



Draft Sex Establishment Licensing Policy January 2012

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DRAFT

1.0 Background to Consultation on Proposed Draft Policy

- 1.1 On 22 March 2011 Portsmouth City Council (“PCC”) decided to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) (as amended by section 27 of the Policing and Crime Act 2009 (“the 2009 Act”)) so that it can regulate sexual entertainment venues (“SEVs”) in the City.
- 1.2 For ease of reference, the full resolution of PCC is set out below (Council Minute No. 31/11 refers):
- *Council note that at its meeting on 23 February 2011, the Licensing Committee considered the recent amendments to the 1982 Act and recommended that Council adopt the new licensing arrangements for SEVs;*
 - *Council resolve to adopt Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009, and the following recommendations shall apply:*
 - *That the new statutory provisions shall apply to the Portsmouth UA area with effect from 1 November 2011;*
 - *That Council arranges for its Licensing Committee to discharge its statutory functions (including the setting of fees) under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended;*
 - *That the Licensing Manager be given authority to arrange formal publication of the statutory notices in a local newspaper;*
 - *In such cases where no objections are made to the grant, renewal, transfer or variation of such licences, the City Solicitor be given delegated authority to approve such applications;*
 - *That the Licensing Manager prepares a draft policy together with standard conditions applicable to sexual entertainment venues for consideration and adoption by the Licensing Committee and that the Licensing Manager should include in that draft policy his/her consideration of whether applications should be refused if they are within three miles of any place of worship, swimming pool, leisure centre, park, youth centre, historic building, tourist attraction, educational premises, school, play area, nursery, children’s centre or similar premises.*
- 1.3 Those parts of Schedule 3 of the 1982 Act relating to sex shops and sex cinemas have previously been adopted by resolution of the Council on 27 October 1982 and continue to have effect.
- 1.4 On 21 September 2011 the Licensing Committee further considered its preferred approach in the formulation of its draft sex establishment licence policy and determined that the Head of Legal, Licensing & Registrars be authorised to draft a policy for consideration and approval by the Licensing Committee, prior to public consultation, which was formulated upon the basis of identification of pre-determined localities and the imposition of numerical controls (Licensing Committee Minute No. 10/11 refers).

- 1.5 In preparing this draft policy, PCC recognises the important role that the regulatory agencies, licensed trade and local communities undertake and considers that their contribution of views is necessary in the formulation of this policy. Therefore, prior to final approval and publication of the policy, PCC intends to consult widely on the draft proposals.
- 1.6 Consultation on this draft policy will take place with:
- The Chief Officer of Police for Hampshire Constabulary;
 - Persons/bodies representative of existing operators of sex establishments in the licensing authority area;
 - Persons/bodies representative of those likely to be affected by or have an interest in the Policy which may include but is not limited to:
 - Regulatory bodies such as the Fire and Planning Authorities;
 - Community Safety and Children's Social Care and Safeguarding;
 - Interested parties such as local residents associations, trade associations and interest groups.
- 1.7 PCC will have due regard to the views of those consulted on this proposed draft policy and any comments received shall be given appropriate weight when the policy is determined, including amendment of the proposed policy where considered appropriate to do so.
- 1.8 Comments on this draft policy should be sent via email, post or fax to the following address:
- The Licensing Manager
Licensing Service
Legal, Licensing & Registrars
Portsmouth City Council
Civic Offices
Guildhall Square
Portsmouth
PO1 2AL
- Email: licensing@portsmouthcc.gov.uk
Fax: 023 9283 4811

COMMENTS MUST BE RECEIVED BY NO LATER THAN 12 APRIL 2012

- 1.9 Consultation will take place on this policy between 1st March 2012 and 12th April 2012 and will be considered and approved by the Licensing Committee prior to final publication. This policy will be subject to regular review and amendments may be made from time to time based upon any relevant government guidance, changes to legislation or local circumstances.

2.0 Aim of the Policy

- 2.1 The aim of this policy is to provide guidance for prospective applicants, persons who may wish to object to or support an application and members of the Council's Licensing Committee when making a decision in respect of an application.
- 2.2 Whilst each application will be considered on its individual merits, this policy is intended to give prospective applicants an early indication of whether their specific application is likely to be successful and the material facts that will be taken into consideration when determining an application. This document also sets out the expectations of the Licensing Authority on the applicant when receiving an application.
- 2.3 No policy will ever be considered absolute and there may be occasions where the Licensing Committee may depart from policy having regard to the unique characteristics of any one particular application.

3.0 Introduction

- 3.1 In this policy we refer to these categories of uses as “sex establishments” unless we say otherwise.
- 3.2 The role of PCC when undertaking its statutory function as the Licensing Authority is to administer the licensing regime in accordance with the law and will not exercise its duties in accordance with any moral standing and will not take into account any unrelated or non-germane considerations that would call into question the validity or vires of any subsequent decision(s) made. All decisions will be based on the facts of an individual case and having regard to any policy in force. PCC recognises that Parliament has made it a lawful activity to operate a licensed sex establishment and such businesses are a legitimate part of the retail and leisure industries.
- 3.3 This policy document relates to the administration of applications for licences for sex establishments. Sex establishments will fall into one of the following categories:
- Sex shops
 - Sex cinemas
 - Sexual entertainment venues

4.0 Background Information

- 4.1 The City of Portsmouth is situated in the ceremonial County of Hampshire which contains 11 District Councils in total. It is at the heart of Britain's southern coastline, with long established direct rail and road links to London, the Midlands and Wales and close to three international airports.

Portsmouth is undergoing rapid change, growing in confidence and developing a renewed sense of itself. As the UK's only island city, this waterfront city combines centuries of maritime history with an attractive contemporary lifestyle.

A significant naval port for centuries, it is home to the world's oldest dry dock, which is still in use today, and to world-famous historic ships, including Admiral Lord Nelson's flagship, HMS Victory, HMS Warrior 1860 and King Henry VIII's Mary Rose. Now new investment around the harbour has transformed the waterfront and attracts generations of new visitors to the city.

In recent years the city has hosted major international events including the International Fleet Review and in 2005 the events to mark 200 years after the Battle of Trafalgar. Portsmouth is also fast becoming the home of ocean racing, hosting the Global Challenge yacht race in 2004/5 and in 2006 the city is the only UK port chosen to host the Volvo Ocean Race.

The Spinnaker Tower at Gunwharf Quays opened in 2005 and is a new icon for the city and the south coast. At 170 metres high, it has already changed the skyline forever and provides an unparalleled view of Portsmouth and the surrounding area from its three observation decks.

This dynamic waterfront city still has an important role as a major dockyard and home base for the Royal Navy. BAE Systems has brought shipbuilding back to the city and in 2006 HMS Clyde was the first ship launched here for 40 years. The council-owned commercial port also continues to thrive and serves more destinations on the continent with freight and passenger traffic than any other UK port.

Portsmouth has a population of 200,000 in an area of only 4,196 hectares, which makes it one of the most densely occupied cities in the country outside London.

Portsmouth offers a vibrant mix of entertainment facilities for residents and visitors alike. This ranges from theatres, restaurants, cinemas and concert venues to club premises, bars, nightclubs and pubs in various locations around the city. The provision of such facilities contributes much to the growth of the local economy for Portsmouth and offers an important role for employment within the city.

- 4.2 At the time of drafting this policy, one licensed sex shop is operating in the City but for many years there were two sex shops operating in different parts of the City.

5.0 Definitions

- 5.1 For the purposes of this policy, the following definitions will apply, provided that any subsequent amendments to the 1982 Act will also be taken into account:

5.2 Sex Shop¹

Any premises, vessel, vehicle or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:

- a) Sex articles; or

¹ Paras 4(1) & (2), Schedule 3 of the 1982 Act

- b) Other things intended for use in connection with, or for the purpose of stimulating or encouraging:
- Sexual activity; or
 - Acts of force or restraint which are associated with sexual activity.

No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.

5.3 **Sex Article²**

Anything made for use in connection with, or for the purpose of stimulating or encouraging:

- i. Sexual activity; or
- ii. Acts of force or restraint which are associated with sexual activity; and anything to which the sub-paragraph below applies.

This sub-paragraph applies:

- a) To any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
- b) To any recording of vision or sound, which
 - i. Is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
 - ii. Is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

5.4 **Sex Cinema³**

Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which:

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

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

² Paras 4(3) & (4), Schedule 3 of the 1982 Act

³ Paras 3(1) & (2), Schedule 3 of the 1982 Act

No premises shall be treated as a sex cinema by reason only –

- a) If they may be used for an exhibition of film (within the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (within the meaning of section 136 of that Act), of their use in accordance with that authorisation.
- b) By their use for an exhibition to which section 6 of the Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of the former Cinemas Act 1985.

5.5 Sexual Entertainment Venue⁴

Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer.

Relevant entertainment is defined as:

Any live performance or 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 an audience (whether by verbal or other means).

In terms of considering what constitutes “relevant entertainment” each case shall be judged on its merits but the informal guidance produced by the Home Office suggests that the definition of relevant entertainment would apply to the following forms of entertainment as they are most commonly understood:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows.

However, the above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should merely be used as an indicator for certain types of entertainment as ultimately decisions to licence premises as sexual entertainment venues shall depend on the content of the entertainment provided and not the name it is given.

5.6 The following are **not** sexual entertainment venues for the purposes of this policy:

- Sex cinemas and sex shops;
- Premises which provide entertainment on an infrequent basis. These are defined as premises where:-
 - a) No relevant entertainment has been provided on more than 11 occasions within a 12 month period;

⁴ Paras 2A(1) &(2), Schedule 3 of the 1982 Act as amended by section 27 of the 2009 Act

- b) No such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - c) 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;
 - Private dwellings with no public admittance.

6.0 Mandatory Grounds for Refusal of an Application⁵

6.1 The 1982 Act sets out 5 mandatory grounds for refusing a sex establishment licence which are set out below:

That the applicant:

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

7.0 Discretionary Grounds for Refusal of an Application⁶

7.1 The 1982 Act also sets out 4 discretionary grounds for refusing a sex establishment licence. The grounds are set out below and further expanded upon within this section of the policy:

- a) The applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- b) 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;
- c) The number of sex establishments, or sex establishments of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality;

⁵ Para 12(1), Schedule 3 of the 1982 Act

⁶ Para 12(3), Schedule 3 of the 1982 Act

d) The grant would be inappropriate, having regard –

- i. To the character of the relevant locality;
- ii. To the use to which any premises in the vicinity are put;
- iii. To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

7.2 a) Unsuitability of applicant

When considering the suitability or otherwise of an applicant, the Licensing Authority will have due regard to not only whether or not an applicant has been convicted of an offence but any other grounds which would call into question his/her suitability.

7.3 The Licensing Authority will wish to be satisfied that:

- The applicant is sufficiently trustworthy to run the sex establishment in accordance with the terms and conditions imposed on any licence granted, as well as the law;
- The welfare of the performers at the licensed premises will be protected;
- That the safety of the public attending the premises will be provided for; and
- The needs and rights of persons/businesses living or working in the area, and indeed the area itself, are recognised and respected.

7.4 In those cases where an applicant has been convicted of an offence, the Licensing Authority will consider, on individual merit, the nature and seriousness of the offence and the time which has elapsed since the date of conviction.

7.5 Applicants should be aware that certain offences will give rise to particular concerns and in particular will include:

- Sexual offences;
- Offences involving prostitution, drugs, dishonesty or violence; and
- Licensing offences.

7.6 In considering the overall suitability of an applicant to hold a licence, the following factors will be taken into account by the Licensing Authority:

- Honesty and integrity of the applicant;
- Relevant experience of running similar sex establishments;
- Understanding of the terms and conditions relating to sex establishments;
- Reliability to run the premises in accordance with the licence;
- Track record of compliance in relation to other premises and/or licensing regimes;
- Intention to manage the premises himself or to employ others in that role;
- Existence or otherwise of a management structure to demonstrate compliance with operating conditions incorporating such matters as:

- ✓ Managerial competence
- ✓ Presence

- ✓ Credible management structure, which will include employment of individuals who have sufficient experience in running such premises
- ✓ Internal enforcement of rules (including training, monitoring, publication of rates for performers and customers)
- ✓ Viable business plan
- ✓ Demonstrate ability to act in the best interests of performers
- ✓ Preparation and enforcement of a written welfare policy for performers
- ✓ Procedures in place to ensure performers are adults and entitled to live and work in UK
- ✓ Demonstrate measures to protect the public (such as transparent rate of charges and prevention of solicitation)

In all cases, the Licensing Authority will give serious consideration to the observations of the Chief Officer of Police in relation to concerns expressed about the suitability of an individual applicant, body corporate or an individual officer of a company.

7.7 b) Unsuitable manager of the business or other beneficiary

The Licensing Authority will need to be satisfied that the proposed premises and activities are not a device to facilitate illegal activity and that those persons in ultimate control of the sex establishment can demonstrate that they will operate the premises in such a manner so as to promote the objectives of the legislation.

7.8 c) Number of sex establishments

PCC recognises that the Act allows discretion by the Licensing Authority to impose a numerical control on the number of sex establishments in a particular locality (including the provision that nil may be an appropriate number) and that this control can apply to both the overall number of sex establishments and also the number of each kind.

7.9 In formulating this policy in relation to the number of sex establishments, the Licensing Authority has taken the following factors into account:

- Portsmouth's Local Strategic Partnership vision for the city where, in particular, we want to:
 - Develop Portsmouth as a city of innovation and enterprise, with a strong economy and employment opportunities for all;
 - Make Portsmouth a city where everyone feels and is safe;
 - Make Portsmouth an attractive and sustainable city;
 - Deliver affordable, quality housing where people want to live;
 - Encourage and enable healthy choices for all and provide appropriate access to health care and support;
 - Enhance Portsmouth's reputation as a city of culture, energy and passion, offering access for all to arts, sports and leisure;

- Celebrate the many diverse and different communities within Portsmouth and work together to create an inclusive city for everyone;
 - Protect and support our more vulnerable residents by shaping public services to meet their needs.
-
- Location and residential density of housing in Portsmouth as shown on Map SELP1 (Page 19);
 - Location of facilities for children including schools, playgroups and children's centres throughout the city as shown on Map SELP2 (Page 20);
 - Location of places of worship throughout the city as shown on Map SELP3 (Page 21);
 - Location of premises attracting vulnerable people such as GP surgeries, health centres, hospitals, dentists as shown on Map SELP4 (Page 22);
 - Areas and premises attracting families such as leisure and sport facilities, play spaces, parks and open spaces including tourist attractions as shown on Map SELP5 (Page 23);
 - Location of areas associated with commerce, retail and commercial use as shown on Map SELP6 (Page 24);
 - Promotion of gender equality, particularly in relation to reducing the fear of crime among women and community attitudes to sex establishments;
 - The Portsmouth Regeneration Strategy;
 - Community Safety Strategy;
 - The Portsmouth Plan (Portsmouth's Core Strategy);
 - Southsea Seafront Strategy.

7.10 Given the various factors set out above, the Licensing Authority has reached the preliminary conclusion that there is no place within the City of Portsmouth of which it could be said that it was situated in a locality in which it would be appropriate to licence a sex establishment.

7.11 d) Character of the relevant locality

Applicants should be aware that the Licensing Authority may refuse a licence on this ground regardless of what may or may not be an appropriate number of sex establishment licences within the locality.

In considering whether it is appropriate to grant a licence having regard to the character of the relevant locality, the Licensing Authority will take account of the following factors,

together with such other factors as may be considered relevant in the individual circumstances of the case:

- The general character of the area (e.g. family residential, family leisure or educational area);
- The impact of the premises on the character of the area;
- The current use for night-time leisure activities including existing sufficient representation of sex-orientated uses;
- Gender equality issues, including whether the proposed use, particularly at night, would deter women from using the area comfortably or at all);
- Raising the fear of crime in the locality should further sex-orientated uses be authorised;
- Effects upon regeneration and tourism in the area;
- Level of genuine demand (including the risk that excess supply would drive down standards and lead to problems associated with compliance with conditions.

7.12 e) Use of premises in the vicinity

Applications for sex establishment licences may be refused where the Licensing Authority considers that the grant of a licence would be inappropriate having regard to the use of other premises in the vicinity. Whilst the term “vicinity” is not defined in the 1982 Act, the Licensing Authority considers that “vicinity” will be a smaller area than “locality” as referred to in paragraph 7.8 above.

- 7.13 Applicants should be aware that the Licensing Authority may refuse a licence on this ground regardless of the character of a locality or indeed what may or may not be an appropriate number of sex establishment licences within it.
- 7.14 When considering the type of uses which may be deemed to be inappropriate, due regard will be given to the suitability of the proposed location of the premises and will take into account relevant factors including, but not limited to, the presence of what may be regarded as sensitive issues (e.g. dwellings, places of worship, schools, youth clubs, community centres, women’s refuges, libraries, parks or swimming pools)
- 7.15 Without prejudice to the above, applicants should also be aware that applications for sex establishment licences will normally be refused if they are proposed to be located in the vicinity of:
- Places of worship;
 - Swimming pools;
 - Leisure centres;
 - Parks;
 - Youth centres;
 - Historic buildings;
 - Tourist attractions;
 - Educational premises;
 - Schools;
 - Play areas;
 - Nurseries;
 - Children’s centres;

Or any other similar premises.

- 7.16 Applicants are advised to consider the impact of their proposed application prior to considering whether or not they wish to operate a sex establishment business in an area and state in their application how they believe any potential impacts could be mitigated. The Licensing Authority reserves the right to take into account other issues or considerations that may arise at the application and consultation stage as well as during the licence period.

7.17 Layout, character or condition

When considering the issue of a licence in terms of its layout, character or condition, the Licensing Authority will give consideration to general factors such as:

- Provision of proper access for disabled people;
- Safe in terms of its structure and overall standards of maintenance for the building;
- Sufficient provision for surveillance and overall supervision;
- Standard of fit out of the premises;

While the Licensing Authority will not refuse a licence merely because the premises do not have planning permission for use as a sex establishment, the authority will take into account the absence of planning permission to the extent relevant to the statutory grounds for renewal.

8.0 Application Process

- 8.1 Application forms are available from the Licensing Service and are also available for download on the Council's website at:

<http://www.portsmouth.gov.uk/living/11752.html>

- 8.2 Upon receipt of an application for the grant, renewal, transfer or variation of a licence, the Licensing Authority will consult with the following bodies/individuals and will have regard to any observations received as a result:

- Hampshire Constabulary
- Hampshire Fire and Rescue Service
- Head of Children's Social Care and Safeguarding
- Head of Planning Services
- Ward Councillors

- 8.3 An application for the grant, renewal, transfer or variation of a licence must be formally advertised in two specific ways:

- a) Within 7 days after the date of application, the applicant must arrange for a public notice to be published in a local newspaper (The News – www.portsmouth.co.uk)

- b) Where the application is in respect of premises, the applicant must also display a notice of the application on or near the premises in question. The notice must be placed in such a position so that it can be conveniently read by the public. The notice must be displayed for 21 days starting with the date of the application.

8.4 The notice must include information relating to:

- Details of the premises to which the application relates;
- Details of the applicant;
- Type of sex establishment licence being applied for;
- Whether the application is for the grant, renewal, transfer or variation of a licence;
- Details of how persons may object; and
- Closing date for representations.

Templates for public notices are available from the Licensing Service or are available to download from PCC's website at <http://www.portsmouth.gov.uk/living/11752.html>.

- 8.5 The applicant must also send a copy of the application to the Chief Officer of Police no later than 7 days after the date of application, unless the application is submitted electronically and in which case the Licensing Authority will serve notice on the Police.

8.6 Address details for the Police are as follows:

The Chief Officer of Police
Hampshire Constabulary
Licensing Unit
Southsea Police Station
259 Highland Road
Eastney
Portsmouth
Hants
PO4 9EX

Tel: 0845 045 4545 Direct Dial: 023 9289 9080 Fax: 023 9289 3285

Email: Portsmouth.licensing@hampshire.pnn.police.uk

9.0 Consideration of an Application

- 9.1 The Licensing Authority will have regard to all information provided by an applicant in support of an application.
- 9.2 Any person wishing to object to an application must give notice of their objection in writing, stating the general terms of the objection no later than 28 days after the date of the application. Any person may object to an application. However objections must be relevant to the grounds set out in paragraph 12, Schedule 3 of the 1982 Act. Those grounds are set out in sections 6 and 7 of this policy. Objections based solely on moral grounds/values will not be considered.

- 9.3 The Licensing Authority will notify the applicant, in writing, of the general terms of any objection received within the 28 day period allowed for objections.
- 9.4 The 1982 Act protects the rights of objectors to remain anonymous. The Licensing Authority will not reveal names or addresses of any objector to the applicant without their consent. However, general information such as the objector lives within a certain distance of the premises in question will be released in order to give the applicant an opportunity to rebut any concerns so far as geographical vicinity or locality is concerned.

10.0 Determining an Application

- 10.1 All applications where objections have been received or where consultees have raised concerns will be referred to the Licensing Sub-Committee for determination at a hearing and all parties will be given the opportunity to put forward their case at the hearing.
- 10.2 The Licensing Authority will consider each application on its individual merits. Reasons for grant or refusal may vary depending upon whether the application relates to a sex shop, sex cinema or sexual entertainment venue.
- 10.3 The Licensing Sub-Committee will retire at the end of the hearing to make its decision on the facts of the case in private.
- 10.3 In most cases the Licensing Sub-Committee will deliver its decision and reasons at the end of the hearing. However, where it is considered proportionate and necessary to do so, the Licensing Sub-Committee may delay making a decision so as to allow for consideration of the respective cases put before it and so as to permit further time for a reasoned decision to be formulated. Any decision and reasons will be communicated, in writing, to the applicant and all other parties within 10 working days of the hearing.

11.0 Hearings

- 11.1 Hearings will be arranged as soon as reasonably practicable following the end of the consultation period. Applicants and other interested parties will be given at least 10 days notice of the proposed date for hearing and more where possible to do so.
- 11.2 All applicants will be given the opportunity to appear before and be heard by the Licensing Sub-Committee responsible for determining the application. Applicants will be entitled to be represented by a legal advisor or similar agent. Witnesses may be called with permission from the Chair of the Sub-Committee.
- 11.3 Persons objecting to applications will also be given the opportunity to appear at the hearing to discuss their objections.
- 11.4 The hearing will take place in public except where the public interest requires otherwise, although members of the public being disruptive will be required to leave the meeting.
- 11.5 All parties will be allowed an equal maximum period of time for the presentation of their case but it is expected that all parties keep points pertinent and the discussion moving in the interests of cost and efficiency.

12.0 Appeals

- 12.1 A right of appeal exists for applicants in respect of the refusal of applications for the grant, renewal, transfer or variation of a sex establishment licence. A right of appeal is also available in relation to the imposition of conditions and revocation of licences.
- 12.2 However, appeals against mandatory refusals (see section 6 of this policy document) can only be lodged on the basis that the mandatory ground does not apply to the appellant.
- 12.3 Additionally, no appeal provisions exist in respect of refusals to grant or renew licences on the discretionary grounds of:
- The number of sex establishments in the relevant locality;
 - The character of the relevant locality;
 - The use to which any premises in the vicinity are put;
 - The layout, character or condition of the premises.
- 12.4 The time limit for lodging an appeal to the Magistrates' Court is 21 days beginning with the date of notification of the decision. The commencement time for the purposes of this section will be from when the applicant receives formal written notification of the decision and reasons.
- 12.5 The 1982 Act also provides for further appeal to the Crown Court.

13.0 Duration of Licences

- 13.1 Licences for sex establishments may be granted for a maximum period of one year but the Licensing Authority may grant a shorter period of time if it thinks fit.

14.0 Licence Conditions

- 14.1 The Licensing Authority will impose standard conditions that are relevant to all licensed sex establishments. These may include, but are not limited to:
- Opening and closing hours
 - Displays and advertisements on or in sex establishments
 - Visibility of the interior of a sex establishment to passers-by
 - Any change of use from one kind of sex establishment to another.

The Licensing Authority has made Regulations as to standard conditions which are set out at Appendix A to this policy. Such conditions will be imposed unless they are varied in an individual case. Any applicant for such variation must set out the variation requested in the application, together with reasons why the variation is sought and how it intends to achieve the objectives of the standard conditions if a variation is permitted.

- 14.2 The Licensing Authority may also specify other conditions specific to individual premises dependant on the type of activity undertaken and the type of premises. These may include, but are not limited to:
- Specifying minimum distances between the audience and performers
 - Control of access to changing room facilities
 - Control of private viewings

Additional conditions may be imposed where appropriate and necessary.

15.0 Waiving of the need for a Sex Establishment Licence⁷

- 15.1 In certain circumstances the Licensing Authority may waive the need for a sex establishment licence. However, applicants should be aware that it is considered that the waiver system is not a substitute for the licensing regime but may be useful in certain borderline cases or where events are minor or temporary. Equally it may be an appropriate alternative solution where clarity or regularisation is considered necessary.
- 15.2 An application for a waiver can either be made as part of an application for a licence or on a separate basis. The Licensing Authority may grant a waiver if it considers that to require a licence would be unreasonable or inappropriate.
- 15.3 In those cases where a waiver is granted the Licensing Authority will confirm, in writing, to the applicant that such a waiver has been approved. The waiver can last for any such period that the Licensing Authority think fit but equally it can be terminated by the Authority at any time subject to a notice period of 28 days.
- 15.4 The Licensing Authority will consider such applications on an individual basis. However, the Licensing Authority considers that in normal cases, licences should be sought for licensable activities and waivers will be granted only in exceptional cases.

16.0 Exchange of Information

- 16.1 The Licensing Authority will process personal information in accordance with the Data Protection Act 1998. Personal details will be held on a database and where the law allows, may be shared with other departments within the Council to update details they hold about you. The Council may also be required to disclose personal information to third parties (such as Police, Department for Work and Pensions or Audit Commission for the National Fraud Initiative) for the purposes of preventing or detecting crime or apprehending or prosecuting offenders.
- 16.2 The Authority may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1988 to exchange data and information with the Police and other partners to fulfil its statutory objective of reducing crime in the area.

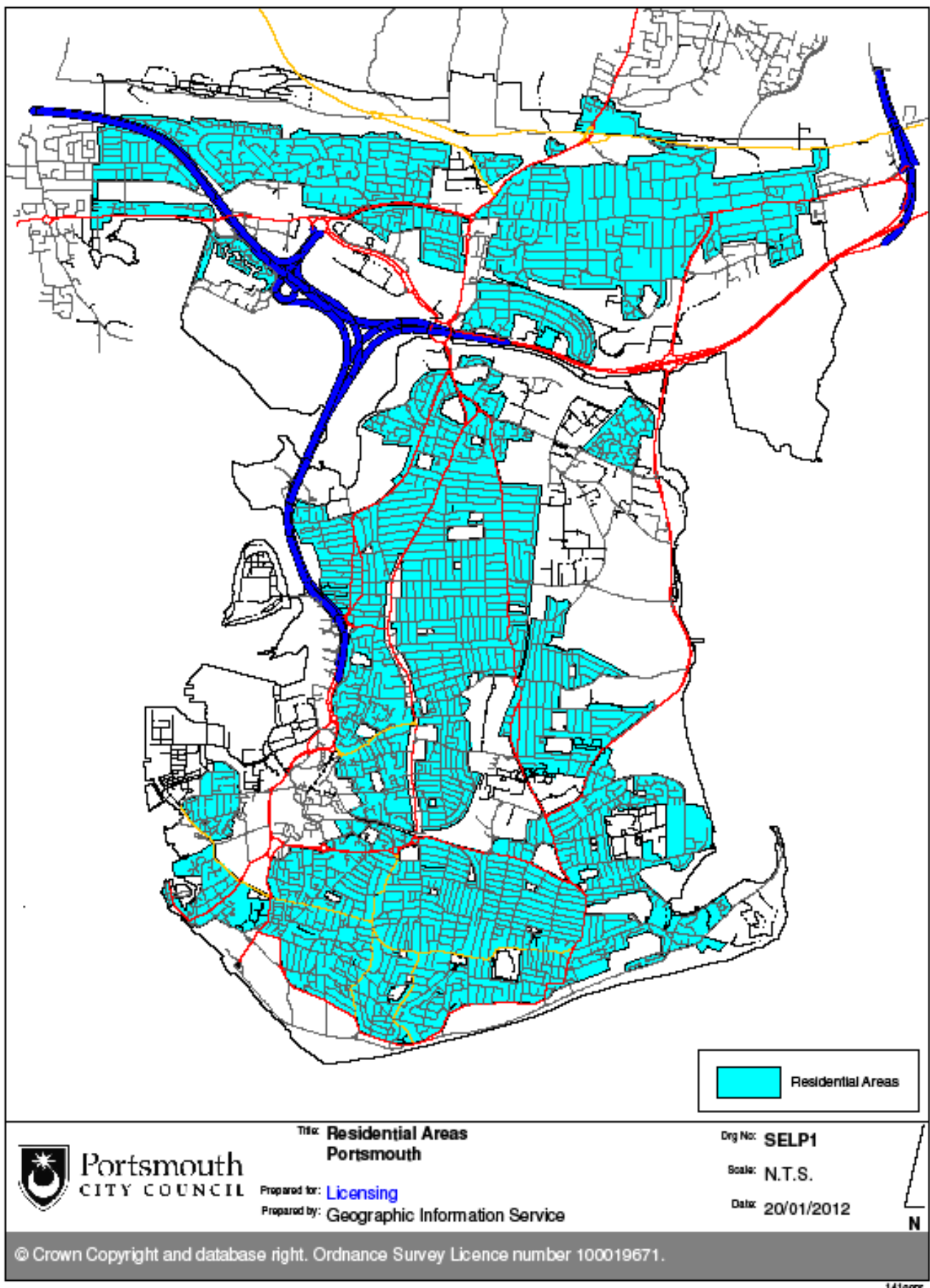
⁷ Para 7, Schedule 3 of the 1982 Act.

17.0 Enforcement

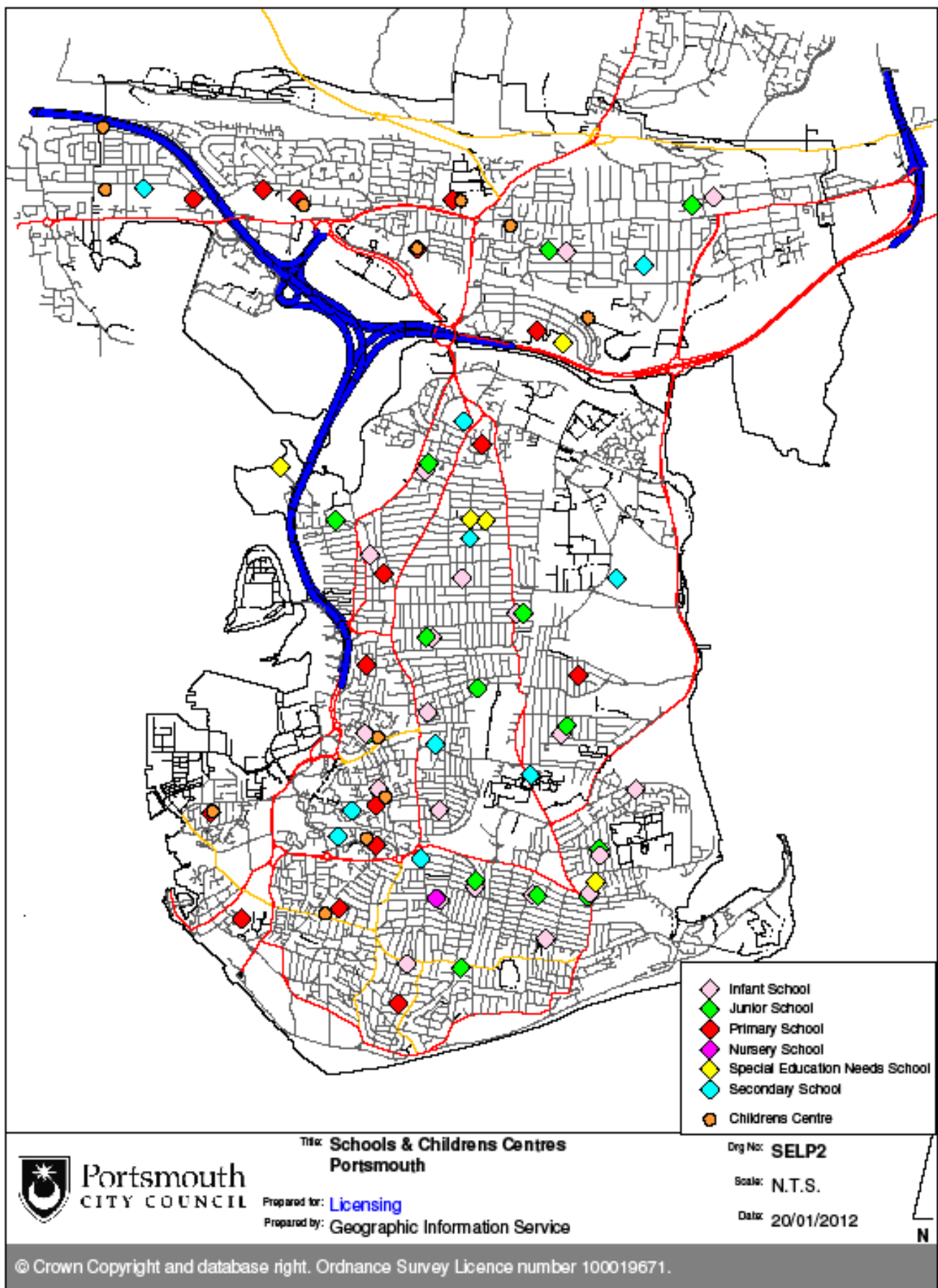
- 17.1 There are serious penalties for breaching the law relating to the control and supervision of sex establishment premises. Historically, PCC has taken robust action to prosecute individuals and businesses operating outside of the law and will maintain this stance in order to ensure protection of the public and to enforce this policy.

As a consequence, the Licensing Authority will establish protocols with other statutory agencies on enforcement issues. This is to enable the more effective deployment of staff who are commonly engaged in enforcing licensing law and the inspection of licensed premises. The aims of the protocol are to target agreed problem and high risk premises which require greater attention while providing a lighter touch in respect of low risk premises which are well run.

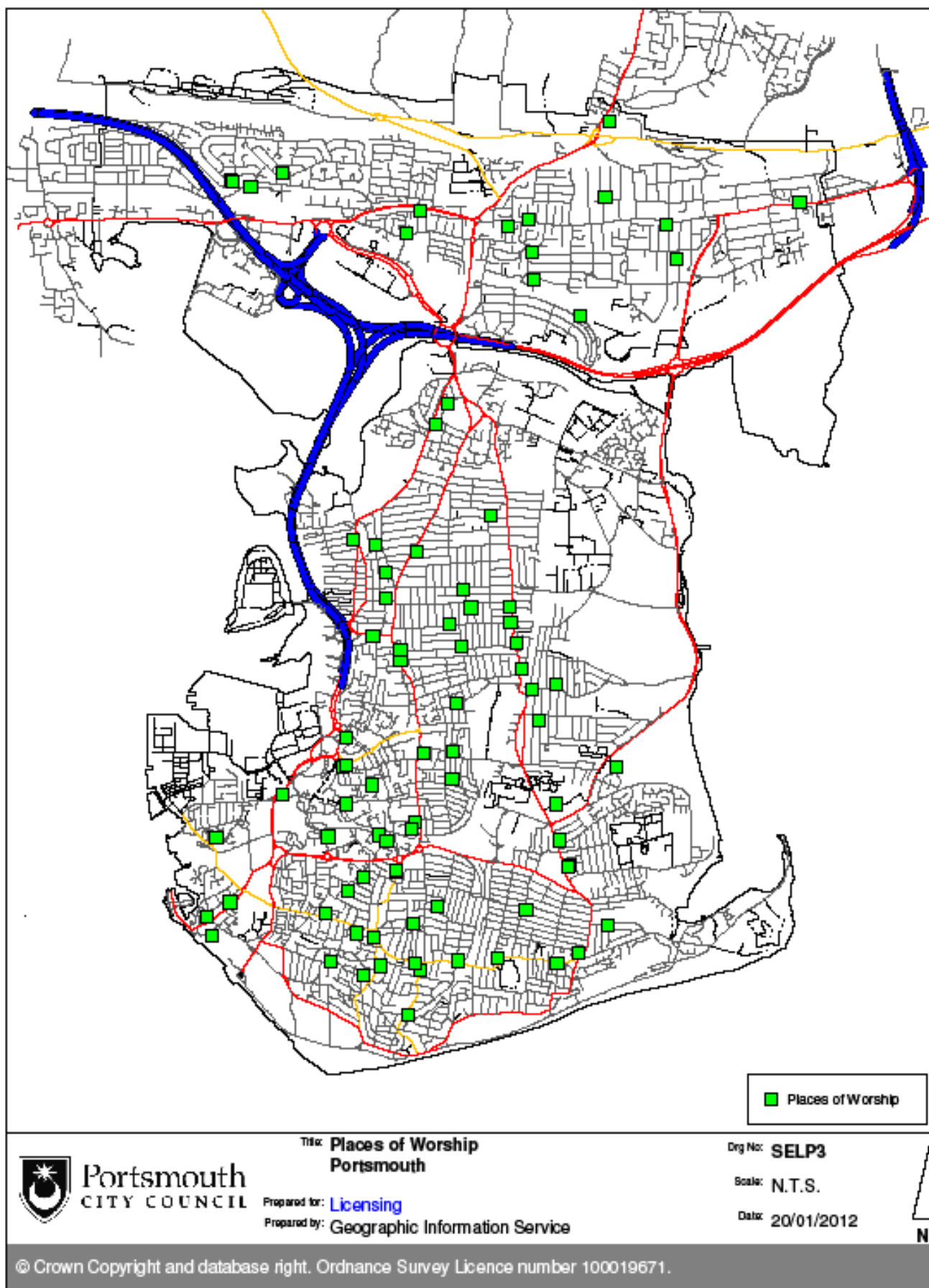
MAP SELP1



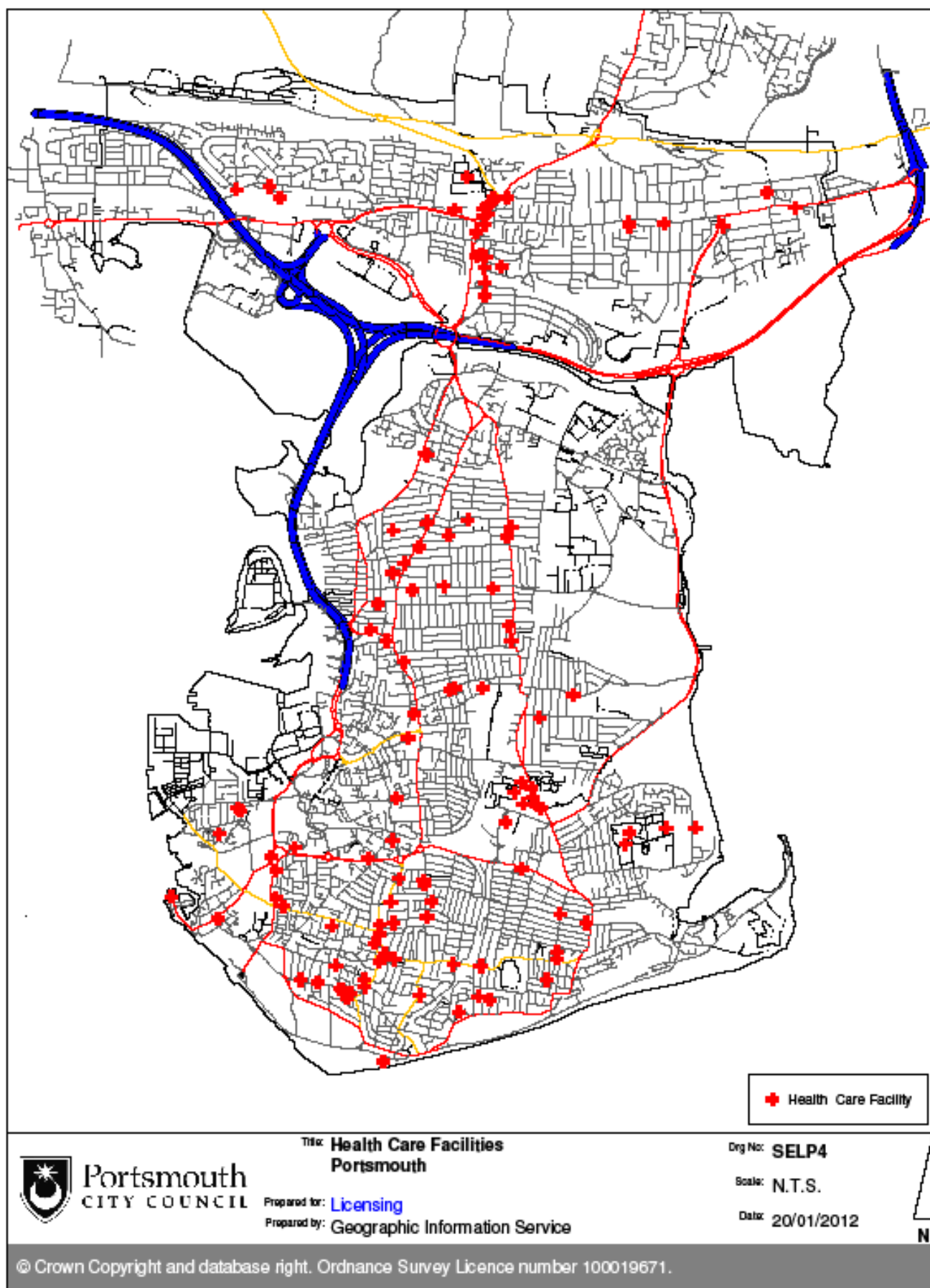
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MAP SELP3

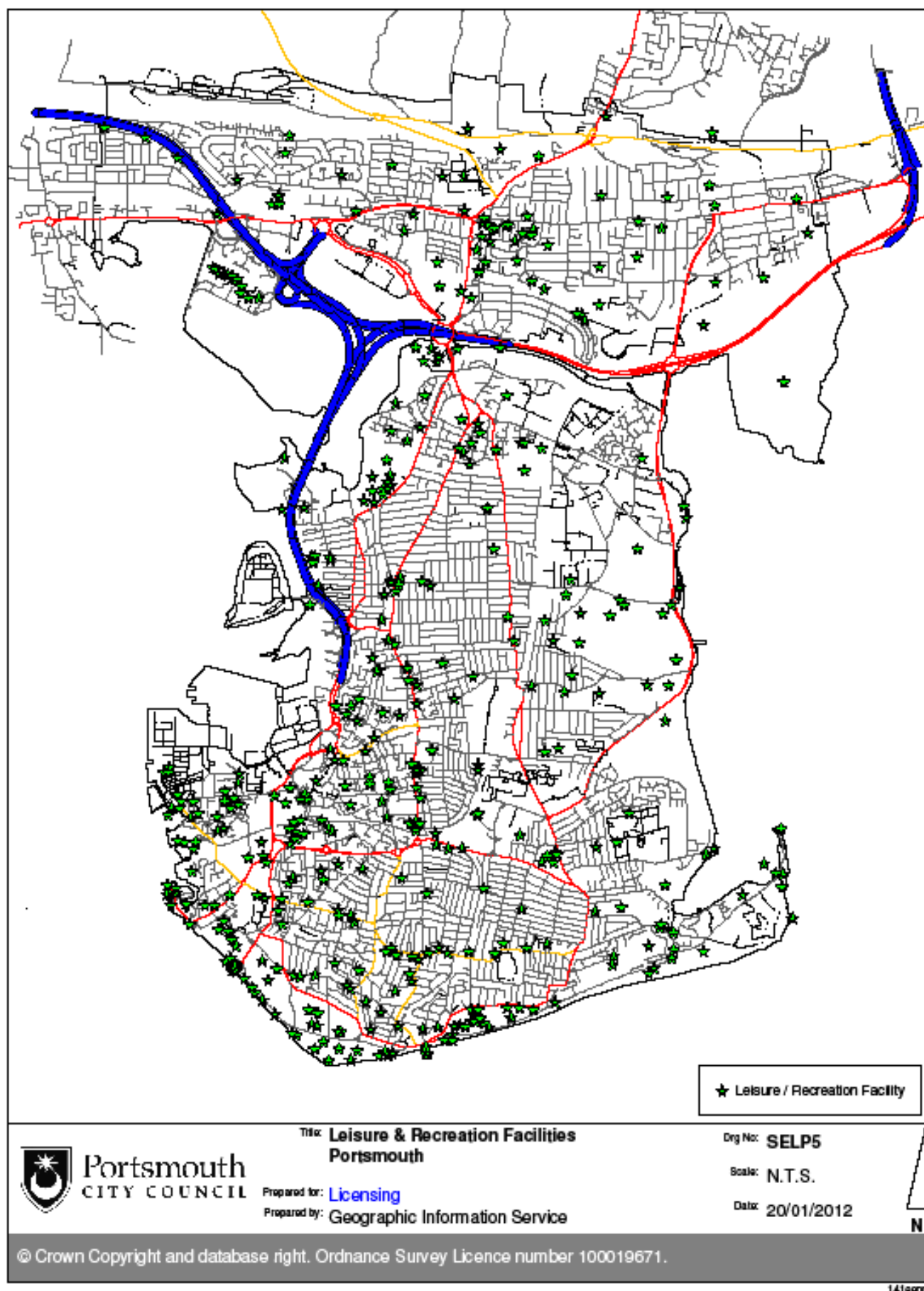


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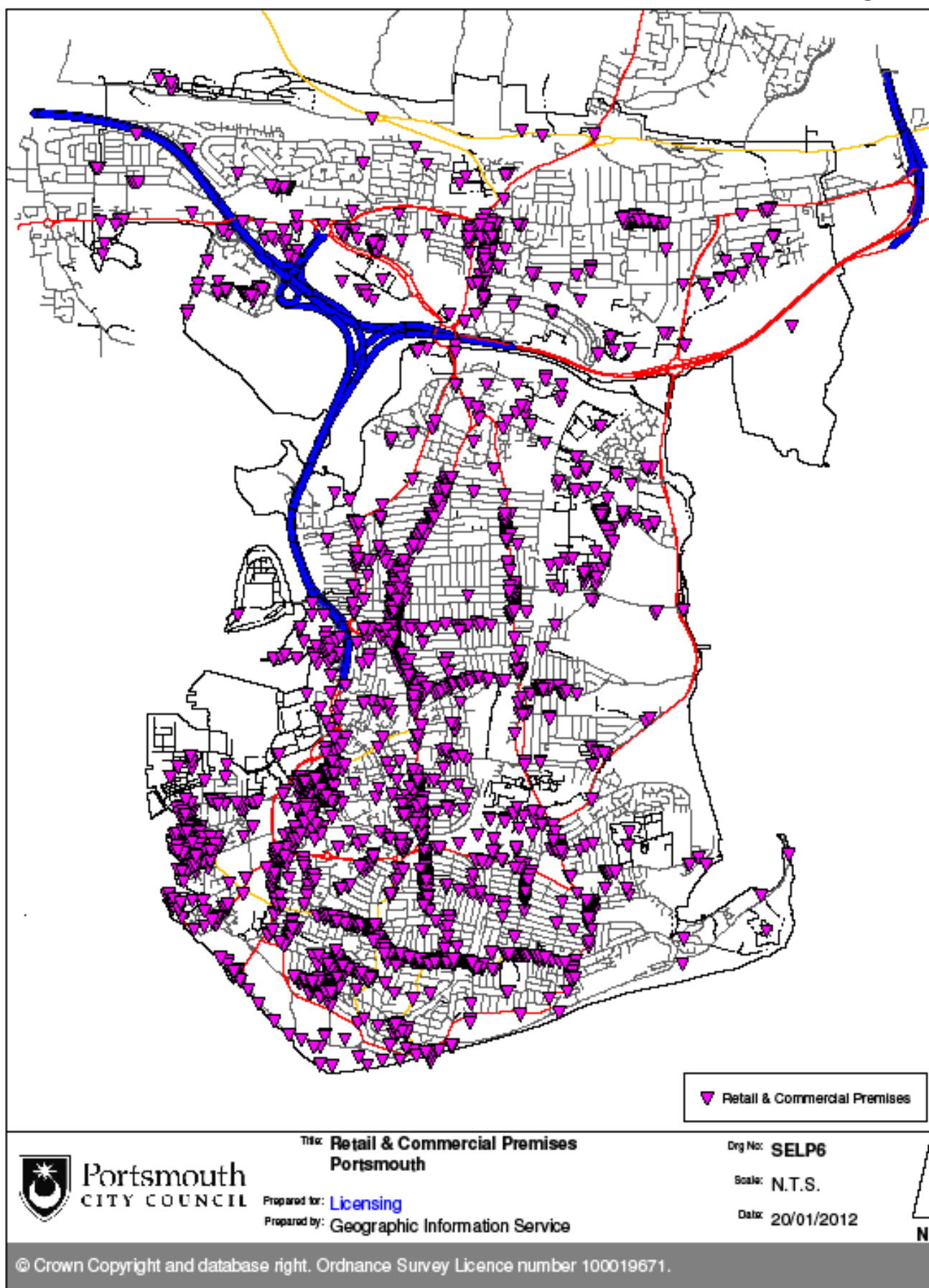


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MAP SELP5



MAP SELP6



Standard Conditions applicable to Sex Establishments consisting of Sex Shops, Sex Cinemas or Sexual Entertainment Venues

Portsmouth City Council, in exercise of the powers conferred by paragraph 13 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 hereby make the following Regulations prescribing standard conditions applicable to licences for sex establishments.

Interpretation

In these Regulations the following expressions that is to say “Sex Establishment”, “Sex Shop”, “Sex Cinema”, “Sexual Entertainment Venue”, “Sex Article”, and “Vessel” shall have the meanings respectively assigned by Schedule 3 of the Act (and where amended by Section 27 of the Policing and Crime Act 2009).

In these Regulations the following expressions shall have the meanings hereby respectively assigned to them namely:

- | | |
|--------------------------|--|
| “the Act” | means the Local Government (Miscellaneous Provisions) Act 1982, as amended. |
| “the council” | means Portsmouth City Council and/or any authorised officer acting on behalf of the Council. |
| “the premises” | means any premises, vehicle, vessel or stall licensed under the Act. |
| “licence holder” | means a person who is the holder of a sex establishment licence. |
| “permitted hours” | means the hours during which the licensed premises are permitted to be open to the public. |
| “licence” | means a licence granted pursuant to Schedule 3 of the Act. |

Part One – General Conditions

Management Of Premises

1. The Licence holder, or some responsible person nominated by him and approved in writing by the council for the purpose of managing the sex establishment (“the manager”), shall have personal responsibility for and be present on the premises at all times when the premises are open to the public.
2. In accordance with section 14 of the 1982 Act, the Licence holder shall display, on the licensed premises in a conspicuous position, a copy of the licence and/or any special conditions attached.
3. The name of the person responsible for the management of the sex establishment, whether the licence holder or manager, shall be displayed in a conspicuous position within the premises throughout the period during which he is responsible for the conduct of the premises.
4. The licence holder shall retain control over all parts of the licensed premises as set out on the approved premises plan and shall not let or part with possession of any part.
5. No person under the age of 18 shall be admitted to the premises and rigorous identity checks **SHALL** be made on any person who appears to be under the age of 18.
 - a) To ensure compliance of 5 above, the licence holder shall exhibit appropriate warning notices as to the minimum age requirements on both the exterior (frontage) door and also conspicuously on the appropriate inner lobby door.
6. No person under the age of 18 shall be employed to work at the premises in any capacity or shall be allowed to work at the premises on a self-employed basis.
7. Neither the Licence holder nor any employee or agent shall tout or solicit custom for the sex establishment immediately outside or in the vicinity of the licensed premises.
8. Where the Licence holder is a body corporate or an unincorporated body, any change of director, or other person responsible for the management of the body is to be notified in writing to the council within 14 days of any such change. In addition, the Licence holder shall provide any details as the council may require in respect of any new director, officer or manager upon request in writing from the council.

Conduct of the Premises

9. No change from one type of sex establishment to another shall be made without the written consent of the council.
10. No part of the premises shall be used by prostitutes for the purpose of solicitation or otherwise exercising their calling.

Premises Interior and Layout

11. The premises layout shall comply with deposited plans unless otherwise approved in writing by the council.
12. No alterations, additions or modifications to either the internal or external parts of the licensed premises shall be made without the prior written consent of the council.
13. External doors shall be closed at all times other than when persons are entering or leaving the premises. The external doors shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
14. The premises shall be fitted with an inner entrance lobby door or partition screen so that no part of the interior of the premises or any of the contents of the premises shall be visible when persons are entering or leaving the premises.
15. No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency.
16. No part of the interior of the licensed premises shall be visible whatsoever to persons outside the premises.
17. No external advertising, words, signs, displays or illuminations shall be permitted unless previously approved by the council.
18. The external fabric, appearance and look of the licensed premises shall consist of materials and colours approved by the council in order to:
 - (a) Ensure that the frontage is of a discreet nature
 - (b) Ensure that it is appropriate to the character of the locality.

CCTV

19. A recording CCTV system shall be installed and fully operational whilst the venue is open to the public.
20. The recording equipment will be stored and operated in a secure environment with limited access, to avoid damage, theft, unauthorised viewing and to maintain the integrity of the system.
21. A record will be kept of any access made to information held on the system.
22. The system will be serviced at twelve monthly intervals and maintained to a standard that is acceptable to the police licensing department responsible for the area. A record of service and maintenance completed shall be held for a minimum of three years at the premises.
23. The system clock will be checked regularly for accuracy taking account of GMT and BST.
24. An additional recording CCTV camera shall be installed and fully operational whilst the venue is open to the public to cover the area outside the front of the premises.

25. The CCTV system will have sufficient storage capacity for 31 days of good evidential quality images.

CCTV Access

26. Police and authorised officers of the council shall have access to data from the systems quickly and easily and therefore provision will be made for the licensee or a member of staff to have access to the secure area and also be able to operate the equipment and to supply footage in a format which can be easily viewed by police or council officers.
27. All operators will receive training from the installer when equipment is installed and this training will be cascaded down to new members of staff.
28. An operator's manual will be available to assist in replaying and exporting data.
29. The premises shall not be operated pursuant to the grant of a licence until such time as the CCTV System has been approved by the Police. The CCTV must be maintained in a satisfactory working condition and subject to police approval in order to remain operating under the licence.

General

30. The Licence holder shall take all reasonable precautions to ensure public safety on the premises and shall comply with any reasonable request made by the council.
31. The council may substitute, delete, vary or amend these conditions at any time.

Part Two – Additional Conditions for Premises Operating as Sex Shops

32. The Licensee shall notify the council of the name, address and date of birth of any manager or employee at the licensed premises at least 7 days prior to commencing employment. The council, in consultation with the police, reserves the right to object to the employment of any person by reason of general unsuitability and/or because of any recorded conviction, reprimand, warning or caution considered relevant in which event the individual concerned shall not be employed at the premises.
33. The names of any and every employee working on the premises shall be displayed in a conspicuous position on the premises.
34. No public music or dancing shall be permitted on the premises.
 - a) No alcohol shall be sold, offered or consumed by either staff or customers on the premises.
 - b) No facilities to provide or consume food (hot or cold) by members of the public shall be permitted on the premises.

Hours of Opening and Closing

35. Licensed premises shall not, unless approved in writing by the council, be open for the purposes for which the licence is granted on any Sunday, bank or public holiday.
36. The general permitted hours (unless otherwise varied by the council) for the use of any premises, as a sex shop shall be:

Monday to Saturday inclusive - 0930 until 2000

Conduct of the Premises

37. A sex shop shall be conducted primarily for the purpose of the sale of goods by retail.
38. All sex articles and other things displayed for sale, hire, exchange or loan within a sex establishment shall be clearly marked to show the price being charged.
39. All printed matter offered for sale, hire, exchange or loan within a sex establishment shall be available for inspection prior to purchase and a notice to this effect shall be displayed in a conspicuous position within the premises.
40. No film or video recording shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Certification and bears a certificate to that effect.

Premises Interior and Layout

41. Any facilities on the premises for previewing films, video recordings or other similar material shall be physically separated from the display area of the shop in such a manner that no material being displayed by way of preview shall be visible or audible outside the preview area. The positioning of any playback or viewing equipment shall be approved by the council.

Part Three – Additional Conditions for Premises Operating as Sexual Entertainment Venues

External Appearance of the Premises and Public Displays of Information

42. The exterior of the premises shall not contain any displays or depictions of the human form, or any imagery that suggests or indicates relevant entertainment takes place at the premises, or other language stating the nature of such activities, including use of the word “nude”. The condition does not prevent the use of the words “Licensed Sexual Entertainment Venue” on a single plate in characters no higher than 10 cm at the entrance to the premises.
43. Any external displays or advertising may only be displayed with the prior approval of the Council.
44. The prices for entrance and any compulsory purchases within the venue, shall be clearly displayed on the exterior of the premises.

45. All charges for products and services shall be displayed in prominent areas within the premises, and at each customer table and in the bar area.
46. Rules for customers shall be displayed in prominent areas within the premises, and at each customer table and in the bar area.
47. No charge shall be applied unless the customer has been made aware of the tariff of charge by the performer in advance of the performance.
48. Performers may not stand in any lobby, reception or foyer areas or outside the premises entrance for the purposes of greeting customers or encouraging customers to enter the venue.
49. The use of cruising cars by the premises to solicit for custom and/or transport people to or from the premises is prohibited.
50. The use of flyers and similar promotional material for the premises is prohibited.

Control of Entry to the Premises

51. The Challenge 25 proof of age scheme shall be operated at the premises whereby any person suspected of being under 25 years of age shall be required to produce identification proving they are over 18 years of age. The only acceptable forms of identification are recognised photographic identification cards, such as a driving licence or passport.

OR at the discretion of the Licensing Authority in individual circumstances the following condition may be applied:

52. All persons entering the premises must supply verifiable identification details that are passed through a digital scanning and recording system such as Club Scan, Idvista or similar computerised system.
53. The premises shall maintain a Refusals log whereby any occasion a person is refused entry shall be recorded and available upon request by the Police or an authorised officer of the council.
54. All individuals employed on the premises to conduct a security activity (within the meaning of paragraph 2(1) (a) of Schedule 2 to the Private Security Act 2001) must be licensed by the Security Industry Authority.
55. Any person who appears to be drunk / intoxicated or under the influence of illegal drugs shall not be permitted entrance to the premises.
56. A policy of random searches of persons entering the premises shall be operated.
57. Any person found to be in possession of illegal drugs upon entry shall be prevented entry and, where possible, restrained until the Police can take such person into custody. Any persons found using illegal drugs on the premises shall be removed from the premises or, where possible, restrained until the Police can take such person into custody.

58. The licensed premises shall be so arranged by screening or obscuring windows, doors and other openings so that the interior of the licensed premises shall not be visible to persons outside the building.
59. The premises shall subscribe to an approved radio system and radios shall be operational at all times the premises is open to the public.

Conduct of Performers and Rules relating to performances of sexual entertainment

60. There shall be a written code of conduct for performers that has been agreed in writing by the Licence holder, the council and the Police.
61. All performers shall be required to certify their agreement to comply with the code and a record shall be kept on the premises and be made available upon request by the Police or an authorised officer of the council. The code shall include the basic criteria as set out in Appendix B to this policy.
62. No changes shall be made to the Dancer's Code of Conduct without the prior written consent of the council and the Police.
63. The Dancer's Code of Conduct must include a statement that any dancer who does not comply with the Code of Conduct will face disciplinary proceedings.
64. All management and staff (including security staff) must be aware of and familiar with the content of the Dancer's Code of Conduct and shall ensure it is complied with at all times.
65. A copy of the Dancer's Code of Conduct shall be prominently displayed in each area of the premises where the public have access, which shall include toilet areas as well as in any area used as a changing/dressing room for dancers.

Code of Conduct for Customers

66. There shall be a written Code of Conduct for Customers that has been agreed in writing by the Licence holder, the council and the Police.
67. The code shall include the basic criteria as set out in Appendix C to this policy.
68. The Code of Conduct for Customers shall be displayed in prominent positions throughout the licensed premises so that it is visible to all patrons.
69. No changes shall be made to the Code of Conduct for Customers without the prior written consent of the council and the Police.
70. The Code of Conduct shall include a statement that any customers who fail to comply with the Code of Conduct will be required to leave the premises.
71. All management and staff (including security staff) must be aware of and familiar with the content of the Code of Conduct for Customers and shall ensure it is complied with at all times.
72. On any occasion whereby a customer breaches the Code of Conduct, such details shall be recorded in the incident log.

73. Any customer breaching the rules of the Code of Conduct shall be asked to leave the premises. Any customer who has previously been asked to leave the premises and again breaches the Code of Conduct shall be banned from the premises.

Disciplinary Procedure for Performers

74. The Licence holder shall ensure that a written disciplinary procedure is in force so as to take appropriate action against performers who breach the Code of Conduct and that a copy of the procedure is provided to each performer who works at the premises.
75. All performers shall sign an acknowledgement that they have received a written copy of the disciplinary procedure and have read and understood its contents.
76. Any disciplinary procedure shall NOT make any provision for financial penalties against performers who breach the disciplinary procedure. Any sanctions shall be limited to verbal or written warnings, suspension or revocation of the performer's right to dance at the premises.

The Protection of Performers and the Prevention of Crime on the Premises

77. Performers shall be provided with secure and private changing facilities.
78. All entrances to private areas to which members of the public are not permitted access shall have clear signage stating that access is restricted.
79. Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking area.
80. The Licence holder shall implement a written policy to ensure the safety of performers when leaving the premises following any period of work.
81. Private booths must not be fully enclosed. There must be a clear sight-line from outside the booth so that any performance of sexual entertainment can be directly monitored.
82. There must be a minimum of one member of security staff present on any floor where a performance of sexual entertainment is taking place.
83. Any private booths shall be fitted with a panic button or security alarm.

Record Keeping and Management

84. All performers shall be required to provide valid identification prior to first employment at the premises. Acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or national ID card.
85. All performers and staff shall be eligible to work in the UK and proof of eligibility records shall be kept on the premises. Management shall ensure that such records are regularly checked to ensure compliance.
86. Employment records for performers and staff shall be kept for a minimum of 6 months following the cessation of their employment.

87. Accurate payment and remuneration records shall be maintained and shall be made available upon request to the Police or an authorised officer of the Council. All fees and charges for performers shall be stated in writing and prominently displayed within the changing area.
88. No films may be shown at the premises unless they have been passed by the British Board of Film Classification. No films classified as R18 shall be shown on the premises.

Dress Code

89. The premises shall operate a dress code for customers to the satisfaction of the Police.

Part Four – Additional Conditions for Premises Operating as Sex Cinemas

Film Exhibition

90. No film shall be exhibited unless:
- a) It has been passed by the British Board of Film Classification (“BBFC”) as a U, PG, 12, 15, 18 or RESTRICTED (18) film and no notice of objection to its exhibition has been given by the council; or
 - b) The film has been passed by the council as U, PG, 12, 15, 18 or RESTRICTED (18).
91. If the Licence holder is notified by the council, in writing, that it objects to the exhibition of a film specifying the grounds of objection, such film shall not be exhibited.
92. The Licence holder shall give at least 28 days notice in writing to the council of any proposal to exhibit any film which has not been classified as specified above. Such a film shall only be exhibited if consent has been obtained from the council in writing and subject to any terms or restrictions contained within such written consent.
93. When the programme includes a film in the 12, 15 or 18 category, no person appearing to be under the age of 12, 15 or 18 as appropriate shall be admitted to any part of the programme.
94. If the council does not agree with the category of any film as passed by the BBFC, it may alter the category or prohibit the showing of the film.
95. Where any notice is given by the council to the Licence holder that it has altered the category of any film, the film shall thereafter be treated as being in the altered category and the conditions application to the exhibition of films in the altered category shall be observed accordingly.
96. Immediately before each exhibition at the premises of a film (other than a current news-reel) passed by the BBFC, there shall be exhibited on the screen for at least ten seconds and in such a manner as to be easily read by all persons in the auditorium, a reproduction of the certificate of the BBFC or, as regards a trailer, of the statement approved by the BBFC indicating the category of the film.

97. For a film passed by the council, notices shall be conspicuously displayed both inside and outside the premises so patrons entering can easily read them and which consist of the following wording:

PORTSMOUTH CITY COUNCIL

(Insert title of film here)

Has been passed by Portsmouth City Council as
(insert the definition of the category and the category assigned)

98. Where a trailer is to be exhibited advertising a film passed by the council, the notice shall state:

PORTSMOUTH CITY COUNCIL

(Insert the category of trailer here) **trailer advertising** *(insert the category of the film)* **film**

99. Every poster, advertisement, photograph, sketch, synopsis or programme relating to a film (other than a current news-reel) exhibited, or to be exhibited at the premises shall indicate clearly the category of the film.

Refusals/Incident Log

100. The Licence holder shall ensure that an incident/refusals log is maintained at the premises. The log shall record the following information:
- Any ejections from the premises
 - Any refused admissions
 - Any refused sales
 - Any inappropriate behaviour by patrons
 - Any failure in the CCTV system
 - Any incidents of crime or disorder
 - Any complaints made by patrons
101. The record shall show the date and time of the incident; the name of the member of staff reporting the incident; a brief description of the customer involved where appropriate and brief details of the incident together with any action taken by the staff/management of the premises.
102. The incident log shall be completed as soon as reasonably practicable after any incident has occurred.
103. The incident log shall be kept in a place where it can be easily accessed by staff working at the premises and all staff shall be aware of the location of the incident log and the need to complete it in such cases as described above.
104. The Licence holder shall ensure that the incident log is checked periodically and at least on a monthly basis to ensure that staff are completing the log as and when appropriate.

105. The incident log shall be made available for inspection to the Police or authorised council officers upon request.

General

106. No sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.

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Sexual Entertainment Venues – Code of Conduct for Dancers

The Dancer's Code of Conduct shall include the following conditions as a minimum standard:

- There shall be no intentional physical contact between performers and customers at any time, before, during or after the performance, with the exception of leading a customer by the hand to, or from, an area permitted for performances of sexual entertainment in advance of, or following, a performance.
- The performer may not simulate any sexual act during a performance.
- Performers must not use any inappropriate, lewd, suggestive or sexually graphic language in any public or performance areas of the premises.
- Performers must not touch the breasts or genitalia of another performer, at any time as part of a performance.
- There shall be no use of sex articles (as defined by paragraph 4(3) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982) at any time.
- There shall be no nudity by performers in public areas of the premises, unless the Council has agreed in writing that area may be used for performances of sexual entertainment.
- Performers must fully dress (i.e. no nudity) at the end of each performance.
- Performances of sexual entertainment may only take place in designated areas of the premises as agreed in writing by the Council.
- There shall be no photography permitted by customers on the premises.
- Customers must remain seated for the duration of a performance.
- Performers shall not arrange to meet, or have further contact with, customers outside of the premises.
- Dancers shall not perform if under the influence of alcohol or drugs.
- All dancers shall comply with this Code of Conduct. Any failure to adhere to the rules set out in Code shall result in the dancer becoming subject to the consideration of disciplinary action as set out in the Disciplinary Procedure.

Sexual Entertainment Venues – Code of Conduct for Customers

The Customer's Code of Conduct shall include the following conditions as a minimum standard:

- Customers may not touch dancers during a performance.
- Customers may not make lewd or offensive comments to performers.
- Customers must not harass or intimidate performers.
- Customers must not ask dancers to perform any sexual favour.
- Customers may not perform acts of masturbation or indulge in other sexual behaviour.
- Any customer failing to comply with this Code of Conduct will be asked to leave the premises and may face a time-limited or permanent ban from attending the premises.

Telephone: 023 9283 4604

Email: Licensing@portsmouthcc.gov.uk

Address: Licensing Service, Portsmouth City Council, Civic Offices, Guildhall Square, Portsmouth, Hants, PO1 2AL.

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