



# Sex Entertainment Venue Licensing Policy and Procedures

April 2011

# Sex Entertainment Venue Licensing

## 1 Introduction

- 1.1 On 14<sup>th</sup> April 2011 Hartlepool Borough Council adopted an amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') by virtue of Section 27 of the Policing and Crime Act 2009 (the 2009 Act) to enable it to licence Sex Entertainment Venues within the borough.
- 1.2 The 1982 Act and the 2009 Act can be viewed at [www.opsi.gov.uk](http://www.opsi.gov.uk).

## 2 Definitions

- 2.1 **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 (subject to the exceptions set out in paragraph 4.1 below).
- 2.2 **Relevant Entertainment** means 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. where the entertainment takes place in private booths).
- 2.3 **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.

### **3 Relevant Entertainment**

3.1 The Council will judge each case on its merits and the definition of Relevant Entertainment will apply to the following forms of entertainment as they are commonly understood:

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

3.2 The above list is not exhaustive and as the understanding of the exact nature of these descriptions may vary, they should only be treated as indicative. Ultimately, decisions to licence premises as Sexual Entertainment Venues shall depend on the content of the entertainment provided and not the name it is given.

### **4 Sexual Entertainment Venues - exceptions**

4.1 Schedule 3, Paragraph 2A(3) of the 1982 Act defines those premises that are not Sexual Entertainment Venues. These are:-

- Sex Shops and Sex Cinemas (which are separately defined in Schedule 3 to the 1982 Act)
- Premises which provide Relevant Entertainment on an infrequent basis. These are defined as premises:-
  - a) Where no Relevant Entertainment has been provided on more than 11 occasions within a 12 month period;
  - b) Where no such occasion has begun within a period of one month beginning with the end of the previous occasions; and

- c) Where no such occasion has lasted longer than 24 hours.
- d) Other premises or types of performances or displays exempted by an order of the Secretary of State.

4.2 Premises which:

- provide Relevant Entertainment on an infrequent basis or
- provide any form of adult entertainment which falls outside the definition of Relevant Entertainment will continue to be regulated under the Licensing Act 2003, insofar as they are providing regulated entertainment under that Act.

## **5 THE POLICY**

- 5.1 The Council does not take a moral stand in adopting this policy and recognises that Parliament has made it lawful to operate Sex Entertainment Venues and that such businesses are a legitimate part of the retail and leisure industry. Every application for a Sex Entertainment Venue licence will be considered on its individual merits.
- 5.2 The Council is mindful of possible concerns that the local community may have in regard to applications for Sex Entertainment Venues and this Policy will guide the Council when considering applications for licences in balancing the conflicting needs of commercial interests, patrons, employees, residents and local communities.
- 5.3 This Policy will be strictly applied and will only be overridden in exceptional circumstances.
- 5.4 The Council has not set a limit on the number of Sex Entertainment Venues that it thinks is appropriate for any relevant locality. The Council will determine each application on its merits on a case-by-case basis.

5.5 This document sets out the process the Council will follow in considering and determining an application for a Sex Entertainment Venue Licence.

5.6 A licence cannot be granted to:

- a person under 18;
- a person who has held a licence but has had it revoked within 12 months preceding the date of the application;
- to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made;
- to a body corporate which is not incorporated in an EEA State; or
- a person who has within the last 12 months preceding the date of the application been refused a licence in respect of the same premises.

5.7 An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on any ground specified above does not have a right to appeal unless the applicant seeks to show that the ground did not apply to him.

5.8 In addition, the Council may refuse an application for the grant or renewal of a licence on one or more of the grounds below:-

- a) The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- b) 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) The number of Sex Entertainment Venues at the time the application is determined 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 (i.e. the locality in which the premises are situated); 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.

5.9 When considering an application the Council shall have regard to the following issues (this list is not exhaustive): -

- The proximity of educational establishments;
- The proximity of places of worship;
- Access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises
- The proximity of shopping centres
- The proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive)
- Any current planning considerations
- Whether there is planned regeneration of the area.
- The proximity of other Sex Establishments
- the character of the locality in which the premises are situated
- the use to which any premises in the vicinity are put
- the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made
- The proximity of residential premises, including any sheltered housing and accommodation of vulnerable people

5.10 When considering the suitability of an applicant the Council shall have regard to, amongst other things, those issues detailed in Appendix II of this policy.

- 5.11 An applicant whose application for the grant or renewal of a licence is refused on either ground specified in (c) or (d) above does not have the right to appeal the decision. In such cases the applicant can only challenge the refusal by way of judicial review.

#### Duration of Licence

- 5.12 Sex Entertainment Venue licences will normally expire on an annual basis, but may be issued for a shorter period if deemed appropriate.

#### Making Representations

- 5.13 Unlike other licensing regimes (such as alcohol, entertainment or gambling) a wide range of people can raise objections about Sex Entertainment Venues. The police are a statutory consultee for all applications.
- 5.14 Representations must be relevant to the application and must not be frivolous or vexatious.
- 5.15 Decisions on whether objections are frivolous or vexatious will be made objectively by Council officers and not on the basis of any political judgement.
- 5.16 Objections should:
- Be made in writing
  - Show the name and address of the person/organisation making the representation.
  - Indicate the premises to which the representation relates
  - Indicate the proximity of the premises to the person making the representation
  - Clearly set out the reasons for making the representations.

5.17 Unless the person/organisation making a representation specifically objects, their name and address shall be disclosed as part of the public record of the application and its determination. A request for anonymity will only be granted in exceptional circumstances.

### The Hearing

5.18 The Council shall hold a hearing before:

- refusing to grant a licence
- refusing to renew a licence
- refusing to transfer a licence
- varying a licence
- revoking a licence

5.19 The applicant and any persons who have made representations and who wish to attend the hearing will have the opportunity to address the Sub-Committee before the application is determined.

5.20 When considering an application the Council will have regard to the following:-

- Those issues listed in paragraph 5.9 of this policy
- All written representations made by responsible authorities or members of the public
- All representations made in person at the hearing

5.21 The Council has not set a limit on the number of Sex Entertainment Venues that it thinks is appropriate for any relevant locality. The Council will determine each application on its merits on a case-by-case basis.

5.22 The Council has however determined that there should be a prohibition on live sex shows, peep shows and any live entertainment which depicts non simulated sexual acts between two or more people.



### General Conditions

5.23 A range of general conditions designed to ensure the safe and well managed operation of licensed premises shall be attached to all Sex Entertainment Venue licences. The general conditions are detailed in Appendix I to this policy.

### Appeals

5.24 The following may at any time, before the expiration of the period of 21 days following receipt of the Council's determination, appeal to the Magistrates' Court: -

- An applicant for a licence whose application is refused or which has been subjected to terms, conditions or restrictions;
- A holder of any such licence whose licence is revoked.

## **6. THE APPLICATION PROCESS**

### Making an application

6.1 Applications may be made electronically via the Council's website at [www.hartlepool.gov.uk/licensing](http://www.hartlepool.gov.uk/licensing).

6.2 An application may also be made in writing to: The Licensing Team, Hartlepool Borough Council, Civic Centre, Victoria Road, Hartlepool, TS24 8AY

6.3 Applicants for a new licence must complete the relevant application form and submit it to the Licensing Team together with:

- The correct fee as set by the Council

- A location plan
- Detailed plans of the premises (in a **scale of 1:100** (1 centimetre to 1 metre) unless a different scale is agreed with the Council in advance) containing the following information:
  - (a) the location of the extent of the boundary of the building, if relevant, and any external and internal walls which comprise the premises, or in which the premises is comprised
  - (b) the location of points of access to and egress from the premises
  - (c) if different, the location of escape routes from the premises
  - (d) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment:
  - (e) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor
  - (f) in a case where the premises includes any steps, stairs, elevators or lifts, the location of those steps, stairs, elevators or lifts.
  - (g) The location of any booths intended to be used to provide entertainment to an unaccompanied individual

6.4 As part of the application process, applicants are required to display a notice at the proposed site for 21 days from the date the application is lodged with the Council setting out the application details. This notice must be blue in colour and a minimum of A4 in size. The notice must be displayed in a prominent position for the entire 21 days and must be easily readable by passers by.

Applicants are also required to place a public notice in a local newspaper giving details of the application. The newspaper notice should appear in the publication within 7 days of the application being lodged.

6.5 The Council will send copies of the application to, and seek comments from:

- Cleveland Police
- Child Protection Officers
- Environmental Health Department
- Any other relevant persons/organisations deemed appropriate by the Council

6.6 Should any representations be received regarding a licence application the matter shall be referred to the Council's Licensing Sub-Committee for consideration.

#### Renewal of Licence

6.7 An application to renew the licence must be made no later than 28 days prior to the expiry of the existing licence.

6.8 Where, before the expiry of a licence, an application has been made for its renewal in accordance with 6.7 above, it shall remain in force even though the expiry date has passed until the withdrawal of the application or its determination by the Council, whichever occurs first.

#### Variation of Licence

6.9 The application form, together with relevant plans and the appropriate fee should be forwarded to the Licensing Department. Applications for variation are required to comply with site and newspaper notice requirements unless otherwise agreed in advance with the Licensing Team (see 6.4 of this policy).

6.10 Applications for variations must relate only to proposed changes in respect of the actual premises and the hours of operation currently covered by the licence.

6.11 Applications for the variation of hours only do not require a plan of the premises to be submitted.

6.12 The Council shall consult with any agency or organisation it considers appropriate and should any representations be made concerning an application for variation, the application will be considered by the Council's Licensing Sub-Committee. Applicants must not operate any revised or varied arrangements until the application is approved and the licence has been issued.

#### Transfer of Licence

6.13 Where, before the date of expiry of a licence, an application has been made to transfer, it shall be deemed in force with any necessary modifications until the withdrawal of the application or its determination, notwithstanding that the expiry date has passed or that the person to whom the licence is to be transferred is carrying on the business of the sex establishment.

6.14 Following the receipt of an application for the transfer of a licence, the Council shall consult with any agency it considers appropriate and, should any representations be received concerning the unsuitability of the applicant, the matter shall be referred to the Council's Licensing Sub-Committee for consideration.

**GENERAL CONDITIONS**

- (a) The licence and conditions (or a clear copy) shall be prominently displayed on the premises at all times so as to be readily and easily seen by all persons using the premises, and also the police, the fire authority and authorised officers of the Council.
- (b) A copy of the "House Rules" shall be prominently displayed on the premises.
- (c) A notice shall be displayed at the main entrance(s) warning patrons that the performance includes unclothed male and/or female dancers and that no person under the age of 18 years shall be admitted.
- (d) No other words or signs, photographs, displays or advertisements, shall be displayed on the outside or in the vicinity of the premises (NB this shall not apply to proper press advertisements). The issue of leaflets or flyers is not permitted.
- (e) External doors and windows shall be closed at all times other than for access and egress.
- (f) A CCTV system of a type and specification approved by Cleveland Police shall be operational during all trading hours. Images recorded by the system shall be retained for a minimum of 28 days and shall be made immediately available to police officers or other authorised officers on request.
- (g) The licensee, or a named responsible person, shall be nominated in writing, by the licensee for the purpose of managing the sexual entertainment venue ('the Manager') and shall be present on the premises at all times whilst relevant entertainment is taking place.
- (h) Except with the written consent of the Council, the premises shall not remain open to the public outside the licensed hours.
- (i) All performers, patrons and staff must be over 18 years or over.
- (j) Photography or recording of any kind within the premises (excluding CCTV recording required by condition on licence) shall be prohibited.
- (k) Any activity that by definition requires to be licensed by this licence shall not be visible from outside of the premises.
- (l) Relevant entertainment shall only be provided by the performer. There must be no audience participation.

- (m) Performers shall only perform on the stage area, to seated and segregated customers or in such other areas of the licensed premises as may be agreed with the Licensing Authority.
- (n) Performers may only dance for seated patrons.
- (o) Patrons must remain fully clothed at all times.
- (p) There shall be no physical contact between performers and patrons before, during and after the performance except for the transfer of money or token to the hand of the performer either immediately before or after the performance. Notices to this effect shall be clearly displayed at each booth/table and at each entrance.
- (q) There shall be a minimum distance of one metre between the performer and any patron during any performance.
- (r) Sex toys must not be used and penetration of the genital area or any other orifice by any means shall not be permitted.
- (s) Any performance shall be restricted to dancing and removal of clothing. There must not be any other form of sexual activity.
- (t) At the end of a performance the performer must be provided with access to a changing room without the need to pass unclothed through an audience.

## Matters to be taken into account when considering the suitability of an applicant

1. Evidence that the applicant is honest
2. That the operator is qualified by experience to run the type of sex establishment in question
3. That the operator understands the general conditions
4. That the operator is proposing a management structure which will deliver compliance with operating conditions e.g. through: -
  - a) Managerial competence
  - b) Presence
  - c) A credible management structure
  - d) Enforcement of rules internally eg. through training and monitoring
  - e) A viable business plan e.g. sufficient to employ door staff and install CCTV
  - f) Policies for welfare of performers
5. That the operator can be relied upon to act in the best interests of the performers e.g. in how they are remunerated, the facilities they enjoy, how they are protected and how and by whom their physical and psychological welfare is monitored.
6. That the operator can be relied upon to protect the public e.g. transparent charging, freedom from solicitation
7. That the operator can show a track record of management of compliant premises or s/he will employ individuals who have such a track record.
8. Any other matter that the licensing authority considers relevant.