

# **REPORT OF THE EXECUTIVE DIRECTOR OF CITY SERVICES**

## **REGULATORY COMMITTEE – 23 MAY 2011**

### **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 – REGULATION OF SEXUAL ENTERTAINMENT VENUES**

#### **1.0 PURPOSE OF THE REPORT**

- 1.1 To advise Members on the contents of a draft policy in respect of sexual entertainment venues and to request approval to undertake a consultation exercise.

#### **2.0 DESCRIPTION OF THE DECISION**

- 2.1 Members are requested to note the contents of the report and to give their approval that the Licensing Section undertakes a consultation exercise upon the Council's draft policy in respect of sexual entertainment venues.

#### **3.0 INTRODUCTION/BACKGROUND**

- 3.1 The Policing and Crime Act 2009 amended the Local Government (Miscellaneous Provisions) Act 1982 (the 'Act') in order to enable councils, from 6 April 2010, to commence the process, should they so choose, of regulating premises which operate as 'sexual entertainment venues'.
- 3.2 Members may recall that at their meeting on 24 May 2010 they received a report outlining the procedure that the Council must follow in order to adopt the legislation.
- 3.3 The Council, at its meeting on 26 January 2011, resolved to adopt the amended Act with effect from 7 March 2011. This became, for the purposes of the Act, the 'first appointed day'. As a result of this resolution applications for the grant of a sexual entertainment venue licence may now be received by the Council. However, any applications cannot be considered until after what is described in the Act as the 'second appointed day' i.e. 7 September 2011.
- 3.4 Members at their meeting on 28 March 2011 resolved that they wished the Council to adopt a policy with regard to the licensing of Sexual Entertainment Venues and requested that officers prepare a draft policy statement.

#### **4.0 CURRENT POSITION**

- 4.1 Officers have prepared a draft policy statement with regard to Sexual Entertainment Venues for the initial consideration of the Committee. The views of the Committee on this draft are requested. It is proposed

that, subsequent to the consideration of the Committee, officers undertake a consultation exercise with regard to the document. Any responses received will be reported to the Committee for potential revision of the draft. A copy of this draft policy statement is attached to the report as Appendix 1.

## **5.0 REASONS FOR THE DECISION**

- 5.1 To promote effective regulation of sexual entertainment venues.

## **6.0 ALTERNATIVE OPTIONS**

- 6.1 None.

## **7.0 RELEVANT CONSIDERATIONS**

- 7.1 None.

## **8.0 GLOSSARY**

- 8.1 No acronyms or abbreviations have been used in this report.

## **9.0 LIST OF APPENDICIES**

- 9.1 Appendix 1 – Draft copy of Sexual Entertainment Venues Policy.

## **10.0 BACKGROUND PAPERS**

- 10.1 Policing and Crime Act 2009
- 10.2 Home Office Guidance on Sexual Entertainment Venues

# **APPENDIX 1**

## **Sexual Entertainment Venue Licensing Policy**

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### **1. Introduction**

- 1.1 Sunderland City Council adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the 'Act') (as amended by section 27 of the Policing and Crime Act 2009) on 7 March 2011. This allows the Council to license sexual entertainment venues. This policy indicates our approach to the enforcement of this law.
- 1.2 The Council is unable to take a moral stand in adopting this policy as we recognise that Parliament has made it potentially lawful to operate a sexual entertainment venue. It is our role as a licensing authority to administer the licensing regime in accordance with the law.
- 1.3 Both the Local Government (Miscellaneous Provisions) Act 1982 and the Policing and Crime Act 2009 can be viewed at [www.legislation.gov.uk](http://www.legislation.gov.uk).

### **2. Consultation**

- 2.1 We consulted on this policy between XXXX and YYYY and it was approved by our Regulatory Committee on ZZZZ. This policy comes into effect on 7 September 2011.
- 2.2 Consultation was conducted with the representatives of local residents; the statutory responsible authorities under the Licensing Act 2003; and the representatives of holders of Licensing Act 2003 premises licences and club premises certificates in the City.

### **3. Objectives of Policy**

- 3.1 The overarching objectives of the policy are to:
    - promote the Council's visions and values;
    - protect the rights and health and safety of the general public, workers and businesses; and
    - ensure consistent and transparent decision making.
  - 3.2 This document outlines the policy which will guide Sunderland City Council when considering applications for sexual entertainment venue licences under the Act.
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### **4. Commenting on licence applications**

- 4.1 Unlike some other licensing regimes (such as for alcohol, entertainment, or gambling), any persons may raise objections about sexual entertainment venue licences. The Police are a statutory consultee for all applications.
- 4.2 We may only consider representations which are relevant to the statutory grounds for refusal that are set out in the Act. These grounds are shown below in paragraphs 8.1 to 8.3.
- 4.3 We will take the following approach to deciding applications:
- each case will be decided upon its merits. The Council will not apply any rigid rules to its decision making;
  - objectors may include residents' associations, community associations and trade associations. Councillors and MPs may also raise objections. Councillors may represent interested parties, providing that they do not also sit on the Regulatory Committee determining the application in question; and
  - we will give clear reasons for our decisions.
- 4.4 We are not able to consider objections which relate to moral grounds as these are outside the scope of the Act.
- 4.5 Objections must be made in writing and submitted to the Council no later than twenty eight days after the application is submitted to the Council.
- 4.6 Objections will be considered by the Regulatory Committee. We will give both applicants and objectors an equal opportunity to state their case.
- 4.7 We request that objections:
- indicate the name and address of the person or organisation making the representation and whether they consent to their details being released to the applicant;
  - indicate the premises to which the objection relates; and
  - clearly set out the reasons for making the objections.
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### **5. Exchange of Information**

- 5.1 The Council may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the Police and other partners in order to fulfil our statutory objective of reducing crime in our area.
- 5.2 The Council is under a duty to protect the public funds we administer, and to this end may use the information provided on application forms for the prevention and detection of fraud. We may also share the information with other bodies responsible for auditing or administering public funds for these purposes.
- 5.3 Details of applications and objections which are referred to the Regulatory Committee for determination will be published in reports that are made publicly available in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000.
- 5.4 The names and addresses of objectors will not be disclosed to applicants or published in public reports without the consent of the person making the objection. However, such details will be made available to Councillors of the Regulatory Committee on the day of the hearing.

### **6. Compliance and Enforcement**

- 6.1 Our approach to enforcement is set out in our Enforcement Policy which is available on request.

### **7. Relevant entertainment**

- 7.1 A sexual entertainment venue licence is required for “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”.
- 7.2 ‘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).” An audience may consist of just one person, e.g. in a private booth.
- 7.3 In deciding whether any entertainment is ‘relevant entertainment’ we will judge each case on its merits, but the term ‘relevant entertainment’ will generally be taken to include:
- lap dancing;
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- pole dancing;
- table dancing;
- strip shows;
- peep shows; and
- live sexual shows.

Adult entertainment not classed as “relevant entertainment” may still require licensing under the Licensing Act 2003.

### **8. Grounds for Refusal**

8.1 There are some specific grounds for refusing sexual entertainment venues which are set out in paragraph 12 of Schedule 3 to the Act. These include the situation where an applicant is unsuitable, due to his/her age, domiciliary status or previous criminal convictions.

8.2 We can also refuse applications for new or renewed licences where:

- the number of sexual entertainment venues in the relevant locality at the time the application is determined to be equal to or exceeds the number which we consider appropriate for that locality;
- the grant or renewal of the licence would be inappropriate, having regard to:
  - (i) the character of the relevant locality, or
  - (ii) the use to which any premises in the vicinity are put, or
  - (ii) to the layout, character or condition of the premises.

8.3 In considering the characteristics of a locality within which a licence is sought we shall particularly take account of the density and proximity of:

- residential accommodation;
  - parks and children’s play areas;
  - retail units (and their uses);
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- schools;
- religious and communal buildings; and
- alcohol or entertainment licensed premises.

### **9. Application form**

- 9.1 We have a standard application form and a model public notice, which are available upon request. The application must be accompanied by a plan of the premises which is clear and legible in all material respects and which identifies the area(s) within which relevant entertainment is to be provided.

### **10. Licence conditions**

- 10.1 We have adopted a set of standard conditions for the operation of sexual entertainment venues. These will be added to any licence issued unless modified by the Council's Regulatory Committee. These conditions are attached as Appendix 1
- 10.2 Other conditions may be imposed upon licences by the Council where considered appropriate.

### **11. Fees**

- 11.1 Our fees will be set each year. Details are available from our Licensing Section and on our website at [www.sunderland.gov.uk](http://www.sunderland.gov.uk). We will charge separate fees for applications for the grant, variation, renewal or transfer of licences.
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## **APPENDIX 1**

# **STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES**

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### **Protection of Customers**

1. Entry prices and prices for compulsory purchases (such as beverages) must be clearly displayed on the exterior of the premises.
2. All charges for products and services must be prominently displayed within the premises.
3. The Licensee shall produce and maintain Rules of Conduct for Customers. These Rules of Conduct must contain the following:
  - Customers viewing a lap dance must remain seated during the entire performance of the dance;
  - Customers may not dance at any time in areas identified for the provision of relevant entertainment in the submitted plan of the premises;
  - Customers must remain clothed at all times;
  - No photography is permitted including the use of mobile phones or other electronic devices for such; and
  - Customers may not touch any performer.
4. The Rules of Conduct shall be prominently displayed at the entrance to the premises, at each customer table and in the bar area.

### **Children/non-users**

5. No person under the age of 18 shall be admitted to the Premises. Customers who appear to be under the age of 25 must be asked to provide either a recognised proof of age card accredited under the Proof of Age Standards Scheme (PASS), a photograph Driving Licence, a passport or official HM Forces or EU ID card bearing a photograph and date of birth. The Licensee must provide prominent notices at each entrance to the Premises to this effect.
  6. Performers shall be aged not less than 18 years. The Licensee must ensure that all performers, before commencing employment at the premises, provide either a recognised proof of age card accredited under the Proof of Age Standards Scheme (PASS), a photograph Driving Licence, a passport or official HM Forces or EU ID card bearing a photograph and date of birth. The Licensee must maintain records of the names, addresses and dates of birth of performers.
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7. The Licensee shall not permit the display outside of the Premises of photographs or other images which may be offensive.
8. The Licensee shall ensure that the interior of the Premises is not visible from the outside of the Premises, and that the exterior is maintained to a satisfactory level of decorum. Performers must not be visible from outside of the Premises.
9. The Licensee shall ensure that neither they nor any person promoting or providing entertainment on the Premises (nor any person acting on behalf of any such person) display or distribute any advertisement which is offensive to public sentiment.

### **Protection for performers/prevention of crime and disorder**

10. The Licensee shall produce and maintain a Code of Conduct for Performers. This Code of Conduct must contain the following:
    - Performers shall only perform in areas identified for the provision of relevant entertainment in the submitted plan of the premises
    - Performers must remain clothed in the presence of customers except while performing in the areas identified for the provision of relevant entertainment in the submitted plan of the premises.
    - Performers must never be alone in the company of a customer except in an area visible to other persons within the Premises.
    - Performers may not perform any act that simulates any sexual act.
    - Performers must never touch the genitals or breasts of another person or knowingly permit another person to touch their genitals or breasts.
    - Performers may not use inappropriate, suggestive or sexually graphic language at any time.
    - Performers may not use any sex article during a performance.
  11. All performers are to be provided with a copy of the Code of Conduct for Performers and are to be given training on its contents.
  12. Performers must be provided with a secure lockable changing room with separate sanitary facilities from those used by the customers.
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### **The Premises**

13. Where lap dancing is performed, the Licensee shall ensure that an internal and external CCTV system of a type and specification approved by Northumbria Police is installed at the premises. Specifically:
    - the system shall be maintained in good working order with regular servicing and shall be operational throughout the operating hours of the premises;
    - The system must provide coverage of all parts of the premises to which customers have access;
    - images recorded by the system shall be retained securely for a minimum of 31 days and must be immediately available on request to a Police officer or authorised officer of the Council; and
    - there must be at least one member of staff on duty throughout operating hours who is trained and capable of downloading recorded CCTV images onto discs.
  14. Adequate arrangements must exist to enable the safe evacuation of disabled people in the event of an emergency. Staff must be aware of disabilities and react according to a pre-determined plan.
  15. All escape routes and exits must be kept unobstructed, in good order with non-slippery and even surfaces, free of trip hazards and clearly identified.
  16. All doors leading from exits into passages or to the outside of the premises shall be without locks, bolts or other fastenings, except that those doors used only for exit which shall be fitted with panic bolts and the method of opening shall be clearly indicated on the door to which it is fitted. Panic bolts shall not be secured with chains, padlocks or other locking devices when the premises are being used for the purposes of the licence.
  17. No person shall be employed at the Licensed Premises to carry out a security activity as defined by Schedule 2 of the Private Security Industry Act 2001 unless he/she is authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or is entitled to carry out that activity by virtue of section 4 of that Act.
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### **Management Standards**

18. The Licensee must remain in personal control of the Premises at all times or nominate in writing to the Council an individual over the age of 18 who will direct activities within the Premises.