

**REPORT TO:** Licensing Sub-Committee  
**MEETING DATE:** 10 October 2024  
**BY:** Executive Director – Council Resources  
**SUBJECT:** Licensing of Sex Shops

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## **1 PURPOSE**

- 1.1 To allow Members to consider whether the Council should introduce a licensing regime for sex shops in the region.

## **2 RECOMMENDATIONS**

- 2.1 That the Sub-Committee:
- a) Determine whether a licensing regime for sex shops should be introduced by way of a resolution under the Civic Government (Scotland) Act 1982; and if so minded, to;
  - b) Determine what the appropriate number of sex shops in East Lothian should be.

## **3 BACKGROUND**

- 3.1 The Civic Government (Scotland) Act 1982 ('1982 Act') provides local authorities a discretionary power to introduce a resolution to licence sex shops.
- 3.2 If no resolution is in place, then no licence is required to operate a sex shop and an existing sex shop could continue to operate or new sex shop could come into operation within a local authority area without a licence. There are currently no known sex shops in East Lothian.
- 3.4 Where a local authority decides to licence sex shops, Section 45 of the 1982 Act enables the local authority to pass a resolution in order for sex shop licensing to have effect in their area. The resolution must specify a date from when it is to take effect in the area, which must not be before the expiration of the period of one month from the date the resolution is passed. Notification that the resolution has been passed must be published in a local newspaper, no later than 28 days before the date of introduction.

## Consultation

- 3.5 On 1 August 2024, a consultation paper (Appendix 1) was advertised online on the Council's website. The consultation ran until 31 August 2024. One response was received (Appendix 2).
- 3.6 The Sub-Committee requires to consider the response and determine whether sex shops ought to be licensed within East Lothian. If the Sub-Committee is minded to pass a resolution introducing licensing for sex shops then the resolution requires to be published in a local newspaper at least 28 days before the resolution comes into effect, which can be no earlier than one month after the Resolution is made.

## 4 POLICY IMPLICATIONS

- 4.1 There are no policy implications.

## 5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

## 6 RESOURCE IMPLICATIONS

- 6.1 Financial – not applicable.
- 6.2 Personnel – not applicable.
- 6.3 Other – not applicable.

## 7 BACKGROUND PAPERS

- 8.1 Civic Government (Scotland) Act 1982, Schedule 2 Control of Sex Shops - [Civic Government \(Scotland\) Act 1982 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1982/14/schedule-2)

### Appendices

Appendix 1 – Consultation document

Appendix 2 – Response

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<b>DATE</b>	25 September 2024

## Introduction

- 1.1** East Lothian Council is the licensing authority for the East Lothian area in relation to a wide range of activities. The responsibility of licensing certain activities is delegated to the Licensing Sub-Committee (“the **Sub-Committee**”).
- 1.2** As a discretionary licensing regime, it is for local authorities to determine whether they wish to licence sex shops. If a local authority chooses to licence sex shops it must determine what the appropriate number in its area should be.

## What is a Sex Shop?

- 2.1** The Civic Government (Scotland) Act 1982 (the ‘1982 Act’) defines a sex shop as “*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*”.
- 2.2** For the purposes of the definition of a sex shop, the following terms and definitions apply:

‘sex article’ means:

Anything 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;
- Any article obtaining 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
- To any recording of vision or sound.

## Potential Impact

- 3.1** If a decision is made to licence sex shops, the 1982 Act requires the local authority to pass a resolution in order for sex shop licensing to have effect in its area. If such a resolution is passed, all sex shops in East Lothian would require to apply for a licence.
- 3.2** If the Sub-Committee does not adopt the discretionary power available to it to licence sex shops, these venues would not require to be licensed and could continue to operate without any direct regulation from the local authority.
- 3.3** Local authorities who pass a resolution to licence sex shops must periodically determine the appropriate number of sex shops for both their area and for each relevant locality within their area. Such determination would be made after a period of consultation.

**3.4** There are various grounds for refusal of a sex shop licence grant or renewal application under the 1982 Act, including that the number of sex shops in the local authority area or the relevant locality at the time the application is made is equal to or exceeds the number which the local authority considers is appropriate for that locality.

## Seeking Your Views

- 4.1 This consultation aims to seek views on the licensing and regulation of sex shops, with the purpose of determining whether they should be licensed within East Lothian.
- 4.2 This consultation is an important stage in the future decision-making process and is essential in establishing whether or not sex shops in East Lothian should be licensed.

## How to Respond

- 5.1 Appendix A sets out further information on the Sub-Committee's discretionary powers to licence sex shops, and the process by which they would be licensed and regulated should a resolution be passed.
- 5.2 Appendix B sets out the matters which would be taken into consideration when considering what the appropriate number of sex shops should be within East Lothian.
- 5.3 You can respond to as many or as few of the issues as you choose depending upon your particular area of interest or experience. Where possible, please try to explain why you have a certain view, providing any evidence you have in support of that view.
- 5.4 Please indicate in your response the capacity in which you are responding, for example, a member of the public, elected member, Community Council, sex shop operator or someone

who works within a sex shop. You should email your response to [licensing@eastlothian.gov.uk](mailto:licensing@eastlothian.gov.uk)

- 5.5 Your response should be received by no later than XXXX in order to ensure your views are considered as part of the consultation exercise.

## Confidentiality & Data Protection

- 6.1 The local authority will process any personal data you provide in your response appropriately in accordance with the Data Protection Act 2018.
- 6.2 The local authority intends to publish a summary of responses received to the consultation exercise – this will include your name if you submit a response.
- 6.3 The Freedom of Information (Scotland) Act 2002 gives the public a right of access to information held by the local authority; this includes any responses we receive to the consultation exercise.
- 6.4 The local authority may disclose your response to third parties on request. In disclosing responses the local authority will take appropriate steps to redact personal data subject to the relevant provisions of the 2018 and 2002 Acts.

**6.5** The local authority will hold your response for a period of 2 years from the date it is received. At the end of this period your response will be destroyed unless there are exceptional circumstances that require the response to be retained for a longer period.

# A

## Appendix A: Should sex shops be licensed?

- A.1** The local authority has the discretionary power to pass a resolution requiring sex shops to be licensed. If a resolution was passed by the Sub-committee, any sex shops currently operating in East Lothian would require to apply for a licence and the Sub-Committee would have to determine the appropriate number of sex shops.
- A.2** If the Sub-Committee were to pass such a resolution it would not come into effect until at least 28 days after the date in which the resolution is passed. As detailed above, if a resolution were passed, existing and any new sex shops in East Lothian would require a licence. The process which sex shops would then be required to complete to apply for such a licence would be as follows:
- a. The applicant would apply to the East Lothian Council for a licence
  - b. A notice of the application would require to be published in a newspaper specified by the local authority, or by other electronic means as specified by the local authority no later than seven days after the date of the application
  - c. A further notice would require to be displayed in the immediate vicinity of the premises where it can be conveniently read by the public for a total of 21 days
  - d. A copy of the licence application must be given to Police Scotland and Scottish Fire and Rescue Service
  - e. At this stage, there would be a period of time during which objections to the application and representations in favour of the application could be made to the local authority
  - f. If, after consideration by the Licensing Sub-committee, it was decided to grant a licence, various conditions could be attached to the licence to impose control over the running of the sex shop.

- A.3** The Sub-Committee would be entitled to refuse the grant of a sex shop licence on the following grounds:
- a. To a person under the age of 18 years
  - b. Unsuitability of the applicant having been convicted of an offence or for any other reason
  - c. To a person who is not resident in the UK or was not resident throughout the period of six months immediately preceding the date the application was made
  - d. A body corporate which is not incorporated in the UK
  - e. That the business would be carried on for the benefit of someone other than the applicant (who would have been refused the licence if they had applied themselves)
  - f. That the number of sex shops in the local authority area at the time the application is made is equal to or in excess of the number which the local authority has deemed to be appropriate
  - g. That the grant of the licence would be inappropriate considering the character of the locality, use to which any premises in the vicinity are put, layout, character or condition
- A.4** There is a right of appeal against a decision of the Sub-Committee not to grant a licence. An appeal could be made on the grounds that the local authority erred in law, based their decision on an incorrect material fact, acted contrary to natural justice or exercised their discretion unreasonably
- A.5** As noted previously, if following this consultation the Sub-Committee were to decide not to pass a resolution providing for the licensing of sex shops, then no licence would be required to operate. Existing sex shops could continue to operate and new sex shops could be established without the need for a licence.
- A.6** When deciding whether to pass a resolution requiring sex shops to be licensed, the Sub-Committee will require to consider potential implications that this may have in relation to the European Convention of Human Rights (ECHR). The Sub-Committee is required to take account of the competing ECHR rights of individuals alongside those of the community.
- A.9** The Sub-Committee must also have regard to the Provision of Services Regulations 2009 (as amended) and the Regulatory Reform (Scotland) Act 2011 when considering whether to pass a resolution to licence sex shops and if so, the appropriate number of sex shops in its area.



**A.10** When determining the appropriate numbers of sex shops and which localities (if any) would be suitable for them to be located, the local authority may have regard to the following factors:

- Whether there are any sex shops already operating in the locality;
- The character of the locality, e.g. principally residential, night-time economy, etc.;  
The location of schools, places of worship, women’s refuges or other services focussed on supporting women, children and young people;
- Whether the locality is of historical or cultural importance;
- Whether the locality contains premises or areas which are frequented by children, young persons or families, for example parks, libraries or swimming pools; and
- Whether there have been incidents involving anti-social behaviour, sexual assaults, prostitution or more minor harassment reported within the locality.

**The Sub-Committee is seeking views on:**

- Do you think sex shops in East Lothian should be licensed? If so, why?
- Do you think there would be positive/negative impacts on sex shop operators if they were licensed? If yes, please explain what you think these would be?
- Do you think there would be positive/negative impacts on the communities and surrounding vicinity to a sex shop if they were licensed? If yes, please explain what you think these would be?
- If sex shops were to be licensed, do you think the location is an important consideration? – Please explain your answer.

**B****Appendix B:  
If sex shops are to be licensed, what should the appropriate number be?**

- B.1** If the Sub-Committee were to pass a resolution to licence sex shops, it has to determine and publicise the number that they consider appropriate for the local authority area and each relevant locality within it. When reaching this decision the Sub-Committee would be required to take specific local circumstances into consideration when determining the appropriate number of sex shops.
- B.2** The Sub-Committee would be required to review the set number of sex shops deemed appropriate from time to time and update this if necessary.
- B.3** The number can be set below the current number of sex shops or even at nil.

**The Sub-Committee is seeking view on:**

- Taking into account the factors referred to above, what do you think the appropriate number should be for the various localities within the local authority area:
  - a) Residential areas
  - b) Rural areas
  - c) Industrial areas
  - d) Late night economy areas
  - e) The county as a wholeWhere possible, please explain your answer.
- What localities, if any, within East Lothian do you consider would be an appropriate location for a sex shop?
- What localities, if any, within East Lothian, do you consider would be inappropriate for the location of a sex shop?

**From:** [Cassini, Cher](#)  
**To:** [Fitzpatrick, Sheila](#)  
**Subject:** Survey re licensing of sex shops  
**Date:** 26 August 2024 14:49:22

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Hi Shiela

I tried to complete the survey but I couldn't get to answer any of the questions, so my opinion has not been recorded. Can you please arrange for another survey to be issued?

As a Councillor who is part of the Licensing Board I can confirm that I would never grant a licence for any sex shop as these places detract from any area they are sited. They pose a particular risk to women and children. They bring down the tone of their surroundings. As I have already committed to the specific protection of women and girls, I feel any outlet which sells material that demeans the value of women in particular is completely against equality and decency East Lothian Council has pledged to uphold.

Sincerely  
Councillor Cher Cassini

Sent from [Outlook for iOS](#)

