



General Licensing and Registration Committee

Date **Thursday 28 April 2011**
Time **9.30 am**
Venue **Council Chamber, County Hall, Durham**

Business

Part A

1. Declarations of Interest (if any)
2. The Minutes of the Meetings held on 27 October 2010 and 20 January 2011, and of the Special Joint Meeting held on 31 January 2011 (Pages 1 - 10)
3. Sex Establishment and Sexual Entertainment Venue Licensing Policy (Pages 11 - 52)
4. Such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration
5. Any resolution relating to the exclusion of the public during the discussion of items containing exempt information

Colette Longbottom
Head of Legal and Democratic Services

County Hall
Durham
18 April 2011

To: **The Members of the General Licensing and Registration Committee**

Councillor C Carr (Chair)
Councillor B Arthur (Vice-Chair)

Councillors J Bailey, D Barnett, J Blakey, D Bowman, D Boyes,
D Brown, D Farry, P Gittins, J Gray, G Huntington, R Liddle,
D Marshall, L Marshall, P May, M Plews, J Shiell, D Stoker,
O Temple, L Thomson, R Todd and A Wright

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Durham County Council

General Licensing and Registration Committee

At the **Special Meeting** of the **General Licensing and Registration Committee** held in the **Committee Room 2** at **County Hall, Durham** on **Wednesday 27 October 2010 at 1.30pm.**

Present:

Councillor C Carr in the Chair

Members of the Committee:

Councillors R Arthur, J Blakey, D Boyes, J Gray, G Huntington, P May, M Plews, O Temple, L Thomson and A Wright.

Other Members:

Councillor K Holroyd

Apologies:

Apologies were received from Councillors J Bailey, D Brown, P Gittins, D Marshall, L Marshall, J Shiell, D Stoker and R Todd.

A1 Declarations of Interest

There were no declarations of interest received.

A2 Minutes

The Minutes of the Meeting held on 8 July 2010 were confirmed as a correct record and signed by the Chair.

A3 Designated Public Place Orders

Consideration was given to the report of the Corporate Director, Neighbourhood Services which provided information on the legislation surrounding Designated Public Place Orders (DPPOs) and to obtain agreement to a process for applications for DPPOs, a copy of which had been circulated.

Members were advised that Sections 12 and 13 of the Criminal Justice and Police Act 2001 provided local authorities the power to designate an area 'a public place' where there was evidence of problems of nuisance, annoyance or disorder because of the consumption of alcohol.

Once an area had been designated a public place it became an offence for an individual over the age of 18 to drink alcohol in the area after being requested not to do so by an accredited officer.

DPPOs were not alcohol free zones and did not make it illegal for people to drink in the area.

A number of DPPOs were already in place which were implemented prior to local Government Reorganisation. These were still in operation, however there were a number of additional areas where Officers felt that the Orders would be beneficial and a draft procedure for making application for a DPPO was attached to the report at Appendix 2.

In response to a question relating to the proposed procedure, the Strategic Manager, Safer Communities confirmed that Area Action Partnerships could be included as consultees on an application.

A Member asked if existing DPPOs had been effective. The Officer advised that anecdotal feedback from the Police had indicated that they had been useful in problem areas.

The cost of making application for a DPPO would be borne by the LMAP Groups (Local Multi-Agency Partnership Problem Solving Groups). It was suggested that the Policy be amended to reflect this.

Members discussed the role of accredited officers and were advised that at present they were made up of Police Officers and PCSOs. The officers were trained by the Police.

With regard to communicating the Policy to Residents Groups etc, it was suggested that if adopted the Area Action Partnerships be used as a mechanism for disseminating the information.

RESOLVED:

That

- (a) the procedure for Designating a Public Place as attached at Appendix 2 be agreed;
- (b) the power to implement a designation be delegated to the Area General Licensing and Registration Sub-Committees.

DURHAM COUNTY COUNCIL

At a Meeting of **General Licensing and Registration Committee** held in Committee Room 2 - County Hall, Durham on **Thursday 20 January 2011 at 10.00 am**

Present:

Councillor C Carr (Chair)

Members of the Committee:

Councillors B Arthur, J Bailey, P Gittins, J Gray, D A Marshall, L Marshall, J Shiell, L Thomson and R Todd

Apologies:

Apologies for absence were received from Councillors G Huntington, P May, O Temple and A Wright

1 Declarations of Interest (if any)

There were no declarations of interest received.

2 The Minutes of the Special Meetings held on 22 November and 6 December 2010 (copies attached)

The Minutes of the Special meetings held on 22 November and 6 December 2010 were agreed as a correct record and were signed by the Chair.

3 Review of Animal Health and Welfare Licensing Protocols

Consideration was given to the joint report of the Corporate Director, Neighbourhood Services and Health Protection Manager in relation to the review of Animal Health and Welfare Licensing, a copy of which had been circulated.

M Yeadon, Health Protection Manager explained that the purpose of the report was to review the current licensing mechanisms relating to prescribed animal welfare establishments within County Durham, and clarify the respective roles and responsibilities of both the local authority, and those partners and stakeholders who may have a contribution towards the application and renewal process.

Enforcement responsibility was dealt with on a multi-agency basis, each body having specific roles and responsibilities, and owners and keepers also had a personal responsibility to ensure the health, safety and welfare of their animal whilst it was in their care.

The Animal Welfare Act 2006 applied to all animals kept by man, including companion animals and placed a duty on all people keeping or responsible for animals, not only to avoid cruelty but also to provide for the welfare needs of the animals.

For the purposes of the Act an animal's needs included:-

- The need for a suitable environment
- The need for a suitable diet
- The need to be able to exhibit normal behaviour patterns
- Any need to be housed with, or apart from, other animals
- The need to be protected from pain, suffering, injury and disease

The legislation also intended to provide enabling powers for secondary legislation, which in due course should better regulate activities such as animal sanctuaries, livery yards, performing animals and greyhound racing.

There were currently 117 identified animal welfare businesses within County Durham that were licensed, details of which were set out in the report.

The report focused primarily on those situations where licensing occurred, clarified how facilities were to be inspected and licensed, and where contributions from other stakeholders or involvement with other agencies was required.

The report outlined the roles and responsibilities of the Council as part of the licensing process in relation to animal welfare establishments, how complaints were dealt with, and monitoring and enforcement. The Environmental Health and Consumer Protection Service would continue to regulate compliance in animal welfare establishments through regular inspection and investigation of complaints, in accordance with the licensing process. In addition it was proposed to develop a voluntary welfare rating scheme to improve fair trading practices amongst local traders and in doing so raise standards and promote consumer confidence.

Appendix 2 of the report outlined the generic procedures to be followed in relation to the licensing of a range of animal welfare establishments and Appendices 3 to 9 gave details of conditions relating to the following licensed premises:-

Pet shops
Establishments for the Breeding of Dogs
Animal Boarding Establishments
Horse Riding Establishments
Zoos
Independent Greyhound Racing Tracks

Appendix 7 outlined standard conditions to be attached to Dangerous Wild Animal Licences.

Members discussed the report and appendices in detail and asked a number of questions.

A Member referred to animal boarding and breeding establishments and potential noise nuisance, and asked if consultation was carried out with local residents as part of the application process. Members were advised that consultation was carried out when new applications were received but this was as part of the planning process. Consultation was not undertaken for renewal applications, however there were powers within the Environmental Protection Act 1990 to deal with issues such as noise nuisance.

Members discussed arrangements for dealing with breaches of conditions and were advised that under current arrangements existing licences could only be revoked by a Magistrate. With the exception of zoos, a Licensing Authority was only able to refuse a new application or an application for renewal. At present a decision to refuse an application was made by Officers, and following discussion it was felt that Members should be involved in the final determination of those applications where refusal was recommended. It was suggested therefore that Officers look at developing a decision-making procedure for consideration by the General Licensing and Registration Committee.

A further question was asked in relation to the criteria for zoos, and Members were advised that a small scale exemption for premises with animals that were not to be viewed by the public, could be applied for through DEFRA.

RESOLVED:

That

1. The approach as outlined in Appendix 2 and application of relevant conditions contained in Appendices 3 – 9 when dealing with licence applications from operators of prescribed animal welfare premises, be supported;
2. the development of a risk-based inspection programme for animal welfare premises, be supported; the programme to include past compliance history, the incidence of complaints and/or referrals and the suitability of the applicant/licence holder;
3. the development of a voluntary, welfare rating scheme, for appropriate businesses, be supported which would include a commitment to fair trade practices;
4. A policy be drawn up detailing a procedure for determination of applications recommended for refusal.

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DURHAM COUNTY COUNCIL

At a **Joint General Licensing and Registration and Statutory Licensing Committee** held in Council Chamber, County Hall, Durham on **Monday 31 January 2011 at 1.00 pm**

Present:

Councillor C Carr (Chair)

Members of the Committee:

Councillors B Alderson, B Arthur, J Bailey, J Blakey, D Boyes, P Charlton, B Graham, J Gray, K Holroyd, J Lee, R Liddle, P May, M Plews, J Shiell, D Stoker, O Temple, L Thomson, R Todd and J Wilkinson

Apologies:

Apologies for absence were received from Councillor Edward Bell, Councillor Paul Gittins, Councillor Amanda Hopgood, Councillor Garry Huntington, Councillor David Marshall, Councillor Linda Marshall and Councillor Anne Wright

1 Declarations of Interest, if any

Councillor O Temple declared an interest in relation to the following item of business where reference was made to village greens.

2 Proposed Amendment to the Constitution - Committee Provisions Applicable to Licensing

Consideration was given to the report of the Head of Legal and Democratic Services which gave details of proposed amendments to the Constitution in relation to Committee provisions applicable to licensing, a copy of which had been circulated.

R Langdon, Solicitor reported that since 1 April 2009 the Council had operated with a Statutory Licensing Committee and a General Licensing and Registration Committee, the existing functions of which were set out in Appendix 2 of the report.

The division of licensing between General and Statutory had resulted in two separate Committees that could not cover each other's work and with the current structure there had been problems with the Area General Licensing and Registration Sub-Committee meetings being quorate.

The Council had resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 which introduced the licensing of sex shops, sexual entertainment venues and other similar establishments.

Therefore the proposals aimed to enable a more efficient and economic provision of the Council's licensing function. It would enable the Statutory Licensing Committee to handle matters of General Licensing when occasions warranted it and provided an understanding of all aspects of the law when handling the new functions under the 1982 Act.

The proposals were set out in detail in Appendix 3 of the report and could be summarised as follows;-

- A General Licensing and Registration Committee made up of 27 Members.
- 3 General Licensing and Registration Sub-Committees of four Members to sit with the Chair or a Vice-Chair as a Panel of 5 Members appointed on a rota basis. The Chair to be a person also serving as a Chair of the Statutory Licensing Committee or Sub-Committee thereof. The quorum of the Sub-Committee to be 3.
- A Statutory Licensing Committee (a Sub-Committee of the General Licensing and Registration Committee) made up of 15 Members of the Council drawn from the General Licensing and Registration Committee. These Members would also be able to serve on other General Licensing and Registration Sub-Committees when occasion demanded.
- 3 Statutory Licensing Sub-Committees of 4 Members to sit with the Chair or a Vice-Chair as a Panel of 5 Members appointed by the Head of Legal and Democratic Services on a rota basis.

Finally Common Land and Village Green applications were currently reported to the General Licensing and Registration Committee. However these were not considered to be licensing issues but claims with respect to the use of land, and therefore more naturally fell within the remit of Highways Committee.

Members discussed the proposals in detail and asked a number of questions.

Councillor Temple referred to the proposal for village greens and common land and commented that Licensing Members had been required to undertake essential training before being able to consider applications. He suggested that, in the interim, until Members of the Highways Committee had undergone training those who had already been trained be utilised for any existing matters.

The Chair, Councillor Carr referred to the proposed quorum of 3 for the General Licensing and Registration Sub-Committees. He reiterated that the current quorum of 5 from a membership of 8 for the Area General Licensing and Registration Sub-Committees had caused problems in terms of meetings potentially being inquorate. However, notwithstanding the proposal to reduce the quorum he stressed the importance of all Sub-Committee Members making every effort to be present at meetings to which they were invited, and to nominate substitutes when they were unable to attend. It was suggested that it would be useful for the Chair of the

General Licensing and Registration Committee to be provided with a list of Member attendances on a periodic basis.

Reference was made to the requirement for political balance on the General Licensing and Registration Committee. Councillor Shiell stated that as the meetings were quasi-judicial, political balance was unnecessary and that in his experience there had been no political interference at any of the hearings. This was a view shared by all Members and it was therefore suggested that there be no requirement for political balance to be maintained in the membership of the General Licensing and Registration Committee and its Sub-Committees.

Councillor Shiell continued that he considered that the Licensing Committees were working well and that Members had developed in knowledge and experience, and he expressed his gratitude for their dedication.

In response to a further question R Langdon stated that in accordance with The Licensing Act 2003 a Statutory Licensing Sub-Committee could only consist of 3 Members, therefore under the proposed arrangements for 3 Panels of 5, there would be 2 substitutes at each hearing. Those Members who were substitutes were encouraged to remain throughout the hearing, not only in the event that they might be required but also to increase their knowledge and experience.

Following discussion it was **RESOLVED**

That the following recommendations be made to Council:-

1. The provisions set out in Appendix 3 of the report replace those in Appendix 2 to enable sufficient persons to cover the work required and ensure that the Statutory Licensing Committee is not limited to work associated with the Licensing Act 2003.
2. Where it is expedient to do so hearings required for the business of the General Licensing and Registration Sub-Committees be combined with hearings of the Statutory Licensing Sub-Committees.
3. All Members of the General Licensing and Registration Committee receive the same training.
4. The current provision for Common Land and Town and Village Greens be removed from the business of the General Licensing and Registration Committee and be dealt with by the Highways Committee. In the interim, until Highways Committee Members received training, those Licensing Members who had been trained deal with any existing village green matters.
5. There be no requirement to maintain political balance on the new General Licensing and Registration Committee and its Sub-Committees.

**General Licensing and Registration
Committee**

28 April 2011



**Sex Establishment and Sexual
Entertainment Venue Licensing Policy**

**Report of Terry Collins, Corporate Director, Neighbourhood
Services**

Purpose of the Report

- 1 The purpose of this report is to present and consider consultation responses on the draft Sex Establishment and Sexual Entertainment Venue Licensing Policy and to recommend an amended policy that is suitable for adoption by Council.

Background

- 2 On 3 November 2010 the Council resolved to adopt schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the amendment to this schedule provided by section 27 of the Policing and Crime Act 2009. The general effect of the amended schedule is to incorporate sexual entertainment venues such as pole dancing and strip clubs within the category of 'sex establishments' under the Act (previously this category only included sex shops and sex cinemas).
- 3 Two of the former District Councils, Durham City Council and Wear Valley District Council had previously adopted the Act prior to its amendment in order to license and thereby regulate sex shops and sex cinemas. In accordance with statutory time related requirements, the date on which the adopted legislation came into force for the County was 13 December 2010 (the "first appointed date").
- 4 This policy fulfils two principal purposes: it provides advice to businesses, operators and to the public on the Council's overall position with regards to the licensing of sex establishments under the Act, and it also provides a decision making framework for the Council via its Licensing Committee to exercise its quasi judicial functions. The policy must therefore balance the legitimate needs of businesses with local controls and community interests together with the licensing authority's role in administering the licensing regime in accordance with the law. Failure to achieve the correct balance could lead to a policy being overly prescriptive and open to challenge, or ineffective in the protection of local residents.
- 5 The adoption of such a policy is not mandatory however, it is considered to be invaluable for the administration and promotion of an open and transparent

licensing process. It has already been agreed by Council that a policy should be developed for adoption and be published prior to 13 June 2011.

- 6 Subject to specified exemptions, it will be unlawful to provide this type of entertainment in County Durham after 13 December 2011 (the "third appointed day") unless a licence has been granted or has been applied for before that date and is still under consideration.

Consultation

- 7 A draft policy was subject to a countywide consultation exercise between 21 December 2010 and 11 March 2011. Copies of the draft policy were sent to all holders of premises licences allowing the on-sales of alcohol, club premises certificates, the statutory responsible authorities under the Licensing Act 2003, local MPs, Councillors, Parish and Town Councils, and the Area Action Partnerships.
- 8 The draft policy was also widely advertised in the local and regional press, and was available for comment on the Council's website.
- 9 A total of 19 responses were received. The schedule of responses is attached as Appendix 2.

Conclusion

10. The responses to the consultation did not raise any matters resulting in significant changes to the draft policy. A copy of the amended final version of the proposed policy is attached as Appendix 3.

Recommendations

- 11 To Consider the attached summary of the consultation comments and approve the amendments to the policy.
- 12 To agree a final version of the amended policy and recommend its adoption to Council.

Background Papers

The amended proposed Sex Establishment/ Sexual Entertainment Venue Licensing Policy for Durham County Council

The Local Government (Miscellaneous Provisions) Act 1982

The Policing and Crime Act 2009

Contact: Joanne Waller, Head of Environment, Health and Consumer Protection Tel: 03000 260924

Appendix 1: Implications

Finance - The costs of consultation and publication of the revised policy will be met from existing budgets. The report has no known value for money implications.

Staffing - None

Equality and Diversity - Equalities and Diversity Impact Assessment (EqIA) screening was carried out in November 2010 during the development of the policy and any potential impacts were considered at this stage (Appendix 4). The EqIA screening has been reviewed after the consultation period and concerns raised in relation to any potential negative impact on age and religion or belief have already been considered in the original EqIA screening.

Accommodation - None

Crime and disorder - If any sex establishment or sexual entertainment venue licence applications are received, the Council's policy will contribute to the control and regulation of the daytime/evening and night time economies. As such, it can be viewed as having a role in the prevention of crime and disorder.

The effective control of licensed premises via appropriate conditions or restrictions on licences can significantly reduce the potential for crime related issues or mitigate their effects. This coupled with appropriate levels of monitoring and suitable enforcement measures can significantly contribute towards crime reduction and an increase in public reassurance.

Human Rights – None

Consultation – A draft policy was subject to a countywide consultation exercise between 21 December 2010 and 11 March 2011. Copies of the draft policy were sent to all holders of premises licences allowing the on-sales of alcohol, club premises certificates, the statutory responsible authorities under the Licensing Act 2003, local MPs, Councillors, Parish and Town Councils, and the Area Action Partnerships

Procurement – None

Disability Discrimination Act – None

Legal Implications – A licensing policy must be reasonable and proportionate. If an appeal concludes it is deficient, Magistrates can declare it to be unlawful. Matters previously subject to a defective policy which are concluded or ongoing may be 'lost' as relevant decisions may have been based on a defective document. Furthermore, a licensing policy can also be subject to a judicial review.

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Appendix 2

Schedule of Responses to the Draft Sex Establishment/SEV Licensing Policy Consultation

Reference	Comments	Appraisal	Response
1	Opposes any Council policy that would allow the opening of sex clubs or similar establishments in Durham.	Lawful to operate a sex establishment. Each application will be considered on its own merits.	No change to policy required
2	Strong objection to any policy that would permit licensing such establishments in Durham.	Lawful to operate a sex establishment. Each application will be considered on its own merits.	No change to policy required
3	“A big no thank you”, would bring “sleaze, more loutish behaviour and a burden on the police force”. Would taint Durham City – leave it at just the one in Consett. But, if approved, please provide lots of male lap dancers!	Lawful to operate a sex establishment. Each application will be considered on its own merits.	No change to policy required
4	Lists criteria that should be included in the policy: Presumption against granting a licence	Lawful to operate a sex establishment. Each application will be considered on its own merits.	No change to policy required
	Wide and effective consultation of local people and schools	Address by publicising any application received on the Council’s website	Add to policy
	Effective consultation of faith groups	As above	

	Consider Localism Bill and put weight on local people's views	Unable to consider as not in force, however:	Add "and the nature of the community generally" to 7.6
	Safety of young girls and women in the community should be paramount	Addressed by performer rules and minimum standards for customer conduct in Appendix 2	No change to policy required
	Activities must contribute to the wellbeing of the community		No change to policy required
	Provide good role models of life-enhancing employment for children and young people		No change to policy required
	Accept objections relating to sexually explicit display		No change to policy required
	H&S, wellbeing and employment rights for dancers to be paramount		No change to policy required
	Widen "Responsible Authorities" to include AAP, local community groups, faith group leaders and school head	Unable to change	No change to policy required
5	Aware of concern when Red Velvet opened. Hopes local residents can be included when considering any future		No change to policy required

	applications.		
6	Hope the idea of a lap dancing club is rejected. Bin the idea for the safety of everyone.	Lawful to operate a sex establishment. Each application will be considered on its own merits.	No change to policy required
7	Concern regarding minimal reference to safeguarding children – can any application be referred to the LSCB?	No relevant licensing objective as in Licensing Act 2003. However, the law does not allow under 18s to enter these premises. The locality is also considered (6.5, 7.6) and there are relevant conditions (7 and 18 of Appendix 1, 1 and 3 of the licence conditions and 1 of the minimum standards for customer conduct of Appendix 2).	No change to policy required
8	No comments		No change to policy required
9	No comments		No change to policy required
10	Pleased to see the Council will now be able to consider a wide range of factors when deciding on these types of licences. Would strenuously oppose all such venues in Durham City. Concerned about the effects of such places on young people and children who have to pass them.		No change to policy required

11	<p>Recommends:</p> <ul style="list-style-type: none"> • no premises shall be within 500m of a school or church of any kind, or within 500m of a community centre, youth club, children's playgroup or childcare building; • that the premises shall have a toilet just inside the entrance for the convenience of the patrons when leaving; • that signage on the building should be limited; • and that they should not be close to Council buildings which contain a Council Chamber or meeting rooms. 	No change to policy required	
12	<p>Welcomes tighter control over such establishments and doesn't question the policy. Requests effectiveness to be monitored and reviewed, and for adequate publicity to alert people potentially affected by an application. Also comments that strong enforcement will be needed if the operation of such an establishment proves to be a nuisance or threat to neighbours, children, vulnerable adults, passers by or employees.</p>	No change to policy required	
13	<p>Would like clarity regarding the required press notice (which paper and how selected). Also notes on-site notices are sometimes difficult to read and there should be a commitment to publishing all applications on the DCC website.</p> <p>The policy should make it clear at 3.3b that individuals have the right to object.</p>	Address by publicising any application received on the Council's website	Add to policy
		Agree	Amend 3.3(b)

	<p>There is no reference in the policy to the power to set a numerical limit or whether the Council intends to use it. It should be made clear that the maximum number could in some cases be zero and that this would be appropriate in a World Heritage Site.</p>		No change to policy required
	<p>The final policy requires clarification that the policy will vary to take account of the character of the area to which the licence application relates.</p>	Addressed by 7.6	No change to policy required
14	<p>Wishes to record her sadness that 1.5 and 3.4 of the policy indicate such venues cannot be banned. Hopes such venues will be kept off locations used in daytime for normal life.</p>		No change to policy required
	<p>Little is said in the policy about the outside indications on such premises.</p>	Addressed by conditions 18-21 (sex shops/cinemas) and conditions 1 and 6 (SEVs).	
15	<p>3.3(b) should start "As well as private individuals,"</p> <p>3.4 The authority should recognise moral grounds may motivate objectors but see what remains in any objection received based on moral grounds rather than reject it out of hand.</p> <p>Appendix 1: paragraphs 8, 9 and 10 refer to "employee" and "those employed". As employees may not be as employment law defines (they could be from agencies or self-employed), suggests replace "employee" with "member of staff" and state this term includes all those responsible to the management.</p>	<p>Agree</p> <p>Change paragraphs 9 and 10</p>	<p>Amend 3.3 (b)</p> <p>No change to policy required</p> <p>Change</p>

	<p>Performers may not need to wear a badge whilst performing.</p> <p>There should be Challenge 25 rather than Challenge 21.</p> <p>Appendix 2: should insert a paragraph stating CCTV is only to be used for the purposes of ensuring the proper management of the premises, and preventing and detecting crime and disorder. Recordings must not be sold or passed to third parties except as set out in paragraph 13.</p> <p>Need to align “under the influence of alcohol” in paragraph 18 and “drunk” in paragraph 19. Suggest paragraph 18 be reworded to “Any person who appears to be drunk or under the influence of illegal drugs will not be admitted to the premises.”</p>	<p>Change paragraph 9</p> <p>Change</p> <p>Change</p>	<p>Change</p> <p>Change</p> <p>Change</p>
16	<p>3.3(b) should include local faith groups.</p> <p>6.6 should clarify what happens after the annual licence – subject to the same scrutiny if a renewal application?</p> <p>Hopes public would have access to research regarding the social impact of sex establishments in other areas, and that this research be considered as valid when considering such establishments. Need to consider not just the impact on crime but on house prices and customers using surrounding establishments. Important to look at the whole impact of such places.</p>	<p>Change</p> <p>Change</p>	<p>Change</p> <p>Change</p> <p>No change to policy required</p>
17	<p>Clarify individuals may object.</p>	<p>Clarify</p>	<p>Amend 3.3(b)</p>

	Unclear if the 11 occasions allowed per year without a licence law or proposed policy. What will the process be for identifying (un)suitable designated areas? What level of consultation will there be with local residents first?	See 7.6	No change to policy required No change to policy required
18	Would like to share what happened where she used to live: a lap dancing club application appeal was heard in Court, with evidence that these sort of clubs in the States caused an increase in prostitution and drug dealing. There was also evidence from a local club that a no touching policy was being breached.		No change to policy required
19	This Council agrees with the policy, subject to local councils becoming statutory consultees.		No change to policy required

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**PROPOSED SEX ESTABLISHMENT AND SEXUAL
ENTERTAINMENT VENUE LICENSING POLICY**

MARCH 2011

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1. Introduction

- 1.1 This policy sets out the County of Durham Council's ("The Authority") requirements for premises to be licensed as sex establishments or sexual entertainment venues.
- 1.2 Durham County Council has adopted schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) so that the Authority may licence sex shops, sex cinemas, and sexual entertainment venues in County Durham.
- 1.3 The 1982 Act and the 2009 Act can be viewed at www.opsi.gov.uk
- 1.4 In this policy all such premises are referred to as "sex establishments" unless stated otherwise.
- 1.5 The Authority recognises that Parliament has made it lawful to operate a sex establishment and that such businesses are a legitimate part of the retail and leisure industries. The licensing authority's role is to administer the licensing regime in accordance with the law.
- 1.6 This policy was approved by Full Council on (date).
- 1.7 Consultation was conducted with local residents; potential holders of sex establishment licences for premises in County Durham; the statutory responsible authorities under the Licensing Act 2003; and holders of premises licences and club premises certificates under the Licensing Act 2003.
- 1.8 In developing the policy the Authority considered the legal requirements of the 1982 Act and its duties under:
 - (a) Section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder.
 - (b) The Regulators' Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the regulations set out and to particularly consider the impact of regulations on small businesses.
 - (c) The Provision of Services Regulations 2009 to ensure requirements are non-discriminatory, justified by an overriding reason relating to the public interest, proportionate to that public interest objective, clear and unambiguous, objective, made public in advance, transparent and accessible.

2. County Durham

- 2.1 The County of Durham is located in the heart of the North East of England. From its western boundary high in the Pennine Hills, to the limestone cliffs of its North Sea coastline, County Durham features a rich diversity in lifestyle and culture including an historic University, a World Heritage Site, Beamish and Bowes Museums, Durham City, Lumley and Lambton Castles, designated areas of Outstanding Natural Beauty, and historic villages and market towns. Approximately 4 million visitors are attracted to the County each year.
- 2.2 The County currently has a resident population of around 493,500 with more than half of the residents living in villages of less than 10,000 people. Many of the County's 12 main towns and 240 other small towns and villages are associated with its proud coal mining heritage.
- 2.3 Potential operators should refer to the Local Development Framework for details about the local planning authority's approach to granting planning permission for developments where such activities may take place:
(www.durham.gov.uk/pages/service.aspx?serviceid=856).
- 2.4 Further information is contained in the Sustainable Community Strategy 2010-2030 which can be obtained from the Council's offices or website (www.durham.gov.uk).

3. Commenting on Licence Applications

- 3.1 The Chief Officer of Police is a statutory consultee for all applications but a wide range of people can raise objections about sex establishment licence applications.
- 3.2 Objections should be relevant to the statutory grounds for refusal that are set out in Schedule 3 (s.12) of Local Government (Miscellaneous Provisions) the 1982 Act:
- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - (b) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
 - (c) that the number of sex establishments 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;
 - (d) that the grant or renewal of the licence would be inappropriate, having regard:
 - (i) to the character of the relevant locality; or
 - ii) to the use to which any premises in the vicinity are put;or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- 3.3 The Authority will take the following approach to deciding applications:
- (a) Each case will be decided on its merits.
 - (b) As well as individuals, objectors can include residents' associations, community associations, local businesses, trade associations. Councillors elected to the County Council of Durham, Parish Councils and Members of Parliament elected to serve areas within the County of Durham. Elected Councillors may represent interested parties, provided that they do not also sit on the Licensing Committee determining that application.
 - (c) Clear reasons will be given for the Authority's decisions.
- 3.4 The Authority will not consider objections that are frivolous, vexatious or repetitious, or which relate to moral grounds, as these are outside the scope of the 1982 Act. Decisions on whether objections are frivolous or vexatious will be made objectively by the

Authority and not on the basis of any political judgement. A referral will be made to the Chair or Vice-Chair of the Licensing Committee. The objector will be given a reason, in writing, where an objection is rejected. A report will be made to the Licensing Committee determining the application, indicating the general grounds of the representation and why it was rejected.

- 3.5 Objections will be considered by the Licensing Committee. Objectors will be entitled to attend any hearing to determine an application and both applicants and objectors will be given an equal opportunity to state their case.
- 3.6 An application referred to the Licensing Committee will normally be considered within 20 working days of the day after the end of any representation period permitted by law. However, the Authority may extend this period if it is considered fair to do so in the public interest. If the Authority decides to extend the fixed period, written notification of the extension and duration will be given to the applicant and objectors, giving the reason(s).

4. Exchange of Information

- 4.1 The Authority will occasionally exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the Police and other partners to fulfil its statutory objective of reducing crime in the area.
- 4.2 Details of applications and objections that are referred to the Licensing 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.
- 4.3 The names and addresses of objectors will not be disclosed or published in public reports in accordance with the 1982 Act although such details will be made available to Councillors on the Licensing Committee. Names and addresses of objectors will not be disclosed to applicants without the consent of the person making the objection.

5. Compliance and Enforcement

- 5.1 The Association of Chief Police Officers advise that sex establishments are not generally a source of crime or disorder. The Authority will normally adopt a light touch inspection regime except when, on the basis of information received, such an inspection regime would not be considered sufficient.
- 5.2 The Authority's approach to enforcement is set out in the Authority's Corporate Enforcement Policy which is available on request.

6. Sex Shops and Sex Cinemas

- 6.1 Licences for sex shops are required where there are any 18R films or where there is a “significant degree” of “sex articles” being offered.
- 6.2 The phrase “sex articles” is defined in the 1982 Act but a “significant degree” is not. When considering whether or not a business is selling a significant degree of sex articles and needs a licence, the Authority will consider:
- (1) the ratio of sex articles to other aspects of the business
 - (2) the absolute quantity of sales
 - (3) the character of the remainder of the business
 - (4) the nature of the displays in the business
 - (5) turnover
 - (6) other factors which appear to be materially relevant.
- 6.3 There are some specific grounds for refusing sex establishment licences set out in paragraph 12 of schedule 3 to the 1982 Act. These include where the applicant is unsuitable to hold a licence due to age, domiciliary status or previous criminal convictions.
- 6.4 The Authority will consider any application on its merits, although generally:

Sex Shops

- in predominantly residential areas will be subject to the presumption that they will always be refused;
- in predominantly commercial areas may be granted subject to the satisfaction of defined criteria unless outweighed by other persuasive or compelling factors;
- in predominantly industrial areas may be granted subject to the satisfaction of defined criteria unless outweighed by other specified factors.

Sex Cinemas

- in predominantly residential areas will be subject to the presumption that they will always be refused;
- in predominantly commercial areas may be granted subject to the overall nature of the area being taken account of and any representations made;
- in predominantly industrial areas will be subject to the presumption that they will always be refused but discretion may be exercised to grant after taking account of the area and any representations made.

- 6.5 In considering the characteristics of a locality the Authority will particularly take account of the density and proximity of residential accommodation, parks and children's play areas, other retail units (and their uses), educational establishments, religious buildings, community halls, youth clubs, hospitals, medical and counselling centres, sports clubs and venues, public entertainment venues and other licensed premises.
- 6.6 The Authority will grant licences for sex shops and sex cinemas for the maximum duration of a year. For renewal applications, the statutory requirements for advertising, giving notice, consideration by the licensing authority, hearings and the giving of reasons are the same as those applying to initial grants.
- 6.7 The Authority does not consider it would be appropriate to permit waivers from the requirement to hold a sex establishment licence except in extreme circumstances considered by the Licensing Committee (for example, to allow a temporary relocation of a business following damage to licensed premises).
- 6.8 The Authority has a standard application form, including public notices, which is available on request.
- 6.9 The Authority has adopted standard conditions for the operation of sex shops that are set out at appendix 1. Where it is reasonable and necessary to do so, the Licensing Committee will impose additional proportionate conditions on a licence.

7. Sexual Entertainment Venues

- 7.1 Licences for sexual entertainment venues are 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 in schedule 3 (as amended by section 27 of the Policing and Crime Act 2009) 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 can consist of just one person, e.g. in a private booth.
- 7.3 In deciding whether entertainment is “relevant entertainment” the Authority will judge each case on its merits but it will generally apply to lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows. Other Adult entertainment not classed as “relevant entertainment”, and the supply of alcohol, will still require licensing under the Licensing Act 2003 for which a separate licence is required. It should be noted that there does not have to be nudity to make it relevant entertainment and clothed or partially clothed performers may come within the definition.
- 7.4 There are some specific grounds for refusing sex establishment licences set out in paragraph 12 of schedule 3 to the 1982 Act. These include where the applicant is unsuitable to hold a licence due to their age, domiciliary status or previous criminal convictions.
- 7.5 The Authority will consider any application on its merits, although generally:

Sexual Entertainment Venues

- in predominantly residential areas will be subject to the presumption that they will always be refused;
 - in predominantly commercial areas may be granted subject to the overall nature of the area being taken account of and any representations made;
 - in predominantly industrial areas will be subject to the presumption that they will always be refused but discretion may be exercised to grant after taking account of the area and any representations made.
- 7.6 In considering the characteristics of a locality the Authority will particularly take account of the density and proximity of residential accommodation, parks and children’s play areas, other retail units (and their uses), educational establishments, religious buildings, community halls, youth clubs, hospitals, medical and counselling

centres, sports clubs and venues, public entertainment venues and other licensed premises.

- 7.7 The Authority will grant licences for the maximum duration of a year. For renewal applications, the statutory requirements for advertising, giving notice, consideration by the licensing authority, hearings and the giving of reasons are the same as those applying to initial grants.
- 7.8 The Authority does not consider it would be appropriate to permit waivers from the requirement to hold a sexual entertainment venue licence, particularly as the legislation allows relevant entertainment on an infrequent basis of no more than eleven occasions within a 12 month period, providing there is at least one month between each period of entertainment which itself does not last for more than 24 hours.
- 7.9 Where a person is to hold entertainment that would make the premises a sexual entertainment venue, but on less than eleven occasions within a 12 month period, whilst a sexual entertainment licence is not required the person must comply with all statutory requirements that apply to a person taking advantage of this exemption and will in any event be expected to notify the Licensing Authority of each such event.
- 7.10 The Authority has a standard application form, including public notices, which are available on request.
- 7.11 The Authority has adopted standard conditions for the operation of sexual entertainment venues that are set out at appendix 2. Where it is reasonable and necessary to do so, the Licensing Committee will impose additional proportionate conditions on a licence.

Appendix 1

The following are standard conditions for Sex Shops and Sex cinemas that will be automatically applied to any licence granted.

Management of the Premises

1. The licence holder (or some responsible person nominated in writing by the licence holder and approved by the Council) has personal responsibility for the premises and is responsible at all times when the premises are open to the public.
2. Where the licence holder is a body corporate or an incorporated body, any change of director, company secretary or other person responsible for the management of the body must be notified in writing to the Council within 14 days of such change.
3. A summary of the licence must be displayed at all times in a conspicuous position on the premises, and a full copy must be available upon request.
4. The name of the person responsible for the management of the premises must be displayed at all times in a conspicuous position on the premises.
5. The licence holder must retain control over all parts of the licensed premises and must not let, licence or part with possession of any part. The Council must be notified immediately in the event that any part of the premises is affected by the termination of a lease or other event affecting the licence holder's control of the premises.
6. No person under the age of 18 may be admitted to the licensed premises and a notice to this effect, in accordance with condition no. 18, must be displayed on the outside of the premises. The Challenge 25 Scheme must be operated at the premises.
7. The licence holder, any employee or agent must not solicit custom for the sex establishment outside or in the vicinity of the premises.
8. The licence holder must ensure that, during the hours the premises are open for the purposes of the business, every agent or representative of the licence holder (other than the performers) wears a badge of a type approved by the Council indicating their name and that they are an employee, agent or representative.

Opening of the Premises

9. The hours prescribed by the Authority will be detailed on the licence.

Conduct of the Premises

10. No change from a sex shop to a sex cinema or a sex cinema to a sex shop may be made without the written consent of the Council.

11. 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, may be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.
12. A sex shop must be conducted primarily for the purpose of the sale of goods by retail.
13. All sex articles and other things displayed or advertised for sale, hire, exchange or loan must be clearly marked to show the price being charged.
14. All printed material offered for sale, hire, exchange or loan must be available for inspection prior to purchase, and a notice to this effect must be displayed in a conspicuous position within the premises.
15. No film or video recording (or computer game) may be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to the effect.

External Appearance of the Premises

16. The licence holder may, on the outside of the premises, and subject to the prior written approval of the Council, exhibit the name of the business and a notice consisting of the words "Licensed Adult Establishment".
17. The licence holder must exhibit a notice of the opening times including the words "No person under the age of 18 allowed. People who appear to be under the age of 25 will be required to produce on request identification bearing their photograph, date of birth and a holographic mark to show proof of their age."
18. No other words, signs, displays or advertisements may be displayed outside or in the vicinity of the premises except those mentioned in condition 19 or otherwise approved by the Council in writing, and no external loudspeakers may be installed.
19. The interior of the premises must not be visible from outside the building.

State, Condition and Layout of the Premises

20. The premises must be maintained in good repair and condition.
21. External doors must be kept closed at all times other than when people are entering or leaving the premises. The external doors must be fitted with automatic closing devices and these devices must be maintained in good working order.
22. The premises must be fitted with an inner entrance door or screen so that no part of the interior or any of the contents in the premises may be visible when people are entering or leaving the premises.

23. Access must not be permitted through the premises to any adjoining or adjacent premises except in an emergency.
24. Lighting must operate continuously in the premises whenever it is open to the public.
25. No alterations or additions, whether internal or external, may be made to the premises without prior written consent from the Licensing Authority.
26. Any facilities for previewing films, video or digital recordings or similar material must be physically separated from the display area of the shop so that no material being displayed is visible or audible outside the preview area.
27. No fastenings of any description may be fitted to any booth or cubicle within the premises and no more than one customer or member of the public (excluding an employee or agent of the licence holder there solely for the purposes of the licence holder's business) may be present in any booth or cubicle at any time

Safety and Security

28. The licence holder must take all reasonable precautions for the safety of the public and employees.
29. The licence holder must take the necessary steps to check the age of customers entering the premises who appear to be under the age of 25 to ensure they are not younger than 18 and where a person is refused entry because of age to keep a record of such in an appropriate register.
30. The licence holder must ensure that a digital CCTV system is installed in the premises to the satisfaction of Durham Constabulary and in respect of which the following conditions shall apply:
 - It must be of such a quality that individuals are readily identifiable from recordings made.
 - It must cover all public entrances and other areas to which the public have admission.
 - It must be operated by properly trained staff.
 - It must be in operation at all times that the premises are being used for licensable activities.
 - Recordings must be kept secure where they cannot be tampered with, and retained for a period of no less than thirty (30) days or such other period as shall be specified by Durham Constabulary.
 - Recordings must be available on request to the Licensing Authority and/or Durham Constabulary, and be provided within 14 days of any such request.

31. The licence holder must within the premises, without charge, display and make available such free literature on counselling on matters relating to sexual problems as may be published by the Family Planning Association and other similar organisations. Free literature relating to the prevention of sexually transmitted diseases and HIV must be available and displayed in a prominent position.
32. All advertising and/or promotional literature must not depict explicit material that shows nudity or describes or represents sexual activity in a direct and detailed way.

Appendix 2

The following are standard conditions performer rules and codes of conduct for Sexual Entertainment Venues that will be automatically applied to any licence granted.

Licence Conditions

- 1 No person under the age of 18 years is permitted in the premises whilst any live performance of sexual entertainment or live display of nudity is taking place, and a notice must be clearly displayed at the entrance to the premises stating “No person under 18 will be admitted. People who appear to be under the age of 25 will be required to produce on request identification bearing their photograph, date of birth and a holographic mark to show proof of their age.”
- 2 Each area must display signs advising customers of the minimum standards for customer conduct. Such signs must first have the approval of the Authority and must include the minimum standards set out in these conditions.
- 3 Performers must be aged 18 years or over. People who appear to be under the age of 25 will be required to produce on request identification bearing their photograph, date of birth and a holographic mark to show proof of their age.
- 4 A price list must be displayed in a prominent position giving the price and time allowed for a dance routine that may be requested by a customer.
- 5 Performers not performing must not remain in the public area unless clothed.
- 6 There must be no physical contact between customers and entertainers during a performance, except for the placing of dance tokens or money into the hands of a performer at the beginning or end of a performance.
- 7 Customers must remain seated whilst watching a performance.
- 8 Anyone employed on the premises to work in the capacity as a door supervisor must hold a current licence with the Security Industry Authority.
- 9 No glass bottles may be taken from the premises.
- 10 The licence holder must ensure that a digital CCTV system is installed in the premises to the satisfaction of Durham Constabulary and in respect of which the following conditions shall apply:
 - It must be of such a quality that individuals are readily identifiable from recordings made
 - It must cover all public entrances and other areas to which the public have admission

- It must be operated by properly trained staff
 - It must be in operation at all times that the premises are being used for licensable activities
 - Recordings must be kept secure where they cannot be tampered with, and retained for a period of no less than thirty (30) days or such other period as shall be specified by Durham Constabulary
 - Recordings must be available on request to the Licensing Authority and/or Durham Constabulary, and be provided within 14 days of any such request.
- 11 A representative of the licence holder will become a member of the local Pubwatch or Clubwatch scheme and attend regularly.
- 12 Performers must be provided with a secure lockable changing room.
- 13 At the beginning and end of a performance performers must be escorted by an employee to and from the dressing room and stage or area set aside for a performance so far as possible without passing through the audience.
- 14 At the end of each shift, suitable arrangements must be made for the safe departure of all performers.
- 15 Any person who appears to be drunk or too much under the influence of alcohol and/or drugs will not be admitted to the premises.
- 16 The licence holder or nominated person must discourage criminal conduct, in particular the use of illegal substances, by displaying notices in and at the entrance to the licensed premises that clearly state "Entry will be refused to any person who appears to be drunk and/or too much under the influence of alcohol and/or drugs and/or threatening or violent. Entry may be refused to any person who has been convicted of an offence of drunkenness, violent or threatening behaviour, or the use of or distribution of illegal substances at a licensed venue. CCTV is in use at the premises and evidence may be recorded using such or other electronic means. Offences will be reported to the Police".
- 17 The licence holder or nominated person will record full details of the circumstances surrounding any seizure of drugs or articles taken as a consequence of a criminal offence or other incident, notify the Police within 24 hours, and items will be retained where they may be required as evidence.
- 18 The licence holder or nominated person will provide a suitable receptacle in accordance with Police guidance for the safe retention of illegal substances and inform the Police to arrange appropriate disposal.

Performer Rules

Performers must be required:

1. The licence holder must have in place suitable arrangements to ensure the safety of performers arriving or leaving the building, to the minimum standard outlined in the application.
2. To be clothed when not performing.
3. Prior to starting work to complete and sign an appropriate form and provide evidence by means of photographic identification in the form of a valid passport or driving licence that they are 18 years of age or over.
4. Not be under the influence, or appear to be under the influence, of alcohol or drugs at any time on the premises.
5. Only to perform in any booth allocated for that purpose by the management.
6. To stop the dance or dancing if a customer attempts to touch or speak to a performer inappropriately during a booth dance performance and immediately inform the management or member of the security staff thereof.
7. Not to sell or solicit any form of sexual favour.
8. To notify management in the event of his or her spouse, civil partner boyfriend or girlfriend being on the premises.

Minimum Standards for Customer Conduct

1. Customers be seated during a performance.
2. There must be no physical contact with the performers at any time during the performance.
3. Unacceptable and inappropriate behaviour will result in a customer being removed from the premises.
4. No illegal substances may be brought into, or consumed on, the premises.
5. No photography is permitted including the use of mobile phones and other electronic devices for such.
6. Customers must be aware that any breach of the code of conduct for customers will result in the customer being excluded from the premises.

Appendix 3

Definitions

Sex Cinema (paragraph 3, schedule 3)

A sex cinema is any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which 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
- iii) 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.

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

- a) If they may be used for an exhibition of a film (within the meaning of paragraph 15 of schedule 1 of 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; or
- b) Of their use for an exhibition to which section 6 of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of the Cinemas Act 1985.

Sex Encounter Establishment (paragraph 3A, schedule 3)

In this schedule “sex encounter establishment” means:

- a) Premises at which performances which are not unlawful are given by one or more persons present and performing, which wholly or mainly comprise the sexual stimulation of persons admitted to the premises (whether by verbal or any other means); or
- b) Premises at which any services which are not unlawful and which do not constitute sexual activity are provided by one or more persons who are without clothes or who expose their breasts or genital, urinary or excretory organs at any time while they are providing the service; or
- c) Premises at which entertainments which are not unlawful are provided by one or more persons who are without clothes or who expose their breasts or genital, urinary or excretory organs during the entertainment; or

- d) Premises (not being a sex cinema) at which pictures are exhibited by whatever means (and whether or not to the accompaniment of music) in such circumstances that it is reasonable for the appropriate authority to decide that the principal purpose of the exhibition, other than the purpose of generating income, is to stimulate or encourage sexual activity or acts of force or restraint associated with sexual activity;

Provided that no premises which are:

- (i) For the time being, being used for the provision of regulated entertainment (within the meaning of the Licensing Act 2003), or in circumstances where that use is authorised under that Act; or
- (ii) For the time being, being used for the purposes of late night refreshment (within the meaning of that Act) in circumstances where that use is so authorised; or
- (iii) A private dwelling house to which the public are not admitted;

shall be regarded as a “sex encounter establishment”.

Sex Shop (paragraph 4, schedule 3)

A sex shops means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:

- a) sex articles; or
- 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.

Sex Article

A sex article means:

- a) Anything made 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;
- b) Anything to which the below applies:

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 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 (other than medical, scientific and/or other instructional literature or artefacts that has not been written or manufactured with a view to sexual stimulation).

Sexual Entertainment Venue (paragraph 2A, schedule 3, as amended by section 27 of the Policing and Crime Act 2009)

In this schedule, a sexual entertainment venue means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

“Relevant entertainment” means any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

Local Authorities will judge each case on its merits, but relevant entertainment includes lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows.

The following are not sex encounter venues:

- a) sex cinemas and sex shops
- b) premises at which relevant entertainment is provided as mentioned above less frequently than once a month
- c) premises or types of performances or displays exempted by an order of the Secretary of State.

“Audience” includes an audience of one.

“Display of nudity” means, in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and, in the case of a man, exposure of his pubic area, genitals or anus.

“The organiser”, in relation to the provision of relevant entertainment at premises, means any person who is responsible for the organisation or management of the relevant entertainment or the premises.

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

“18R” refers to the classification of a video or DVD that is restricted to over 18s only. By virtue of the Video Recordings Act 1984, when the classification 18R is placed on a recording, that video (or DVD) may only be distributed from a licensed sex shop.

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Appendix 4

Equalities and Diversity Impact Assessment

Sex Establishment/Entertainment Venue Licensing Policy

Published by Durham County Council
(Final Draft Version)



Durham County Council – Altogether Better equality impact assessment form

NB: Equality impact assessment is a legal requirement for all strategies plans, functions, policies, procedures and services. We are also legally required to publish our assessments.

You can find help and prompts on completing the assessment in the guidance from page 7 onwards.

Section one: Description and initial screening

Section overview: this section provides an audit trail.	
Service/team or section: Environment, Health and Consumer Protection – Public Safety – Licensing Services	
Lead Officer: Licensing Manager, Environment, Health and Consumer Protection	Start date: 5.11.10
Head of Environment Health and Consumer Protection Planning and Policy Officer	Reviewed 6.04. 2011
Licensing Manager	Reviewed 14.04.2011
<p>Subject of the Impact Assessment: (please also include a brief description of the aims, outcomes, operational issues as appropriate)</p> <p>Sex Establishment/Entertainment Venue Licensing Policy</p> <p>The licensing service works almost exclusively with, through and for people. It is passionate about promoting a just society that gives everyone an equal chance to learn, work and live free from discrimination and prejudice. As a service within a Local Authority it is taking action to ensure all aspects of service delivery addresses equality and diversity issues. Durham County Council has resolved to adopt legislation which incorporates “sexual entertainment venues” within the categories of sex establishments regulated by the Council. The Licensing Authority has decided to set out a Sex Establishment/Entertainment Venue Licensing Policy and to undertake consultation with appropriate service users, businesses and potential licence holders. This policy has been produced in accordance with the powers conferred by the Local Government (Miscellaneous Provisions) Act 1982 and the Policing and Crime Act 2009, and also in accordance with “Sexual Entertainment Venues: Guidance for England and Wales” published by the Home Office in March 2010. This policy shall apply throughout the administrative area of Durham County Council from the date of adoption. The licences specified in the Acts and covered by this policy are sex establishments (shops and cinemas) and sexual entertainment venues. The Council will adopt and carry out its function to licence sex establishments/entertainment venues with a view to protecting the public by administering the licensing regime in accordance with the law, considering each application on its merit, and adopting standard conditions. Additional conditions may be imposed by the Licensing Committee if considered reasonable and necessary. Any complaints will be investigated and appropriate follow up action taken. When taking enforcement action the Council as the Licensing Authority will have regard to Durham County Council’s Enforcement Policy.</p> <p>Reviewed</p> <p>The EqIA screening has been reviewed after the consultation period and concerns raised in relation to any potential negative impact on age and religion or belief have already been considered in the original EqIA screening. (March 2011)</p>	
Who are the main stakeholders: General public / Employees / Elected Members / Partners/ Specific audiences/Other (please	

specify) –

The Council will take into account the views of the following regarding this policy:

- Potential licence holders
- Elected Members of the Council
- Local MPs and MEPs
- Town and Parish Councils
- Durham Constabulary and the other statutory responsible authorities under the Licensing Act 2003
- Holders of premises licences and club premises certificates under the Licensing Act 2003
- Area Action Partnerships
- Disability Groups
- Relevant Trade Associations

A full list of those consulted is available from the Licensing Section.

Is a copy of the subject attached? Yes

Initial screening

To achieve the above standard the Council will endeavour to comply with the duties and obligations under the following legislation:

- Sex Discrimination Act 1975
- Race Relations Act 1976/2000
- Disability Discrimination Act 1995/2005
- Human Rights Act 1998
- Provision of Services Regulations 2009
- Equalities Act 2010

Gender

Single Gender clubs – The legislation, guidance and policy are directed to the consideration and processing of applications from any person and premises that meets the statutorily directed criteria which must be adhered to in the application process. The licensing authority holds a neutral stance in relation to all matters providing the application criteria are met by the applicant. The only reasons for rejecting an application stem from the statutory requirements of the application process and the only representations and objections that may be considered by the licensing authority that may lead to a decision not to grant a licence relate exclusively to the requirements of agreed policy and legislation. An application could not for example be rejected simply on the grounds on an exclusive gender issue.

Age

Standard conditions attached to a sex shop licence state that no person under the age of 18 may be admitted to the premises and a notice to this effect must be displayed on the outside of the premises. The notice must state “No person under the age of 18 allowed. People under the age of 21 will be required to show proof of their age.” Standard conditions attached to a sexual entertainment venue licence state that no person under the age of 18 years will be permitted in the premises whilst any live performance of sexual entertainment or live display of nudity is taking place, and a notice must be clearly displayed at the entrance

to the premises stating “No person under 18 will be admitted”. There is also a standard condition that performers must be aged 18 years or over. The policy also states that the authority will consider the character of the relevant locality when considering an application and will particularly take account of the density and proximity of various types of premises including parks and children’s play areas, educational establishments and youth clubs. It is likely that any premise licensed as a sexual establishment venue will already be licensed under the Licensing Act 2003. This primary legislation provides for various offences and requirements associated with the protection of children and the sale and consumption of alcohol by children.

Disability

No identified issues.

Race/Ethnicity

No identified issues.

Religion or belief

Some people may have a religion or belief that is offended by sex establishments/entertainment venues. The policy notes that it is lawful to operate these and that such businesses are a legitimate part of the retail and leisure industries. The licensing authority’s role is to administer the licensing regime in accordance with the law. This law empowers local people and the community to be involved in the licensing process. The policy also states that the authority will consider the character of the relevant locality when considering an application and will particularly take account of the density and proximity of various types of premises including religious buildings.

Prompts to help you:

Who is affected by it? Who is intended to benefit and how? Could there be a different impact or outcome for some groups? Is it likely to affect relations between different communities or groups, for example if it is thought to favour one particular group or deny opportunities for others? Is there any specific targeted action to promote equality?

Is there an actual/potential negative or positive impact on specific groups within these headings?

Indicate :Y = Yes, N = No, ?=Unsure

Gender	N	Disability	N	Age	Y	Race/ethnicity	N	Religion or belief	Y	Sexual orientation	N
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How will this support our commitment to promote equality and meet our legal responsibilities?

Reminder of our legal duties:

- Eliminating unlawful discrimination & harassment
- Promoting equality of opportunity
- Promoting good relations between people from different groups
- Promoting positive attitudes towards disabled people and taking account of someone’s disability, even where that involves treating them more favourably than other people
- Involving people, particularly disabled people, in public life and decision making

The Council, in adopting the licensing policy, recognises both the need for safe and healthy neighbourhoods as well as the need to support local businesses to enhance the local economy and vibrancy of the County. In formulating this Policy the Licensing Authority has had regard to the provisions of the European Convention on Human Rights, Human Rights Act 1998, Crime and

Section three: Review and Conclusion

Summary: please provide a brief overview, including impact, changes, improvements and any gaps in evidence.			
Action to be taken	Officer responsible	Target Date	In which plan will this action appear
When will this assessment be reviewed?	Date: When the policy is reviewed.		
Are there any additional assessments that need to be undertaken in relation to this assessment?			
Lead officer - sign off: Head of Environment Health and Consumer Protection			Date: 19 Nov 2010 Reviewed 6.04.2011 Reviewed 14.04.2011
Service equality representative - sign off: Policy Performance and Communications Officer			Date: 19 Nov 2010 Reviewed 6.04.2011 Reviewed 14.04.2011

Please ask us if you would like this document summarised in another language or format.

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