier for the public to distinguish these legitimate collections from the bogus collections.

As there is so much information available and this information is regularly updated, the IoF has created a webpage that pulls together all of the different information from different organisations, making it easy for the sector and the public to stay abreast of the tools that can be used to help.

Organisations can request specific information which is included on this page and anyone can access the information and resources on the page, which can be found at: www.institute-of-fundraising.org.uk/boguscollections



Charity Retail Association™
The voice of charity retail



About the Institute of Fundraising

The **Institute of Fundraising** is the professional membership body for UK fundraising, working to promote the highest standards in fundraising practice and management. The **Institute of Fundraising's** mission is to support fundraisers, through leadership, representation, standards setting and education, to deliver excellent fundraising.

Committed to raising standards in fundraising practice and management, we engage with charities, Government, media, the general public and other bodies to positively influence the UK fundraising environment. We work to nurture the knowledge and standards of all those who undertake fundraising, offering an extensive range of training and networking opportunities.

The Institute represents over 5,000 fundraisers and 330 fundraising organisations, providing information and support services for Individual and Organisational members.

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Please bear in mind that the Institute does not give professional legal or accounting advice, and while care has been taken with this briefing, you should seek advice before taking any actions or incurring costs.

Appendix 4.

Office for Civil Society provisional position on appeals under the House to House Collections Act 1939

Where a local licensing authority refuses to grant a licence (or revokes a licence), there is a right of appeal to the Minister for the Cabinet Office (under section 2(4) of the House to House Collections Act 1939). Under section 2(4), local licensing authorities must set out in writing their decision including the grounds for refusal (or revocation), and must inform the applicant of their right of appeal to the Minister for the Cabinet Office. Any such appeal may be brought within 14 days of the date of the notice.

As a starting point, house to house collections appeals will be considered afresh on their merits, based on the information provided by the applicant to the local licensing authority, and any additional information provided to us by either party. This approach represents a shift, based on legal advice, from our previous position of simply reviewing whether the local licensing authority's decision was one that it could legitimately make (without consideration of the merits of the application).

In determining an appeal on its merits, we will need to consider whether to refuse the application on one of the grounds in set out in sections 2(3)(a) to (f) of the House to House Collections Act 1939 ("the 1939 Act"). These are:

(a) that the total amount likely to be applied for charitable purposes as the result of the collection (including any amount already so applied) is inadequate in proportion to the value of the proceeds likely to be received (including any proceeds already received);

(b) that remuneration which is excessive in relation to the total amount aforesaid is likely to be, or has been, retained or received out of the proceeds of the collection by any person;

(c) that the grant of a licence would be likely to facilitate the commission of an offence under section three of the Vagrancy Act 1824, or that an offence under that section has been committed in connection with the collection;

(d) that the applicant or the holder of the licence is not a fit and proper person to hold a licence by reason of the fact that he has been convicted in the United Kingdom of any of the offences specified in the Schedule to this Act, or has been convicted in any part of His Majesty's dominions of any offence conviction for which necessarily involved a finding that he acted fraudulently or dishonestly, or of an offence of a kind the commission of which would be likely to be facilitated by the grant of a licence;

(e) that the applicant or the holder of the licence, in promoting a collection in respect of which a licence has been granted to him, has failed to exercise due diligence to secure that persons authorised by him to act as collectors for the purposes of the collection were fit and proper persons, to secure compliance on the part of persons so authorised with the provisions of regulations made under this Act, or to prevent

prescribed badges or prescribed certificates of authority being obtained by persons other than persons so authorised; or

(f) that the applicant or holder of the licence has refused or neglected to furnish to the authority such information as they may have reasonably required for the purpose of informing themselves as to any of the matters specified in the foregoing paragraphs.

The most common grounds on which appeals have been received for refusals in recent years are (a), (b) and (f).

In considering the test in (a) above (“the proportionality test”), what we regard as “inadequate” will depend on the nature of the collection. We acknowledge that the costs of conducting certain types of house to house collection (e.g. of second-hand clothing) tend to be higher than other collections (e.g. of cash). In relation to collections of second-hand goods for re-sale, the value of the goods at the point of donation may be low, and it is through the collection and sorting process that value is added, resulting in a saleable product. We will therefore take into consideration reasonable costs of conducting the collection.

In considering the test in (b) above (“the excessive remuneration test”), we will consider whether remuneration or expenses paid out to any persons involved in organising or conducting the collection are at a level that is reasonable for the type of work being undertaken, taking into account that the collection is said to benefit a charitable purpose.

In most cases we will need to ask for more information from both the appellant and local licensing authority unless it has been provided as part of the license application process or when the appeal was lodged. This is likely to include a copy of the relevant commercial participator agreement where a commercial partner is undertaking the collections on behalf of a charity, copies of the collection materials (leaflets/bags), details of some previous collections – e.g. returns provided to local authorities, what steps the promoter takes to secure that collectors are fit and proper persons, whether best practice e.g. membership of the Fundraising Standards Board, mechanism for dealing with complaints etc..

Appendix 5.

The Preamble to the Charitable Uses Act 1601

The following purposes have been found to be analogous to the purposes set out in the Preamble:

- The provision of public works and services;
- The provision of public amenities;
- The protection of life and property;
- The preservation of public order;
- The defence of the realm;
- The promotion of the sound development and administration of the law;
- The social relief, resettlement and rehabilitation of persons under a disability and deprivation;
- The promotion of certain patriotic purposes;
- The promotion of health and the relief of sick, ill and disabled people;
- The care, upbringing and establishment in life of children and young people;
- The training and retraining of and finding work opportunities for unemployed people.

Appendix 6,

**House to House Collections Act 1939
House to House Collections Regulations 1947**

Model Application Form for licence to undertake Charitable Door to Door Collections.

To the [Licensing Authority] for (here insert name of [licensing area]).
In pursuance of section 2 of the House to House Collections Act 1939, I hereby apply for a licence authorising me to promote the collection, of which particulars are given below.

Date (Signed)

PARTICULARS OF COLLECTION

1. Surname of applicant (in block letters).
Other names.
2. Address of applicant.
3. Particulars of charitable purpose to which proceeds of collection are to be applied.
(Full particulars should be given including name of organisation, registered address, registered charity number (if applicable) and appropriate contact details, Furthermore, where possible, the most recent account of any charity which is to benefit should be enclosed).
4. Over what parts of the [licensing area] is it proposed that the collection should extend?
5. During what period of the year is it proposed that the collection be made?
6. Is it proposed to collect money?
7. Is it proposed to collect other property? If so, of what nature? and is it proposed to sell such property or to give it away or to use it?
8. Approximately how many persons is it proposed to authorise to act as collectors in the area of which the application is addressed?
9. Is it proposed that remuneration should be paid out of the proceeds of the collection-
(a) to collectors

(b) to other persons?

If so, at what rates and to what classes of persons?

10. Is application being made for licences for collections for the same purpose in other [licensing areas]?

If so, to what [licensing authorities]?

And, approximately, how many persons in all is it proposed to authorise to act as collectors?

11. Has the applicant, or to the knowledge of the applicant, anyone associated with the promotion of the collection, been refused a licence or order under the Act, or had a licence or order revoked?

12. Is it proposed to promote this collection in conjunction with a street collection? If so, is it desired that the accounts of this collection should be combined wholly or in part with the account of the street collection?

13. If the collection is for a War Charity, state if such charity has been registered or exempted from registration under the War Charities Act 1940, and give name of registration authority and date of registration or exemption.

ⁱ Remunerate (definition) - to pay, recompense, or reward for work, trouble, etc. Source (www.dictionary.com).



Arguments around use of percentages

- When it comes to how much money goes to charity for goods collections, there is a difference between it going to the charity and going to 'charitable purposes'.
- Fundraising or trading (collections are both) are not charitable purposes. No matter who undertakes the collection, there will be costs that need to be considered and deducted.
- These costs could include licence application, organising collections, printing and distributing bags,, vans, petrol, sorting and distributing the goods. If done by volunteers, there will still be costs – recruiting, training, expenses, co-ordination, administration etc.
- These costs can vary massively depending on what collection method is used, how many collections, locations, issues of theft etc, and so should not be relied upon as the primary method of deciding if a collection is appropriate or in the best interests of the charity.
- Example figures from charities with shops shows how much variation there is:
- 2010 – charity A generated £116,337,000 through retail and costs were £94,238,000 – this means around 81% is used on costs and 19% goes to charitable purposes.
- 2009 – charity B generated 23,406,000 through shops and costs were £24,411,000 – this means they actually lost £1million on shops.

Implications of % system - processes

- Local Authorities need to ensure that rules around costs and amounts going to charitable purposes are applied equally to charities doing their own collections (through a trading arm or not) and also charities using commercial collectors.
- This would require charities to break out the costs of the activity and say what is the cost and what is the % going to 'charitable purposes'.
- This would place an extra burden on charities, as they would have to break down all the figures on applications. This is at a time when charities have less resources than ever.
- It would also involve Licencing Officers checking all paperwork and going back and forth with the charities to ensure they have all the figures and finding out what is put as a cost and what is not. This is extra work on licencing officers, again, at a time when Local Authorities are having their funding cut and have more work to do, with far fewer resources.

Implications – challenges to system

- This would open local authorities up to Freedom of Information requests (Fol), to ensure the system was being operated evenly – again, a huge drain on income and resources.
- If any disparity was found, the Fol information could be used to start a legal challenge or judicial review. Again, this is a massive drain on resources.

- If licences are refused, more organisations will look to the Minister to appeal this process. This would involve considerable resources of time, money and expertise preparing a case if needed.
- Although the current system only requires looking at the refusal, there is now precedent for the refusal to be overturned (Clothes Aid), which means the process of refusing licence was a wasted resource.
- The Cabinet Office is looking at reviewing its appeal process as it currently does not consider wider circumstances than why the licence was refused. If this system is widened, it means the Minister can consider more circumstances and again, would involve even further resources and give more grounds for refusals to be overturned.

Reason behind percentages:

- We understand that licencing officers are using percentages to:
 - a) Ensure that enough money goes to charity and people know the amount.
 - b) Prevent illegal collection activity from occurring.
- As mentioned, relying on a minimum % going to charity is not the most efficient use of anyone's resources.
- Further reasons are given below as to why a % method does not work:

A – Ensure that enough money goes to charity and people know that amount

- There are already two mechanisms that ensure the money goes to the charity.
- Firstly, charities already ensure that a satisfactory amount of money from commercial collections goes to their charity. Trustees have a legal duty to ensure they act in the best interests of the charity, including when they enter into contracts with businesses.
- Secondly, the amounts going to charity from commercial collections are shown on collection materials, so the public have knowledge of the charity share and can decide if they want to give.

B – Prevent illegal collection activity

- The majority of bogus collectors do not bother to get a licence.
- They either pretend to be legitimate and that they are benefitting and collect without licences, or go out and steal bags that have been left out for genuine charities.
- This means they do not engage with the licencing process and so putting in a % to stop them getting licences is irrelevant.
- However, the charity sector is committed to abolishing bogus collectors and current initiatives include: guidance and education to public, Government round table, awareness raising, working with police, working with trading standards.

Alternative proposal – declaration system

- A solution to this is to have a declaration system to form part of licence applications.
- As well as the licence form, this would entail having a declaration signed by the charity stating that the charity has performed due diligence and are happy with the remuneration going to charitable objects.

- For charities using commercial collectors, this would state that they are happy with the amount they are getting.
- For charities that do collections themselves, this would state that they feel that the balance has been achieved between costs and the amount going to charitable objects.
- Streamlines the process and effective use of resources – means licencing officers fulfilling obligation to ensure a good amount was going charity without overruling the decision of the charity.

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Rotherham MBC
SEX ESTABLISHMENT LICENSING POLICY
June 2019

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1. Introduction

- 1.1. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009, provides for local authorities to adopt a policy and standard conditions relating to the regulation of:
 - sexual entertainment venues
 - sex shops
 - sex cinemas
- 1.2. Rotherham Borough Council (the Council) adopted the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 on 22nd May 2019, with effect from 1st July 2019.
- 1.3. This policy sets out the Councils approach to the regulation of the premises detailed in paragraph 1.1 above under the provisions of the 1982 Act.
- 1.4. This policy should be read with reference to the statutory Statement of Licensing Policy published under the Licensing Act 2003.
- 1.5. A review of this policy will commence one year after its introduction. It will be then be reviewed on a three yearly basis.
- 1.6. Interpretations can be found at Appendix A.

2. Purpose and Scope

- 2.1. This policy is concerned with the regulation of sex establishments as defined by the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 (the Act), namely
 - sexual entertainment venues;
 - sex shops; and
 - sex cinemas
- 2.2. The full legal definition of a sexual entertainment venue, sex cinema and sex shop can be found within sections 2, 2A, 3 and 4 of the Act.
- 2.3. The aim of this policy is to ensure that sex establishments operate within the authority area in a safe, fair and discreet manner, and do not negatively affect residents, visitors to the area or the character, or economic development of the Borough. The policy is written taking into account the principles laid out within Rotherham's Children and Young People's Plan (2016 to 2019), the Rotherham Safeguarding Adults Board Strategy (2016 to 2019) and the Safer Rother Partnership Plan (2018-21).
- 2.4. The Council is mindful of the possible concerns of the local community and that there may be conflict between the wishes of an applicant in respect of a licence and those who object to such applications. The aim of this policy is to provide guidance for prospective applicants, existing licence holders, those who may wish to object to an application and Members of the Licensing Committee when making a determination on an application.
- 2.5. The Policy also identifies the relevant localities where sex establishments would not be considered appropriate, and the number of sex establishments that the Council considers appropriate in a particular locality. The Policy also sets standard conditions to address advertising and the external appearance of premises, crime and disorder safeguards, and staff welfare issues.
- 2.6. While each application will be dealt with on its own merits, this policy gives prospective applicants an early indication as to whether their application is likely to be granted or not and creates a presumption that any application for a sex establishment outside of the town centre area and any application for a sex entertainment venue in the town centre area will normally be refused. It also provides prospective applicants with details of what is expected of them should an application be made.
- 2.7. The Council will impose conditions where necessary to promote responsible licensed activity and will use effective enforcement to address premises where there are problems, in partnership with key agencies and bodies such as:
 - South Yorkshire Police
 - South Yorkshire Fire & Rescue Service
 - Safer Rotherham Partnership

- 2.8. The Council will keep the policy under constant review and make such revisions it considers appropriate, in the light of new or amended legislation.

3. Public Consultation

- 3.1. The Council undertook full public consultation about the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009, and proposals for a Sex Establishments Licensing Policy between 19th December 2018 and 20th February 2019. The consultation involved (amongst others) the general public, statutory authorities, the users and managers of those sensitive locations identified, religious groups, community and voluntary groups, residents living near to premises, workers within the industry and their representatives, as well as industry representatives.
- 3.2. 422 responses were received in total. Two-thirds (68%) of respondents were residents of the Borough (289 respondents), with the remainder being: individuals living outside of the Borough (86 respondents), business owners (15 respondents), workers in the industry (7 respondents), Religious organisations (8 respondents), Charitable groups (7 respondents), and Women's groups (16 respondents).
- 3.3. The consultation asked residents about the adoption of a Sex Establishments Policy, and about the localities where it would not be appropriate for each type of such establishments to be located. The following results reference the percentage of the people that responded to the question. The highest figure is highlighted. Where there are two higher results within a percentage point, both are highlighted. Please note all percentages are rounded up.

Adoption of a Sex Establishments Policy

| | All Respondents | | Rotherham Residents | |
|---|-------------------------|-------------------------------|-------------------------|-------------------------------|
| | Agree or Strongly Agree | Disagree or Strongly Disagree | Agree or Strongly Agree | Disagree or Strongly Disagree |
| The Council should adopt a specific policy to regulate and licence sex establishments | 77% | 17% | 75% | 19% |

- 3.4. 77% of respondents agreed or strongly agreed that the Council should adopt a policy to regulate and licence Sex Establishments. 75% of residents of the Borough agreed or strongly agreed. Whilst 53% of businesses agreed that a policy should be adopted 30% disagreed or strongly disagreed. Of those working in the industry 43% agreed or strongly agreed, and 29% disagreed or strongly disagreed.

Sexual Entertainment Venues – Appropriate Localities

| | | All Respondents | | Rotherham Residents | |
|--|---|-------------------------|-------------------------------|-------------------------|-------------------------------|
| | | Agree or Strongly Agree | Disagree or Strongly Disagree | Agree or Strongly Agree | Disagree or Strongly Disagree |
| It would not be acceptable to locate a lap dancing, pole dancing or similar club in: | A residential area | 75% | 19% | 71% | 23% |
| | A rural area, including for example where an industrial unit may already be located | 58% | 28% | 47% | 35% |
| | Rotherham town centre | 66% | 28% | 59% | 34% |
| | Built up areas like other town and village centres in the borough | 69% | 24% | 64% | 28% |
| | An industrial area | 55% | 29% | 44% | 36% |
| It would not be acceptable to have a lap dancing club in any locality in Rotherham | | 62% | 32% | 54% | 38% |

- 3.5. A clear majority of respondents agreed or strongly agreed that it would not be acceptable to locate a sexual entertainment venue in any of the types of locality described. This ranged from 75% of respondents agreeing or strongly agreeing that a residential area would not be appropriate, to 55% of respondents agreeing or strongly agreeing that an industrial area would not be appropriate. There was some variation in terms of particular respondents, e.g. workers in the industry responded broadly disagreed that any of the areas would be inappropriate for a sexual entertainment venue, whereas religious organisations, charitable and women's groups strongly agreed that sexual entertainment venues should not be located in any of the identified areas.
- 3.6. A majority of respondents (62%) and of residents (54%) agreed or strongly agreed that it would not be acceptable to have a lap dancing club in any locality in Rotherham.

Sexual Entertainment Venues – Sensitive Locations

| | | All Respondents | | Rotherham Residents | |
|---|---|-------------------------|-------------------------------|-------------------------|-------------------------------|
| | | Agree or Strongly Agree | Disagree or Strongly Disagree | Agree or Strongly Agree | Disagree or Strongly Disagree |
| It would not be acceptable to locate a lap dancing, pole dancing or similar club near to: | People's homes | 84% | 10% | 82% | 12% |
| | Premises used by charities | 74% | 14% | 70% | 16% |
| | Office and other workplaces | 69% | 18% | 61% | 22% |
| | Places of worship | 78% | 14% | 73% | 17% |
| | Parks and play areas | 86% | 9% | 84% | 11% |
| | Family leisure facilities such as cinemas, theatres and concert halls | 81% | 13% | 78% | 15% |
| | Women's refuge facilities | 80% | 11% | 77% | 13% |
| | Youth facilities | 83% | 9% | 81% | 11% |
| | Places used for celebration or commemoration | 75% | 13% | 71% | 15% |
| | Schools and other education establishments | 85% | 8% | 83% | 10% |
| | Cultural leisure facilities such as libraries and museums | 75% | 15% | 70% | 18% |
| | Historic buildings | 67% | 19% | 60% | 23% |
| | Civic and other public buildings | 70% | 20% | 63% | 23% |
| Retail shopping areas | 72% | 17% | 67% | 19% | |

3.7. The majority of respondents agreed or strongly disagreed that sexual entertainment venues should not be located near to any of the identified sensitive locations. This ranged from over 85% of respondents agreeing or strongly agreeing that sexual entertainment venues should not be located near to Parks or Play areas, or schools, to 67% agreeing or strongly agreeing that they should not be located close to historic buildings. These results are mirrored in those of residents. Whilst a lower proportion of businesses agreed or

strongly agreed, the majority agreed or strongly agreed that it would not be appropriate for sexual entertainment venues to be located near to any sensitive locations, other than near to religious establishments (where 47% agreed or strongly agreed, and 20% disagreed or strongly disagreed).

Sex Cinemas – Appropriate Localities

| | | All Respondents | | Rotherham Residents | |
|---|---|-------------------------|-------------------------------|-------------------------|-------------------------------|
| | | Agree or Strongly Agree | Disagree or Strongly Disagree | Agree or Strongly Agree | Disagree or Strongly Disagree |
| It would not be acceptable to locate a sex cinema in: | A residential area | 86% | 9% | 83% | 12% |
| | A rural area, including for example where an industrial unit may already be located | 64% | 23% | 55% | 30% |
| | Rotherham town centre | 69% | 22% | 62% | 25% |
| | Built up areas like other town and village centres in the borough | 78% | 15% | 75% | 17% |
| | An industrial area | 60% | 25% | 50% | 32% |
| It would not be acceptable to locate a sex cinema anywhere in Rotherham | | 66% | 27% | 57% | 33% |

- 3.8. The majority of respondents in all categories, aside from workers in the industry, agreed or strongly agreed that Sex Cinemas should not be located in any of the localities described. 66% of respondents agreed or strongly agreed that it would not be appropriate to locate a Sex Cinema in any locality in Rotherham.

Sex Cinemas – Sensitive Locations

| | | All Respondents | | Rotherham Residents | |
|--|---|-------------------------|-------------------------------|-------------------------|-------------------------------|
| | | Agree or Strongly Agree | Disagree or Strongly Disagree | Agree or Strongly Agree | Disagree or Strongly Disagree |
| It would not be acceptable to locate a sex cinema near to: | People's homes | 84% | 9% | 82% | 12% |
| | Premises used by charities | 76% | 13% | 72% | 16% |
| | Office and other workplaces | 71% | 17% | 65% | 20% |
| | Places of worship | 78% | 13% | 73% | 15% |
| | Parks and play areas | 88% | 7% | 86% | 9% |
| | Family leisure facilities such as cinemas, theatres and concert halls | 81% | 12% | 78% | 15% |
| | Women's refuge facilities | 80% | 11% | 76% | 13% |
| | Youth facilities | 85% | 8% | 83% | 11% |
| | Places used for celebration or commemoration | 75% | 12% | 72% | 14% |
| | Schools and other education establishments | 86% | 8% | 85% | 10% |
| | Cultural leisure facilities such as libraries and museums | 75% | 14% | 71% | 17% |
| | Historic buildings | 69% | 16% | 62% | 19% |
| | Civic and other public buildings | 70% | 17% | 64% | 20% |
| Retail shopping areas | 74% | 16% | 70% | 19% | |

3.9. The results of the consultation around sensitive locations for sex cinemas broadly mirrored those of sexual entertainment venues.

Sex Shops – Appropriate Localities

| | | All Respondents | | Rotherham Residents | |
|---|---|-------------------------|-------------------------------|-------------------------|-------------------------------|
| | | Agree or Strongly Agree | Disagree or Strongly Disagree | Agree or Strongly Agree | Disagree or Strongly Disagree |
| It would not be acceptable to locate a sex shop in: | A residential area | 83% | 10% | 80% | 12% |
| | A rural area, including for example where an industrial unit may already be located | 58% | 26% | 49% | 32% |
| | Rotherham town centre | 64% | 24% | 57% | 29% |
| | Built up areas like other town and village centres in the borough | 71% | 18% | 65% | 20% |
| | An industrial area | 51% | 30% | 39% | 37% |
| It would not be acceptable to locate a sex shop anywhere in Rotherham | | 55% | 32% | 46% | 39% |

3.10. All respondents agreed or strongly agreed that it would not be appropriate to locate a sex shop in a residential area, or a town or village centre. However, responses in terms of industrial areas were less equivocal, with 51% of respondents agreeing or strongly agreeing, and 39% of residents agreeing or strongly agreeing.

3.11. 55% of respondents and 46% of residents agreed or strongly agreed that sex shops should not be located anywhere in Rotherham.

Sex Shops – Sensitive Locations

| | | All Respondents | | Rotherham Residents | |
|--|---|-------------------------|-------------------------------|-------------------------|-------------------------------|
| | | Agree or Strongly Agree | Disagree or Strongly Disagree | Agree or Strongly Agree | Disagree or Strongly Disagree |
| It would not be acceptable to locate a sex shop near to: | People's homes | 82% | 10% | 79% | 11% |
| | Premises used by charities | 72% | 16% | 67% | 19% |
| | Office and other workplaces | 66% | 20% | 58% | 24% |
| | Places of worship | 75% | 14% | 71% | 16% |
| | Parks and play areas | 85% | 9% | 82% | 10% |
| | Family leisure facilities such as cinemas, theatres and concert halls | 79% | 12% | 76% | 14% |
| | Women's refuge facilities | 77% | 12% | 73% | 15% |
| | Youth facilities | 83% | 9% | 80% | 11% |
| | Places used for celebration or commemoration | 74% | 14% | 70% | 16% |
| | Schools and other education establishments | 86% | 8% | 84% | 10% |
| | Cultural leisure facilities such as libraries and museums | 73% | 15% | 67% | 18% |
| | Historic buildings | 66% | 18% | 58% | 22% |
| | Civic and other public buildings | 67% | 19% | 60% | 22% |
| Retail shopping areas | 68% | 19% | 61% | 23% | |

3.12. When asked about sensitive locations, responses were remarkably similar to those for sexual entertainment venues and sex cinemas. The majority of respondents (and the subset of residents) agreed or strongly agreed that sex shops should not be located near to any of the sensitive locations identified.

Workers' Rights

| | All Respondents | | Rotherham Residents | |
|---|-------------------------|-------------------------------|-------------------------|-------------------------------|
| | Agree or Strongly Agree | Disagree or Strongly Disagree | Agree or Strongly Agree | Disagree or Strongly Disagree |
| The Council should set conditions that protect the health and welfare of workers within the sexual entertainment venue industry | 84% | 9% | 82% | 10% |

3.13. There was strong support across all respondents that the Council should set conditions that protect the health and welfare of workers within sexual entertainment venues.

3.14. A full analysis of the consultation results is available on request.

4. General Principles

4.1. In determining licensing applications the Council will treat each application on an individual basis, on its own merits, taking into account this policy, the guidance issued by the Home Office and the Act.

4.2. A decision to refuse the licence application will not be made on moral grounds or that the establishment may cause offence.

Mandatory grounds for the refusal of an application

4.3. Mandatory grounds for the refusal of an application for a sex establishment are that the applicant:

- is under the age of 18;
- is for the time being disqualified from holding a sex establishment licence;
- is not a body corporate, and is not resident or has not been resident in an EEA state for six months immediately preceding the date of the application;
- is a body corporate which is not incorporated in an EEA state;
- has in the period of 12 months preceding the date of the application 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.

Discretionary grounds for the refusal of an application

4.4. Discretionary ground for the refusal of an application for a sex establishment are that:

- the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- if the licence were to be granted, 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 of such a licence if he made the application himself;
- the number of sex establishments, or sex establishment of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality. Nil may be an “appropriate number” where the character of the area is considered to be unsuitable for the siting of a sex establishment.
- granting of a licence would be inappropriate, having regard:
 - to the character of the relevant locality;
 - to the use to which any premises in the vicinity are put;
 - to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Suitability of applicant

4.5. When considering the suitability of the applicant to hold a licence the Council will take into account such matters as it considers to be relevant including but not limited to whether the applicant:

- is honest;
- is qualified by experience to run the type of sex establishment in question;
- has a clear understanding of the conditions that may be attached to the licence;
- has no unspent conviction of a nature that deem him/her unsuitable, for example (but not limited to) theft, drug offences, sexual offences, violent offences, or prostitution;
- a management structure is in place which delivers compliance with the operating conditions, e.g. through managerial competence, presence, a credible management structure, enforcement of rules internally, a viable business plan and policies for welfare of dancer / performers / workers;
- will act in the best interests of dancer / performers / workers, e.g. the facilities they enjoy, how they are protected and how and by who their physical and psychological welfare is monitored;
- can be relied upon to protect the public, e.g. transparent charging, freedom from solicitation;
- can show a track record of management of compliant premises, or that he/she will employ individuals who have such a track record.

- 4.6. The Council will require the applicant to identify the proposed manager or beneficiary of the business (along with any changes in the manager or beneficiary once the licence is issued). In considering the suitability of these persons the Council will apply the principles at 4.5 of this policy.

Appropriate numbers and localities

- 4.7. There is provision within the Act which enables the Council to impose a numerical control on the number of sex establishments in a particular locality. The control applies not only to the number of sex establishments overall, but also to the number of each kind of premises.
- 4.8. The Council may refuse a licence on the grounds that the number of licences of that type is equal to or exceeds the number which the authority considers is appropriate for that locality. Nil may be an “appropriate number” where the character of the area is considered to be unsuitable for the siting of a sex establishment.
- 4.9. The Council has taken account of its own corporate strategies and priorities as represented by Rotherham’s Council Plan, Children and Young People’s Plan, the Rotherham Safeguarding Adults Board Strategy and the Safer Rother Partnership Plan, of the legal context, and public consultation in determining its policy in this regard.

Sexual Entertainment Venues

- 4.10. It is the Council’s belief that Sexual Entertainment Venues are not in-keeping with a culturally rich and diverse Borough. In particular Sexual Entertainment Venues tend not to be inclusive, appeal only to a narrow sector of the community and are unlikely to enhance the cultural or child friendly reputation of the Borough.
- 4.11. The council has had due regard to the need to advance equality of opportunity between men and women, under its Public Sector Equality Duty. It considers that the presence of Sexual Entertainment Venues in any locality of Rotherham will not advance the equality of opportunity of women workers or residents. The council therefore believes that, on balance, in gender equality terms, its policy is both supportable and correct.
- 4.12. The consultation showed that a majority of all respondents and of Rotherham residents considered that Sexual Entertainment Venues would not be appropriate in:
- A residential area;
 - A rural area, including for example where an industrial unit may already be located;
 - Rotherham town centre;
 - Built up areas like other town and village centres in the borough.
- 4.13. A majority of all respondents (55%) considered that Sexual Entertainment Venues would not be appropriate in an industrial area, with 46% of Rotherham residents agreeing or strongly agreeing. 36% of residents disagreed or strongly disagreed that industrial areas would not be appropriate locations for Sexual Entertainment Venues.

4.14. However, a significant majority of respondents (62%) agreed or strongly agreed that it would not be acceptable to have a lap dancing club in any locality in Rotherham. The Council's Policy is therefore that there is a presumption against licensing sexual entertainment venues in any of these types of areas.

4.15. In addition the consultation revealed that a significant majority of all respondents and Rotherham residents consider that Sexual Entertainment Venues are inappropriate in the vicinity of:

- People's homes,
- Premises used by charities,
- Offices and other workplaces,
- Places of worship,
- Parks and play areas,
- Family leisure facilities such as cinemas, theatres and concert halls,
- Women's refuge facilities,
- Youth facilities,
- Places used for celebration or commemoration,
- Schools and other education establishments,
- Cultural leisure facilities such as libraries and museums,
- Historic buildings,
- Civic and other public buildings, or
- Retail shopping areas.

4.16. The Council's Policy is therefore that there is a presumption against licensing Sexual Entertainment Venues in proximity to any of these sensitive locations.

4.17. In considering each of its Ward areas the Council has considered if there are any localities which would fall outside of the areas and locations described in 4.12, 4.13 and 4.15 above. Whilst the Council would still be required to consider applications when they arise, on the basis of this assessment, it is therefore the Council's Policy that there is no locality in the Borough where it would be appropriate for Sex Entertainment Venues to be located. Accordingly the appropriate number of Sexual Entertainment Venues in each Ward of the Borough is nil.

Sex Cinemas

4.18. The consultation showed that a majority of all respondents and Rotherham residents considered that Sex Cinemas would not be appropriate in:

- A residential area;
- A rural area, including for example where an industrial unit may already be located;
- Rotherham town centre;
- Built up areas like other town and village centres in the borough;
- An industrial area.

4.19. A majority of respondents (66%) and of Rotherham residents (57%) agreed or strongly agreed that it would not be acceptable to have a Sex Cinema in any locality in Rotherham. The Council's Policy is therefore that there is a presumption against licensing Sex Cinemas in any of these types of areas.

4.20. In addition the consultation revealed that a significant majority of respondents and Rotherham residents consider that Sex Cinemas are inappropriate in the vicinity of:

- People's homes,
- Premises used by charities,
- Offices and other workplaces,
- Places of worship,
- Parks and play areas,
- Family leisure facilities such as cinemas, theatres and concert halls,
- Women's refuge facilities,
- Youth facilities,
- Places used for celebration or commemoration,
- Schools and other education establishments,
- Cultural leisure facilities such as libraries and museums,
- Historic buildings,
- Civic and other public buildings, or
- Retail shopping areas.

4.21. The Council's Policy is therefore that there is a presumption against licensing Sex Cinemas in proximity to any of these sensitive locations.

4.22. In considering each of its Wards the Council has considered if there are any localities which would fall outside of the areas and locations described in 4.18 and 4.20 above. Whilst the Council would still be required to consider applications when they arise, on the basis of this assessment, it is therefore the Council's Policy that there is no locality in the Borough where it would be appropriate for a Sex Cinema to be located. Accordingly the appropriate number of Sex Cinemas in each Ward of the Borough is nil.

Sex Shops

4.23. The consultation showed that a majority of respondents and Rotherham residents considered that Sex Shops would not be appropriate in:

- A residential area;
- A rural area, including for example where an industrial unit may already be located;
- Rotherham town centre;
- Built up areas like other town and village centres in the borough.

4.24. Whilst a majority of all respondents (51%) considered that Sex Shops would not be appropriate in an industrial area, only 39% of Rotherham residents agreed or strongly agreed. Almost the same proportion (37%) of residents disagreed or strongly disagreed that industrial areas would not be appropriate locations for Sex Shops. There is not therefore clear support for a presumption against Sex Shops in Industrial Areas.

4.25. A majority of all respondents (55%) agreed or strongly agreed that it would not be acceptable to have a Sex Shop in any locality in Rotherham, but a minority of Rotherham residents (46%) agreed or strongly agreed that it would not be acceptable to have a Sex Shop in any locality in Rotherham. Again, there is therefore not clear support for a presumption against Sex Shops in any part of Rotherham.

4.26. Given this, the Council's Policy is therefore that there is a presumption against licensing Sex Shops in any of these types of areas, aside from Industrial Areas.

4.27. In addition the consultation revealed that a majority of residents in Rotherham consider that Sex Shops are inappropriate in the vicinity of:

- People's homes,
- Premises used by charities,
- Offices and other workplaces,
- Places of worship,
- Parks and play areas,
- Family leisure facilities such as cinemas, theatres and concert halls,
- Women's refuge facilities,
- Youth facilities,
- Places used for celebration or commemoration,
- Schools and other education establishments,
- Cultural leisure facilities such as libraries and museums,
- Historic buildings,

- Civic and other public buildings, or
- Retail shopping areas.

4.28. The Council's Policy is therefore that there is a presumption against licensing Sex Shops in proximity to any of these sensitive locations.

4.29. The council has not determined a limit on numbers in each locality in relation to Sex Shops. These applications will be dealt with on a case by case basis, on the basis of the above criteria.

Links to other Legislation

4.30. The Council will consider and have regards to the following legislation when applications are determined:

a) Crime and Disorder Act 1998

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.

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 is reasonable can to prevent them.

b) Equality Act 2010

Under the Equality Act 2010, people are not allowed to discriminate, harass or victimise anyone because of the following 'protected characteristics':

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion and belief
- Sex
- Sexual orientation

The Equality Act includes a Public Sector Equality Duty. This says we must show 'due regard' to:

- eliminating discrimination, harassment and victimisation advancing equality of opportunity;
- fostering good relations between people who share a protected characteristic;
- fostering good relations between people who have a protected characteristic and those who don't.

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.

Due regard will therefore be given to the determination of licences and the attaching of conditions to ensure the Council delivers on the Public Sector Equality Duty.

c) Human Rights Act 1998

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 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 1 of the first protocol that every person is entitled to the peaceful enjoyment of his or her possessions, including for example a licence.

d) The Provision of Services Regulations 2009

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.

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

e) Any other relevant current or future legislation.

Planning

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

4.32. In general, all premises which are the subject of an application, should have the benefit of planning permission, or be deemed permitted development. The onus will be on the applicant to demonstrate that planning permission has been granted or that the premises have the benefit of permitted development rights.

4.33. In addition, all new developments and premises which have been subject to works that require an application covered by Building Regulations should have building control approval in the form of a Building Regulations Completion Certificate. The onuses will be on the applicant to demonstrate that any such works have been approved by a building control body.

4.34. Any decision on a licence application will not consider whether any decision to grant or refuse planning permission or building consent was lawful and correct.

Advertising

4.35. 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 the Council (see Appendix B - Standard Conditions). Any unsolicited 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, or be of a detriment to the amenity or character of the local vicinity, and must be approved by the Council in writing. This approval will be sought at a sub-committee hearing. Applicants will be entitled to attend the hearing. Please contact the Licensing Section for further information on how to submit changes to advertising material and external appearance.

Staff Training

4.36. The Council requires that all persons employed on licensed premises are trained and made aware of their responsibilities in relation to the Act, especially the offences under the Act, and the conditions of the licence.

4.37. Licensed premises will be required to document training undertaken by staff. Such records will be kept for a minimum of one year and will be made available for inspection on request by an authorised officer or the police.

Prohibition on the practice of fining

4.38. The Council is aware that in some sexual entertainment venues it is the usual practice of some businesses to fine dancer / performers for misdemeanours such as chewing gum, wearing inappropriate clothing or being late for a shift. The practice of fining can lead to an air of mistrust and resentment in the work place. More importantly the Council is aware that in a majority of cases of fining that have been noted in premises the (predominantly male) management fine female dancer / performers; however they do not fine bar staff or door staff.

4.39. Therefore, for reasons of gender inequality, a standard condition has been imposed on all new and renewed licences to prohibit the practice of fining.

Whistleblowing Policy

4.40. The Council is aware of the potential for workers within sexual entertainment venues to lack the confidence to report any breaches of licensing conditions or other issues to management or the Licensing Authority.

4.41. Therefore a standard condition has been imposed requiring a code of conduct to be in

place that clearly sets out the process for workers to report any concerns anonymously to the manager of the venue, and/or the Licensing Authority (a 'whistleblowing policy').

Exemptions

4.42. Under the Act 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.

4.43. This exemption does not apply to sex shops or sex cinemas.

5. Application procedure

5.1. Applications must be made to the Council in the form prescribed, which is available from the Licensing Section.

5.2. The applicants / operators suitability will be checked before a licence is granted. The suitability of the applicant/operator is important to ensure that the interests of the public are protected. The Council will use the methods detailed below to ensure that the proposed licence holder and 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 convictions of a nature that deem him/her unsuitable, for example (but not limited to) theft, drug offences, sexual offences, violent offences, or prostitution

5.3. Applicant / operator suitability checks may be achieved by the following means:

- application form
- criminal record check
- personal interview
- information and/or intelligence relating to any previous licenses held
- accreditation

5.4. On receipt of the application it will be sent to South Yorkshire Police who may conduct a check. Applicants/operators will be asked, as a minimum, to provide basic Disclosure and Barring Service checks, to support their application. This may be supplemented by attendance at an interview if deemed appropriate.

- 5.5. Applications for sexual entertainment venue or sex establishment licences will also show that there are clear policies and codes of conduct in place, to protect staff and the interests of customers, in relation to a:
- workers' welfare policy including clear guidance as to the process for workers to report any concerns anonymously to the manager of the venue, and/or the Licensing Authority (a 'whistleblowing policy').
 - code of conduct for workers on the premises.
 - code of conduct for customers.
 - pricing policy.
- 5.6. These criteria will be taken into account when the Council determine the licence. Non-compliance with one or more of the criteria will not necessarily exclude the operator from holding a licence, providing the applicant is able to prove to the Council that the interest of the public is protected.
- 5.7. Checks/enquiries may also be made with regard to 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.
- 5.8. These checks/enquiries may be made via South Yorkshire Police, Companies House, personal interview or applicants may be asked to provide business records.

Fees

- 5.9. The fee must be submitted as part of the application. The fee is based on the recovery of costs incurred by the Council in determining the application.

Plans

- 5.10. The applicant must submit an appropriate number of plans / diagrams that will allow the identification of:
- the locality of the premises and the proximity of any sensitive premises,
 - the external footprint of the premises,
 - the internal layout of the premises (to include areas where licensable activity will take place, staff areas, changing rooms, welfare facilities, means of access and egress, etc.)

Notices

- 5.11. It is a legal requirement that the applicant must advertise the application in the following ways:
- publish an advertisement in a local newspaper within 7 days of the application being submitted to the Council
 - display a notice of the application on or near the premises for 21 consecutive days
 - send a copy of the notice of application to the Chief Officer of Police for South

Yorkshire within 7 days of the application being submitted to the Council

5.12. Proof that the applicant has advertised the application fully will be required. The Council recommends as a minimum that the occupiers of any nearby properties are notified of the details of any proposed applications in relation to a premises. All new applications will be publicised on the Council's website.

Objections

5.13. Anyone can object to an application for a sex establishment. Objection should be received by the Council no later than 28 days after the date that the application was received by the Council. Objections can be on any matter but should not be based on moral grounds/values. Appropriate weight will be given to objections which relate to the purpose of the legislation which is the control of sex establishments.

5.14. The Council will notify the applicant in writing of the general terms of any objection it receives within the 28 days of the application. Objectors will, however, remain anonymous and efforts will be made to redact the contents of the objections so the objector's identity remains anonymous. If the objectors wish for their details to be released to the applicant they should make this clear in their objection.

Hearings - decision making process

5.15. It is the Council's practice to provide notice of committees and sub-committee hearings to all interested parties (applicants and objectors) five days before the hearing as laid down in the Local Government Act 1972. This notice will provide the date and time of the hearing, the procedure for the hearing, and will require the addressee to confirm their attendance and the attendance of any witnesses they may wish to call. The hearing will take place in public except where the public interest requires otherwise.

5.16. In determining licence applications under the Act the Council will take into consideration the application before it, any objections received as well as local knowledge including local issues and cultural sensitivities.

5.17. The decision to refuse or revoke a licence can be made by the Licensing Board, sub-committee or Officers. Any decision to refuse or revoke a licence will be accompanied by clear reasons for the decision.

5.18. Where possible a decision will be given 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 further consideration of the case and in such circumstances the decision and reasons will be issued in writing to all parties.

Conditions

5.19. The Council will impose standard conditions on all licences. However, if deemed necessary, the Council may add to, change or replace the standard conditions with

conditions that are relevant to the application. The standard conditions can be found at Appendix B.

5.20. Through the standard conditions the Council seeks to ensure that sex establishments are well managed and supervised, restrict sexual entertainment activities and the manner in which they are permitted to be provided, protect performers and workers, protect customers and control the impact that the premises has in relation to the general public and locality.

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

5.22. Where it is considered appropriate the Council may attach conditions, in addition to the standard conditions, to a licence in the individual circumstances of an application.

Right of appeal

5.23. Only the applicant has the right to appeal the Council's decision to the Magistrate's Court and only on limited grounds, within 21 days of written reasons of decision. There is no right to appeal for objectors or statutory authorities. Further information can be found at Section 27 of the Act.

Term of licence

5.24. A sex establishment licence shall remain in force for a maximum period of one year. The authority may grant a shorter licence period if it thinks fit. A licence may be brought to an early end by being surrendered or revoked.

Renewal / transfer

5.25. The process for applying for a renewal or transfer of the licence is the same as when applying for a new licence.

5.26. Applications for the renewal of a licence must be made prior to the date of expiry. The licence is deemed to continue until the application is withdrawn by the applicant or determined by the licensing authority.

5.27. The previous conduct / history of an applicant / licence holder (insofar as it relates to licensable activities or the impact thereon) will be taken into consideration when assessing a renewal or transfer application.

Variation

5.28. A licence holder can apply to vary the terms, conditions or restrictions of a licence at any time. The 1982 Act does not set out procedural requirements in relation to variations, therefore it has been decided that the variation application process in Rotherham will be the same as the grant application process; with the exception that a plan of the premises

need not be provided (unless the variation relates to structural alterations).

Revocation

- 5.29. The Council may revoke the sex establishment licence if information is received in relation to either the mandatory grounds, detailed at paragraph 4.3, or the first two of the discretionary grounds, details at paragraph 4.4.
- 5.30. Should the Council consider revocation of the licence to be appropriate, the licensee will be given an opportunity to appear before and be heard by the Licensing Board or Sub-Committee.
- 5.31. The licensee will be given a statement in writing of the reasons for revocation within seven days of the requirement being made.
- 5.32. The revocation will take effect once the appeal period referred to in section 5.24 above has expired, or if an appeal is lodged after the determination or abandonment of the appeal.

Waiver

- 5.33. Provisions within the Act allow licensing authorities to waive the need for a licence. 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, in border line cases, to correct errors or for minor or temporary events.
- 5.34. The Council would only waive the need for a licence where activity is low risk and/or temporary. However, a waiver will not be considered in the cases where a licence is reasonable and appropriate or where there is public interest.
- 5.35. The application for a waiver uses the same form as an application for a new licence, this should be accompanied by a letter which describes the circumstances under which the need for a licence should be waived. There is no requirement to advertise the application. There is a fee. Applicants should contact the Licensing Section before making their application.
- 5.36. The decision to waive the need for a licence will be taken at a licensing sub-committee hearing and a Notice of Waiver will be issued in due course.
- 5.37. 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.

Interpretations

Advertisement means 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.

Authorised officer means an officer employed by Rotherham Metropolitan Borough Council and authorised by the Council to act in accordance with provisions of the Local Government (Miscellaneous Provisions) Act 1982.

The Council means Rotherham Metropolitan Borough Council.

Display of nudity means:

- (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.

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

Licence means any sex establishment licence that the Council can grant under the Local Government (Miscellaneous Provisions) Act 1982.

Licensee means the holder of a sex establishment licence.

Licensed area means the part of the premises marked on the plan where licensable activities are to take place.

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

Relevant entertainment means 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).

Responsible person means 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.

Sex shop means 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 the connection with, or for the purpose of stimulating or encouraging sexual activity.

Sexual entertainment venue means any premises at which relevant entertainment is provided before a live audience, directly or indirectly for the financial gain of the organiser (i.e. a person who is responsible for organisation of management of the entertainment or the premises).

Standard conditions will mean 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.

Unsolicited (in relation to advertising) means any material that is unasked for, not looked for or unsought, i.e. newspaper advertising, flyers, posters, radio advertisements, television advertising, advertising hoardings etc.

Vehicle means a vehicle intended or adapted for use on roads.

Worker means any individual that works on or at the premises whether on a paid or unpaid basis. It includes management, bar staff, security personnel, dancers, performers and any other person that is involved in the operation of the premises during the period when licensable activity is taking place, including those who are self-employed.

Standard Conditions**Sexual Entertainment Venues****General**

1. In accordance with Home Office guidance, where a condition conflicts with a condition in a Licensing Act 2003 premises licence, the more onerous applies.
2. Unless stated otherwise, the licence hereby granted will remain in force 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.
3. 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 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
4. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
5. 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

6. The licence or a certified copy must be prominently displayed at all times so as to be readily and easily seen by all persons using the premises and all authorised officers. A copy of the conditions attached to the licence must be kept on the premises and be available for inspection by an authorised officer of the Council.

Hours of opening

7. Except with the written consent of the Council, the premises will only open to the public during the following hours:

| | | | |
|-----------|---------------|----------|---------------|
| Monday | 21:00 – 00:00 | Friday | 21:00 – 01:00 |
| Tuesday | 21:00 – 00:00 | Saturday | 21:00 – 01:00 |
| Wednesday | 21:00 – 00:00 | Sunday | 21:00 – 01:00 |
| Thursday | 21:00 – 00:00 | | |

Conduct of the premises

8. Relevant entertainment will only be performed by the dancer / performer. There must be no audience participation.
9. Dancer / performers will only perform on the stage area, or in booths / areas for VIPs as identified on the plan attached.
10. Any performance will be restricted to dancing and the removal of clothes. There will not be any other form of sexual activity or stimulation which, for the avoidance of doubt, includes

kissing.

11. Sex toys must not be used and penetration of the genital area by any means must not take place.
12. Dancer / performers shall re-dress at the conclusion of the performance.
13. Customers will not be permitted to throw money at the dancer / performers.
14. No customers shall be admitted to the premises or allowed to remain on the premises if they appear to be intoxicated or unruly.
15. No person shall take any photographs, videos or other similar recordings (including mobile phones and video streaming) of the authorised relevant entertainment.
16. Performers must never be alone in the company of a customer except in an area open to the public within the premises.
17. The licensee is to ensure a sufficient number of staff are employed ('floor supervisors') inside the premises whilst sexual entertainment is provided to supervise the performers and customers.
18. Performers must not perform a nude table dance unless in a supervised area or within five metres of a floor supervisor.
19. Performers are never to be in the company of a customer except in an area open to the public within the premises (excluding the toilets).
20. Notices must be clearly displayed on each table, each bar and at the entrance to the premises stating:
 - (1) there is no physical contact between customers and performers;
 - (2) a minimum distance of 300 millimetres must be maintained between performers and customers;
21. Performers must not:
 - (1) climb on furniture provided for patrons
 - (2) simulate sex acts
 - (3) remain in a state of undress once they have completed their act.
22. Performers shall at all times wear a non-transparent G-string or similar piece of clothing on the appropriate part of the body, and at no time will it reveal any part of their genitalia or anus.
23. The licensee must ensure that during the performance of a table dance:
 - (1) customers must be seated in an upright position against the back of the booth or seat with their hands by their sides before a dancer can start a table dance;
 - (2) customers must remain seated during the entire performance of the dance;
 - (3) for the purpose of restraint only, performers may only touch a customer above the customers chest with their hands only;
 - (4) performers must not sit or straddle the customer;
 - (5) performers must not place their feet on the seats.

24. The licensee must ensure that during performances to which this licence relates:
- (1) performers may not perform any act that clearly simulates any sexual act;
 - (2) performers may not intentionally touch a customer any time during the performance unless absolutely accidentally or due to a third party;
 - (3) performers may not use inappropriate, suggestive or sexually graphic language at any time;
 - (4) performers must never intentionally touch the genitals or breasts of another dancer or to knowingly permit another dancer to intentionally touch their genitals or breast;
 - (5) performers must not engage in communications that could be deemed as acts of prostitution or solicitation, even if the performer has no intention of carrying out the act;
 - (6) performers only perform nude or semi-nude dancing (of any description) within areas specified by the Council.
25. The licensee must ensure that during performances to which the licence relates:
- (1) customers may not dance at any time except in areas specifically designated by the Council as being separate from areas for sexual entertainment;
 - (2) customers must remain appropriately clothed at all times.

External appearance

26. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following words and no others:

| |
|--|
| <p style="text-align: center;">STRICTLY NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE</p> <p style="text-align: center;">This premises operates a Challenge 25 policy. Persons who appear to be under the age of 25 will be required to show proof of age.</p> |
|--|

27. The external appearance of the premises must be approved by the Council in writing. 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 in writing before work is undertaken.
28. 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.
29. Windows and opening to the premises, other than entrances, shall be obscured in a manner and with such material approved by the Council. Door entrances shall also be obscured by blinds or material approved by the Council so as to prevent any member of the public from seeing through to the premises whilst relevant entertainment is taking place.
30. External signage will only be illuminated, and moveable signs will only be displayed, during times that the premises is open and licensable activities are taking place.

Advertising

31. Any unsolicited 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, or be of a detriment to the amenity or character of the local vicinity, and must be approved by the Council in writing.

32. Staff employed or subcontracted by the premises will not verbally or otherwise promote, tout or advertise the premises, except by way of flyers. Staff employed or subcontracted by the premises will not direct potential customers to transport connected with the premises.
33. The distribution of flyers will only be permitted in such a way where it does not cause public offence. Therefore, the distribution of flyers is only permitted between the hours of 9.00pm and 12.30am. The licensee will remove any leaflets/flyers from the highway within a 100 metre radius of the premises by 5.00am. Flyers must not be distributed by and to persons under the age of 18 years.

Layout of the premises

34. Access to ground floor premises may only be through two or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises. The first set of entry doors must be fitted with a device to provide for their automatic closure and such a device shall be maintained in good working order.
35. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
36. 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.
37. Where works necessitate the premises being closed for a long period of time, the premises shall not reopen for the purpose of the licence, until the licensee has been notified in writing by the Council of the satisfactory completion of the work.
38. All parts of the premises shall be well maintained and kept in a clean condition to the satisfaction of the Council.

Management of the premises

39. Where the licensee is a body corporate, or an un-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 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.
40. 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.

41. 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 about at all times when they are in charge of the premises.
42. Where the licensee, director, company secretary, or responsible person nominated for the purpose of managing the venue (“the manager”), is charged with, or convicted of, an offence, they must, as soon as practicable after the charge or conviction, inform the Council of the charge or conviction, giving details of the nature and date of the charge or conviction, and any conditions or sentence imposed.
43. 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 affected by the termination of a lease or other event affecting the licensee’s control of the premises.
44. 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.
45. No person under the age of 18 will be admitted to the premises.
46. The licensee will operate a Challenge 25 age verification policy. People who appear to be under the age of 25 will be required to show proof of ID prior to admittance. A notice to this effect, in accordance with condition 18 will be displayed on the premises.
47. The licence holder will not employ any person under the age of 18 in any capacity.
48. The licensee will comply with all statutory provisions and any regulations made hereunder.
49. The licensee will provide, for approval in writing of both the police and the licensing authority, a code of practice for the dancer / performers. This code must be given to all dancer / performers and displayed in staff areas. This code must be made available upon request to both the police and authorised officers.
50. The licensee will provide, for approval in writing of both the police and the licensing authority, a code of conduct for customers, this must be printed in a manner which is clear and easy to read during normal operation of the premises. This code must be prominently displayed at each entrance to the premises, at the entrance to any private dance areas and in suitable locations within the licensed premises, such locations to be agreed with the Council, such as at bars.
51. Price lists for both drinks and sexual entertainment will be clearly displayed at each entrance to the premises, at each bar and at each table.
52. Suitable and sufficient training will be provided to all staff including the nominated responsible person. The training will be recorded and the training records must be made available upon request to both the police and authorised officers.
53. The name of the person responsible for the management of the premises, whether the licensee or manager, shall be displayed in a conspicuous position within the premises throughout the period during which he/she is responsible for its conduct.

Safety and security

54. A colour digital CCTV system will be maintained and operational at the premises at all times when licensable activities are being carried out and at any other times when member of the public are present on the premises.
55. The CCTV system will cover all areas of the premises occupied by the public under the terms of the licence, including corridors, stairways, each dance booth and VIP areas (excluding within toilets and changing rooms). The CCTV system will cover the main entrances and external areas of the premises occupied by the public, for example queuing areas, beer gardens, smoking areas and car parks.
56. The locations of CCTV cameras are identified on the site plan of the premises. No amendments to the locations of the cameras will be made without prior consultation with South Yorkshire Police and the Council.
57. The CCTV system will be of a satisfactory resolution quality which will enable the identification of persons and activities, and other fine details such as vehicle registration number plates.
58. Recorded CCTV images will be maintained and stored for a continuous period of 28 days. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.
59. Where CCTV is recorded onto a hard drive system, any DVDs subsequently produced will be in a format so it can be played back on a standard DVD player.
60. The nominated person ("the manager") must be trained in the use of any such CCTV equipment and be able to produce CCTV images to the police or Licensing Authority.
61. CCTV footage will be controlled and kept in a secure environment to prevent tampering and unauthorised viewing.
62. The data controller, under the Data Protection Act 1998, who is responsible for any CCTV images captured on cameras on the premises will, on the lawful request of the police or an authorised officer of the Council, cause any required footage to be downloaded immediately, or where this is not possible, as soon as reasonably practicable, and supplied to the requesting officer. Where the CCTV images are not supplied at the time of the request being made the data controller will ensure that they are secured to prevent any overwriting.
63. A minimum of two Security Industry Authority registered door staff (numbers to be subject to police and licensing authority approval) will be present on the premises during the performance of relevant entertainment.
64. An incident log shall be kept at the premises, and made available on request to the Licensing Authority or the Police, which will record the following:
 - a) all crimes reported to the venue;
 - b) all ejections of patrons;
 - c) any complaints received;
 - d) any incidents of disorder;
 - e) seizures of drugs or offensive weapons;

- f) any faults in the CCTV system or searching equipment or scanning equipment;
 - g) any refusal of the sale of alcohol;
 - h) any visit by a relevant authority or emergency service;
 - i) any breach of licence conditions reported by a Performer
65. The licensee will ensure that a fire safety risk assessment is carried out in connection with the premises, and is retained on the premises at all times and available for inspection by an authorised officer or a member of the Fire Authority.
66. The licensee will maintain good order in the premises at all times, and ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents in the vicinity and persons passing by.

Worker welfare (see Appendix A for interpretation of the term “worker”)

67. Dancer / performers will be aged 18 years or over.
68. Before a dancer / performer is permitted to work on the premises the licensee will ensure that the dancer / performer:
- a) has not been convicted of theft, drug offences, sexual offences, violent offences, or prostitution
 - b) has the right to work in the UK

The licensee will keep records of the checks, including copies of any documentation such as a basic disclosure, passport, visa, driving licence or national insurance number provided by the dancer / performer.

69. All premises that provide relevant entertainment will provide dancer / performers with copies of the following documents:
- a) A copy of the conditions attached to the Sex Establishment Licence;
 - b) Details of any other conditions applied by management of the premises;
 - c) A copy of the code of practice for dancer / performers;
 - d) A copy of the code of conduct for customers;
 - e) Workers' welfare policy including clear guidance as to the process for workers to report any concerns anonymously to the manager of the venue, and/or the Licensing Authority (a 'whistleblowing policy').
 - f) Price lists for drinks and sexual entertainment.

The licensee must ensure that a record is kept of the provision of these documents, and that the record is signed and dated by the dancer / performer.

70. Dancer / performers will be provided with separate secure dressing rooms, facilities to secure valuables and proper sanitation facilities. No person other than performers and authorised staff will be allowed in or near the dressing rooms, therefore safe and controlled access will be maintained at all times. The documents detailed in condition 69 will be displayed in the dressing rooms.
71. There will be at least one female member of staff authorised to be responsible for the safety and welfare of the dancer / performers. This staff member must be on the premises at all times when licensable activities are taking place.
72. All booths and VIP areas used for private dances must be visible to supervision and must

not have closing doors, or curtains.

73. All booths and VIP areas 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 a SIA registered door supervisor working on the premises at all times the booths/areas are in use. Direct supervision does not include remote supervision by CCTV.
74. Dancer / performers will only be present in the licensed area in a state of nudity when they are performing on stage or providing a private dance.
75. Any person on the premises who can be observed from outside the premises will be properly and decently dressed.
76. The practice of fining is prohibited.
77. Customers and staff must not be allowed to interact while using the smoking area, and where possible a separate smoking area should be provided for staff. Dancer / performers must be covered up at all times with knee length robes or coats whilst using the smoking areas.
78. Throughout the lap or table dance customers will remain seated and fully clothed, with their hands clearly visible, either resting on the arms of the chair/sofa or on the seat cushion, or customers must be asked to sit on their hands.
79. If a dancer / performer is invited to have a drink with a customer, the dancer / performer will remain fully clothed during this period. Dancers / performers will not be paid commission on the sale of beverages.
80. On leaving the premises dancers / performers will be escorted to their transport by a SIA registered door supervisor.
81. Individual records shall be kept at the premises of the real names, stage names and addresses of all dancers / performers working at the premises. The record will include either a copy of their birth certificate, current passport, EU driving licence or national identity card and shall be made immediately available for inspection by the Police and/or the Licensing Authority upon request.
82. The licence holder must not for any reason discriminate against current or prospective workers. This will include age, race, physical ability or affiliation with any organisation.

Vessels, vehicles and stalls

83. In the case of licensed premises that are a vessel, vehicle or stall, the licensee shall not move the vessel, vehicle or stall from the location specified in the licence unless 28 days written notice is given to the Council of such intended removal. The Council may require the licensee to lodge such written application as it may deem appropriate and pay such a fee as it may deem reasonable in respect of such application.
84. The requirements of condition 83 will not apply to a vessel, vehicle or stall habitually operating from a fixed location, which is regularly moved, whether under its own propulsion or otherwise, from another place for storage purposes. This place must be specified in the licence and must not be used for the purposes for which the licence is granted and any other location than that specified in the licence.

85. Vehicles must not be used for personal solicitation, touting or advertising.

Variation of conditions

86. 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.
87. The licensee may apply to the Council to vary any of the terms of the licence.
88. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the grant, renewal or transfer of the licence.

Standard Conditions

Sex Cinemas

General

1. Unless stated otherwise, the licence hereby granted will remain in force 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 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
3. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
4. 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

5. The licence or a certified copy shall be prominently displayed at all times so as to be readily and easily seen by all persons using the premises and all authorised officers. A copy of the conditions attached to the licence shall be kept on the premises and be available for inspection by an authorised officer of the Council.

Hours of opening

6. Except with the written consent of the Council, the premises will only open to the public during the hours specified in the licence.

Conduct of the premises

7. The premises will be conducted primarily for the purpose of the exhibition of films.
8. 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.
9. No part of the premises will be used by prostitutes.

External appearance

10. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following words and no others:

| |
|--|
| STRICTLY NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE |
|--|

| |
|--|
| This premises operates a Challenge 25 policy. Persons who appear to be under the age of 25 will be required to show proof of age. |
|--|

11. The external appearance of the premises must be approved by the Council in writing. 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.
12. 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.
13. There will be no illuminated or protruding signs fixed to the premises and no signs placed outside the premises.

Advertising

14. Any unsolicited 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, or be of a detriment to the amenity or character of the local vicinity, and must be approved by the Council in writing.
15. The distribution of flyers will only be permitted in such a way where it does not cause public offence. Flyers must not be distributed by and to persons under the age of 18 years.

Layout of the premises

16. Access to ground floor premises may only be through two or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises. The first set of entry doors must be fitted with a device to provide for their automatic closure and such a device shall be maintained in good working order.
17. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
18. 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

24. Where the licensee is a body corporate, or an un-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 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.

25. 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.
26. 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 about at all times when they are in charge of the premises.
27. 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.
28. 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 affected by the termination of a lease or other event affecting the licensee’s control of the premises.
29. 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.
30. The holder of the licence will keep a record of all workers 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).
31. 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.
32. No person under the age of 18 will be admitted to the premises.
33. The licensee will operate a Challenge 25 age verification policy. People who appear to be under the age of 25 will be required to show proof of ID prior to admittance. A notice to this effect, in accordance with condition 18 will be displayed on the premises.
34. The licence holder will not employ any person under the age of 18 in any capacity.
35. The licence holder must notify the Council immediately should there be any changes to the management or operation of the premises.

Safety and security

36. A colour digital CCTV system will be maintained and operational at the premises at all times when licensable activities are being carried out and at any other times when member of the public are present on the premises.
37. The CCTV system will cover all areas of the premises occupied by the public under the terms of the licence, including corridors and stairways. The CCTV system will cover the main entrances and external areas of the premises occupied by the public, for example queuing areas, smoking areas and car parks.

38. The locations of CCTV cameras are identified on the site plan of the premises. No amendments to the locations of the cameras will be made without prior consultation with South Yorkshire Police and the Council.
39. The CCTV system will be of a satisfactory resolution quality which will enable the identification of persons and activities, and other fine details such as vehicle registration number plates.
40. Recorded CCTV images will be maintained and stored for a continuous period of 28 days. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.
41. Where CCTV is recorded onto a hard drive system, any DVDs subsequently produced will be in a format so it can be played back on a standard DVD player.
42. The nominated person ("the manager") must be trained in the use of any such CCTV equipment and be able to produce CCTV images to the police or Licensing Authority.
43. CCTV footage will be controlled and kept in a secure environment to prevent tampering and unauthorised viewing.
44. The data controller, under the Data Protection Act 1998, who is responsible for any CCTV images captured on cameras on the premises will, on the lawful request of the police or an authorised officer of the Council, cause any required footage to be downloaded immediately, or where this is not possible, as soon as reasonably practicable, and supplied to the requesting officer. Where the CCTV images are not supplied at the time of the request being made the data controller will ensure that they are secured to prevent any overwriting.
45. Regular checks will be carried out in the auditorium(s) when screenings are taking place.
46. A refusals/incident/accident register will be maintained and shall record all refusals relating to alcohol, access to the premises and all incidents or accidents.
47. The licensee will ensure that a fire safety risk assessment is carried out in connection with the premises, and is retained on the premises at all times and available for inspection by an authorised officer or a member of the Fire Authority.
48. The licensee will maintain good order in the premises at all times, and ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents in the vicinity and persons passing by.

Vessels, vehicles and stalls

49. In the case of licensed premises that are a vessel, vehicle or stall, the licensee shall not move the vessel, vehicle or stall from the location specified in the licence unless 28 days written notice is given to the Council of such intended removal. The Council may require the licensee to lodge such written application as it may deem appropriate and pay such a fee as it may deem reasonable in respect of such application.
50. The requirements of condition 48 will not apply to a vessel, vehicle or stall habitually operating from a fixed location, which is regularly moved, whether under its own propulsion or otherwise, from another place for storage purposes. This place must be specified in the licence and must not be used for the purposes for which the licence is granted and any other location than that specified in the licence.

51. Vehicles must not be used for personal solicitation, touting or advertising.

Variation of conditions

52. 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.

53. The licensee may apply to the Council to vary any of the terms of the licence.

54. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the grant, renewal or transfer of the licence.

Standard Conditions

Sex Shops

General

1. Unless stated otherwise, the licence hereby granted will remain in force 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 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
3. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
4. 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

5. The licence or a certified copy shall be prominently displayed at all times so as to be readily and easily seen by all persons using the premises and all authorised officers. A copy of the conditions attached to the licence shall be kept on the premises and be available for inspection by an authorised officer of the Council.

Hours of opening

6. Except with the written consent of the Council, the premises will only open to the public during the following hours:

| | | | |
|-----------|---------------|----------|---------------|
| Monday | 09:00 – 20:00 | Friday | 09:00 – 20:00 |
| Tuesday | 09:00 – 20:00 | Saturday | 09:00 – 20:00 |
| Wednesday | 09:00 – 20:00 | Sunday | 12:00 – 20:00 |
| Thursday | 09:00 – 20:00 | | |

Conduct of the premises

7. The premises will be conducted primarily for the purpose of the sale or hire of goods by retail.
8. 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.

9. No part of the premises will be used by prostitutes.
10. All sex articles or other items displayed for sale, hire, exchange or loan within the premises will be clearly marked to show the price being charged.
11. All printed material offered for sale, hire, exchange or loan will be available for inspection prior to purchase and a notice to this effect will be displayed in a conspicuous position within the premises.
12. No film, DVD or video recording (or computer game) will be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to that effect.
13. 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.
14. Items offered for sale, hire, exchange or used in any promotion/advertising must not contravene any current legislation i.e. Section 12 Video Recordings Act 1984 (as amended).

External appearance

15. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following words and no others:

STRICTLY NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE

This premises operates a Challenge 25 policy.
Persons who appear to be under the age of 25 will be required to show proof of age.

16. The external appearance of the premises must be approved by the Council in writing. 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 in writing before work is undertaken.
17. 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.
18. There will be no illuminated or protruding signs fixed to the premises and no signs placed outside the premises on the public highway.

Advertising

19. Any unsolicited 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, or be of a detriment to the amenity or character of the local vicinity, and must be approved by the Council in writing.
20. The distribution of flyers will only be permitted in such a way where it does not cause public offence. Flyers must not be distributed by and to persons under the age of 18 years.

Layout of the premises

21. Access to ground floor premises may only be through two or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises. The first set of entry doors must be fitted with a device to provide for their automatic closure and such a device shall be maintained in good working order.
22. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
23. 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

24. Where the licensee is a body corporate, or an un-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 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.
25. 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.
26. 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 about at all times when they are in charge of the premises.
27. 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.
28. 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 affected by the termination of a lease or other event affecting the licensee's control of the premises.
29. 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.
30. The holder of the licence will keep a record of all workers 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).

31. 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.
32. No person under the age of 18 will be admitted to the premises.
33. The licensee will operate a Challenge 25 age verification policy. People who appear to be under the age of 25 will be required to show proof of ID prior to admittance. A notice to this effect, in accordance with condition 18 will be displayed on the premises.
34. The licence holder will not employ any person under the age of 18 in any capacity.

Vessels, vehicles and stalls

35. In the case of licensed premises that are a vessel, vehicle or stall, the licensee shall not move the vessel, vehicle or stall from the location specified in the licence unless 28 days written notice is given to the Council of such intended removal. The Council may require the licensee to lodge such written application as it may deem appropriate and pay such a fee as it may deem reasonable in respect of such application.
36. The requirements of condition 35 will not apply to a vessel, vehicle or stall habitually operating from a fixed location, which is regularly moved, whether under its own propulsion or otherwise, from another place for storage purposes. This place must be specified in the licence and must not be used for the purposes for which the licence is granted and any other location than that specified in the licence.
37. Vehicles must not be used for personal solicitation, touting or advertising.

Variation of conditions

38. 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.
39. The licensee may apply to the Council to vary any of the terms of the licence.
40. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the grant, renewal or transfer of the licence.

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