

Licensing Committee

Agenda

Date: Monday, 10th January, 2011
Time: 2.00 pm
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

4. **Minutes of Previous Meeting** (Pages 1 - 2)

To approve the minutes of the meeting held on 8 November 2010.

5. **Minutes of Licensing Sub-Committees** (Pages 3 - 26)

To receive the minutes of the Licensing Act Sub-Committee meetings held on 1 November 2010, 26 November 2010, 8 December 2010, 17 December 2010 & 20 December 2010, and the General Licensing Sub-Committee meeting held on 2 December 2010.

6. **Sexual Entertainment Venues – Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 (as amended)** (Pages 27 - 108)

To consider:

- (a) the consultation responses received in relation to the proposed adoption of the power to regulate 'sexual entertainment venues' within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009
- (b) the consultation responses received in relation to the draft policy on the licensing of sexual entertainment venues
- (c) fee levels in relation to sexual entertainment venue applications
- (d) proposed delegations

7. **Information Report: Police Reform and Social Responsibility Bill**
(Pages 109 - 122)

To note the provisions contained in the Police Reform and Social Responsibility Bill which relate to the proposed amendment of the Licensing Act 2003.

8. **Amendments to Licensing Delegations** (Pages 123 - 132)

To consider proposed amendments to the Licensing delegations.

THERE ARE NO PART 2 ITEMS

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Committee**
held on Monday, 8th November, 2010 at Meeting Room B,
Macclesfield Library, Jordangate, Macclesfield, Cheshire SK10 1EE

PRESENT

Councillor P Whiteley (Chairman)
Councillor B H Dykes (Vice-Chairman)

Councillors C Andrew, W T Beard, H Davenport, L Gilbert, J Goddard,
A Ranfield and C Tomlinson

OFFICERS IN ATTENDANCE

Mrs K Khan, Solicitor
Mrs J Zientek, Democratic Services Officer

Apologies

Councillors Rhoda Bailey, D Bebbington, M Hardy, M Parsons and J Wray

15 DECLARATIONS OF INTEREST

There were no declarations of interest.

16 PUBLIC SPEAKING TIME/OPEN SESSION

There were no questions from members of the public.

17 MINUTES OF PREVIOUS MEETING

RESOLVED – That the minutes of the meeting held on 13 September 2010 be approved as a correct record and signed by the Chairman.

18 MINUTES OF LICENSING SUB-COMMITTEES

RESOLVED – That the minutes of the Licensing Act Sub-Committee meeting held on 27 September 2010 and the General Licensing Sub-Committee meeting held on 14 October 2010 be received.

19 REGULATION OF HYPNOTISM - HYPNOTISM ACT 1952

The Committee considered a report regarding a proposed set of conditions which would attach to authorisations relating to performances of hypnotism granted by the Council.

The draft conditions had been subject to a twelve week consultation exercise which concluded on 8th October 2010. Three representations had been received, including a suggestion that the conditions be amended

to require the submission of an up-to-date copy of liability insurance with applications.

RESOLVED

- (a) That the representations received during the consultation period be noted.
- (b) That the conditions as set out at Appendix A of the report be attached to authorisations relating to performances of hypnotism, subject to condition 3 being amended to read as follows:

‘3. Insurance

- a. The performance shall be covered by public liability insurance at a level which must be approved by the Licensing Authority. The hypnotist must provide evidence of this to the local authority 7 days prior to the performance and it must be available for inspection at the performance.’

20 RE-ADOPTION OF PART II LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Committee considered a report regarding a proposal to re-adopt the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 within the Borough of Cheshire East.

Each of the three predecessor district Councils had made resolutions to adopt Part II of the 1976 Act, which contains provisions in relation to the licensing of private hire and hackney carriage vehicles, drivers and operators. It was suggested that it would be beneficial to consolidate the adoption resolutions for the purpose of clarity for the future and to ensure certainty in any enforcement action taken under the legislation.

In response to a query regarding the estimated publicity costs for the statutory notices, the Solicitor stated that the cost would be kept as low as possible while adhering to the legislative requirements.

RESOLVED – That the Cabinet Member for Safer and Stronger Communities be recommended to authorise the Borough Solicitor, or officer acting on his behalf, to provide notice, in accordance with section 45 of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), of the Council’s intention to pass a resolution to adopt the provisions of Part II of the 1976 Act in relation to the Council’s administrative area.

The meeting commenced at 11.10 am and concluded at 11.32 am
(Note: The meeting was not quorate at the advertised start time of 10.30am)

Councillor P Whiteley (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Act Sub-Committee**
held on Monday, 1st November, 2010 at The Capesthorpe Room - Town Hall,
Macclesfield SK10 1DX

PRESENT

Councillor P Whiteley (Chairman)

Councillors W T Beard and J Goddard

OFFICERS PRESENT

Mr J Hopper (Licensing Officer) and Mrs K Khan (Licensing Solicitor)

16 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

17 DECLARATIONS OF INTEREST

There were no declarations of interest.

18 APPLICATION FOR A PREMISES LICENCE - LIVESEY'S DELICATESSEN & COFFEE HOUSE, 15 HIGH STREET, BOLLINGTON, MACCLESFIELD, CHESHIRE

The Sub-Committee considered a report regarding an application by Miss Joanne Weselby for the grant of a Premises Licence for Livesey's Delicatessen and Coffee House under section 17 of the Licensing Act 2003.

The applicant, her partner and an objector attended the hearing and made representations with respect to the application.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of:

- The Secretary of State's Guidance under section 182 of the Licensing Act 2003
- Cheshire East Borough Council's Statement of Licensing Policy
- The four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm)
- All the evidence, including the oral representations made at the meeting and the written representations of an interested party, the Police, the Cheshire Fire Service and Bollington Town Council

the following course of action had been agreed:

RESOLVED – That the application to grant a Premises Licence for Livesey's Delicatessen and Coffee House be granted as follows:

Recorded Music (to take place indoors only)

Monday to Saturday 08.00 to 22.30

Sunday 10.00 to 18.30

Sale and supply of alcohol (for consumption both on and off the premises)

Monday to Saturday 08.00 to 22.00

Sunday 10.00 to 18.00

And subject to the following conditions:-

1. No sale of alcohol shall take place in the rear yard area;

2. No open glasses, vessels or containers of alcohol shall be taken into the rear yard area at any time after 20.00.

The Sub-Committee wished to highlight the fact that should problems relating to the licensing objectives be linked to the operation of licensable activities at this premises then Responsible Authorities or Interested Parties may call for a review of the licence at any time.

Both parties were reminded of the right to appeal decisions to the Magistrates Court within 21 days.

(Prior to consideration of the following item the meeting was adjourned for 5 minutes).

19 APPLICATION FOR A PREMISES LICENCE - POYNTON SPORTS CLUB, LONDON ROAD NORTH, POYNTON

The Sub-Committee considered a report regarding an application by Poynton Sports Club for the grant of a Premises Licence for Poynton Sports Club under section 17 of the Licensing Act 2003.

The Chairman of the Club, the Deputy Chairman of the Club, the Designated Premises Supervisor, Poynton Town Councillor L Clarke, an objector and a representative from the Police attended the hearing and made representations with respect to the application.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of:

- The Secretary of State's Guidance under section 182 of the Licensing Act 2003
- Cheshire East Borough Council's Statement of Licensing Policy

- The four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm)
- All the evidence, including the oral representations made at the meeting and the written representations of interested parties, the Police, the Environmental Health Officer and Trading Standards

the following course of action had been agreed:

RESOLVED – That the application to grant a Premises Licence for Poynton Sports Club be granted as follows:

Live Music (to take place indoors only)

Sunday to Thursday 10.00 to 24.00

Friday and Saturday 10.00 to 01.00

From 10.00 on Christmas Eve until 24.00 on Christmas Day.

From 10.00 on New Years Eve until 24.00 on New Years Day.

Recorded Music (to take place indoors only)

Sunday to Thursday 10.00 to 24.00

Friday and Saturday 10.00 to 01.00

From 10.00 on Christmas Eve until 24.00 on Christmas Day.

From 10.00 on New Years Eve until 24.00 on New Years Day.

Indoor Sports

Sunday to Thursday 10.00 to 24.00

Friday and Saturday 10.00 to 01.00

Sale and supply of alcohol (for consumption on the premises only)

Sunday to Thursday 10.00 to 24.00

Friday and Saturday 10.00 to 01.00

From 10.00 on Christmas Eve until 24.00 on Christmas Day.

From 10.00 on New Years Eve until 24.00 on New Years Day.

Provision of facilities for making music (to take place indoors only)

Sunday to Thursday 10.00 to 24.00

Friday and Saturday 10.00 to 01.00

From 10.00 on Christmas Eve until 24.00 on Christmas Day.

From 10.00 on New Years Eve until 24.00 on New Years Day.

Provision of facilities for dancing (to take place indoors only)

Sunday to Thursday 10.00 to 24.00

Friday and Saturday 10.00 to 01.00

From 10.00 on Christmas Eve until 24.00 on Christmas Day.
From 10.00 on New Years Eve until 24.00 on New Years Day.

Late Night Refreshment (to take place indoors only)

Sunday to Thursday 23.00 to 24.00

Friday and Saturday 23.00 to 01.00

From 23.00 on Christmas Eve until 05.00 on Christmas Day.

From 23.00 on New Years Eve until 05.00 on New Years Day.

And subject to the following conditions:-

1. The conditions suggested by the Environmental Health Department, as outlined below, are imposed on the Premises Licence, subject to the amendment to condition ii to make it clear that doors shall be maintained in a closed position, except for access and egress:-

i. Amplified live music should terminate at 23.30 hours from Sunday to Thursday and at 00.30 on Fridays and Saturdays.

ii. Doors to the function room should be maintained in a closed position at all times that amplified entertainment is taking place – this includes the double doors leading to the outside and also the internal double doors to the lounge/bar area.

iii. Volume control both in relation to the overall volume level and the bass beat volume element shall be controlled at all times by the Club.

iv. Regular patrols shall be made around the perimeter of the Poynton Sports Club site by responsible persons associated with the Club during amplified entertainment to ensure that noise nuisance and disturbance is not caused from the playing of amplified music to the surrounding residents. A 'log' of noise assessments shall be kept at the Club premises and made available for inspection by an Officer of this Authority at any time. The log should detail the type of amplified entertainment at the time, date and time of the assessment, the position of the assessment and a subjective description of the noise heard.

These conditions were imposed, at the recommendation of the Environmental Health Department and in the light of the evidence from local residents, in order to prevent harm to the licensing objective of the prevention of public nuisance.

2. A CCTV system shall be installed at the premises, in accordance with the requirements of the Police. Images shall be retained for a period of time approved by the Police.

This condition was imposed, following the recommendation of the Police, in order to prevent harm to the objective of the prevention of crime and disorder.

3. In cases where events or functions (of a non-sporting nature) are to take place at which alcohol is to be sold or regulated entertainment provided to members of the public generally, i.e. individuals other than members and guests and associate members and guests, then:

(a) no glasses or bottles (with the exception of plastic or polycarbonate glasses) shall be taken outside the clubhouse;

(b) the Designated Premises Supervisor or other nominated member of the Club will notify the Police Licensing Officer of the event/function and will, if required by the Police, employ SIA registered door supervisors.

These conditions were imposed, following the evidence from the Police, in order to prevent crime and disorder.

4. Notices shall be placed at the exits to the premises requiring persons leaving the premises to do so quietly and with respect for neighbours.

The Sub-Committee wished to highlight the fact that should problems relating to the licensing objectives be linked to the operation of licensable activities at this premises then Responsible Authorities or Interested Parties may call for a review of the licence at any time.

Both parties were reminded of the right to appeal decisions to the Magistrates Court within 21 days.

The meeting commenced at 9.30 am and concluded at 12.55 pm

Councillor P Whiteley (Chairman)

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Act Sub-Committee**
held on Friday, 26th November, 2010 at West Committee Room - Municipal
Buildings, Earle Street, Crewe, CW1 2BJ

PRESENT

Councillor P Whiteley (Chairman)

Councillors Rhoda Bailey and B H Dykes

OFFICERS IN ATTENDANCE

Mrs K Khan, Solicitor

Mr P Simester, Licensing Officer

Mrs J Zientek, Democratic Services Officer

20 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

21 DECLARATIONS OF INTEREST

There were no declarations of interest.

22 VARIATION OF PREMISES LICENCE - JAX COUNTRY PRODUCE, YEW TREE HOUSE, WREXHAM ROAD, BULKELEY, MALPAS, SY14 8BX

Note: In the absence of the applicant, the meeting was adjourned for 5 minutes prior to consideration of this item.

The Sub-Committee considered a report regarding an application from Mrs Jacqueline Foster to vary the Premises Licence for Jax Country Produce, Yew Tree House, Wrexham Road, Bulkeley, Malpas, SY14 8BX under section 34 of the Licensing Act 2003.

The applicant, a representative of the applicant and four local residents attended the hearing and made representations with respect to the application.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of:

- The Secretary of State's Guidance under section 182 of the Licensing Act 2003
- Cheshire East Borough Council's Statement of Licensing Policy

- The four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm)
- All the evidence, including the oral representations made at the meeting and the written representations of interested parties

the following course of action had been agreed:

RESOLVED

1. That the variation to the Premises Licence for Jax Country Produce, Yew Tree House, Wrexham Road, Bulkeley, Malpas, SY14 8BX be approved, as follows:

Live music - indoors only

Sunday to Thursday: 18:00 to 23:00

Friday and Saturday: 18:00 to 24:00

Provision of late night refreshment - indoors only

Friday and Saturday: 23:00 to 24:00

Sale of alcohol

Sunday to Thursday: 08:00 to 23:00

Friday and Saturday: 08:00 to 23:30

Christmas Eve: 08:00 to 24:00

New Years Eve: 08:00 to 02:00

Opening times

Monday to Thursday: 08:00 to 23:00

Friday and Saturday: 08:00 to 24:00

Sunday: 11:00 to 23:00

Christmas Eve: 08:00 to 00:30

New Years Eve: 08:00 to 02:30

2. That the following conditions be added to the Premises Licence:
 - (1) When regulated entertainment takes place, all windows and doors shall be kept closed except to allow access and egress.
 - (2) Live music provided at the premises shall be unamplified music only.

Note: Following consideration of this item, the meeting was adjourned from 11.25am to 11.30am for a break.

23 REVIEW OF PREMISES LICENCE - WILBRAHAM ARMS, 58 WELSH ROW, NANTWICH, CW5 5EJ

The Sub-Committee considered a report regarding an application from the Environmental Health Division of Cheshire East Borough Council for a review of the Premises Licence of the Wilbraham Arms, Nantwich under section 51 of the Licensing Act 2003.

The following attended the hearing and made representations with respect to the application:

an Environmental Health Officer
two local residents
two representatives of the Chief Officer of Police
the premises licence holder
a representative of the premises licence holder
the Regional Manager, Enterprise Inns

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of:

- The Secretary of State's Guidance under section 182 of the Licensing Act 2003
- Cheshire East Borough Council's Statement of Licensing Policy
- The four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm)
- All the evidence, including the oral representations made at the meeting and the written representations of interested parties

the following course of action had been agreed:

RESOLVED - That, in order to promote the licensing objective of the prevention of public nuisance, the conditions of the Premises Licence be modified to include the following:

1. Sound attenuation works shall be carried out to the premises in order to create a double door system at the rear of the premises, the design of which shall be formulated in consultation with the Environmental Health Service.
2. The terminal hours in relation to licensable activities shall be amended as follows:
 - (a) the terminal hour in relation to sale of alcohol, late night refreshment and regulated entertainment (with the exception of recorded music) shall be 23.00 Sunday to Thursday and 23.30 on Fridays and Saturday (with the exception of New Years Eve

which shall be from 10.00 to the normal opening hours on New Years Day).

- (b) the terminal hour in relation to recorded music shall be 23.30 Sunday to Thursday and 24.00 on Fridays and Saturdays (with the exception of New Years Eve which shall be from 10.00 to the normal opening hours on New Years Day), subject to the requirement that recorded music during the 30 minutes before the premises is closed to the public shall be background music only;
- 3. The opening hours of the premises shall be amended as follows:

Sunday to Thursday: 10.00 to 23.30
Fridays and Saturdays: 10.00 to 24.00
- 4. The rear external drinking area is to be closed to the public from 9 pm every night and to remain closed until the premises reopen to the public the following day.
- 5. All tables, chairs, umbrellas and other paraphernalia are to be removed from the front of the premises from 9 pm every night and this restriction is to remain in place until the premises reopen to the public the following day.
- 6. No open vessel is to be taken outside the premises building after 9 pm and this restriction is to remain in place until the premises reopen to the public the following day.
- 7. No drinks may be sold or supplied to customers in a sealed vessel after 9 pm and this restriction is to remain in place until the premises reopen to the public the following day.

The meeting commenced at 9.30 am and concluded at 3.40 pm

Councillor P Whiteley (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Act Sub-Committee**
held on Wednesday, 8th December, 2010 at Council Chamber, Municipal
Buildings, Earle Street, Crewe CW1 2BJ

PRESENT

Councillor P Whiteley (Chairman)

Councillors W S Davies and M Parsons

OFFICERS IN ATTENDANCE

Miss C Kerr, Licensing Officer

Mrs K Khan, Solicitor

Mrs J Zientek, Democratic Services Officer

24 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

25 DECLARATIONS OF INTEREST

There were no declarations of interest.

26 VARIATION OF PREMISES LICENCE - WM MORRISONS SUPERMARKET, STATION ROAD, NANTWICH

The Sub-Committee considered a report regarding an application to vary the Premises Licence for Wm Morrisons Supermarket, Station Road, Nantwich under section 34 of the Licensing Act 2003.

The applicant, a representative of the applicant and a local resident attended the hearing and made representations with respect to the application.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of:

- The Secretary of State's Guidance under section 182 of the Licensing Act 2003
- Cheshire East Borough Council's Statement of Licensing Policy
- The four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm)
- All the evidence, including the oral representations made at the meeting and the written representations of interested parties

the following course of action had been agreed:

RESOLVED - That the variation to the Premises Licence for Wm Morrisons Supermarket, Station Road, Nantwich be approved, as follows:

Sale of alcohol

06:00 to 23:00 Monday to Sunday inclusive

Opening times

06:00 to 23:00 Monday to Sunday inclusive

Interested parties were reminded of their right to appeal the decision to the Magistrates' Court within 21 days.

The meeting commenced at 9.30 am and concluded at 10.00 am

Councillor P Whiteley (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Act Sub-Committee**
held on Friday, 17th December, 2010 at East Committee Room - Municipal
Buildings, Earle Street, Crewe, CW1 2BJ

PRESENT

Councillors C Andrew, M Parsons and P Whiteley

OFFICERS PRESENT

Mrs J Cornes (Licensing Officer) and Mrs K Khan (Licensing Solicitor).

27 APPOINTMENT OF CHAIRMAN

RESOLVED

That Councillor Paul Whiteley be appointed Chairman for the meeting,

28 DECLARATIONS OF INTEREST

No interests were declared in respect of the business of the meeting.

29 APPLICATION FOR A NEW PREMISES LICENCE – NO. 1 THE COURTYARD, 26 WEST STREET, CONGLETON

The Sub Committee considered a report regarding an application by Mr Timothy Andrew Crichton and Mr Aaron Brys Davies for the grant of a Premises Licence for an Italian Restaurant, namely 1 The Courtyard at 26 West Street, Congleton under Section 17 of the Licensing Act 2003.

The applicants together with Mrs Crichton and eight objectors attended the hearing and made representations with respect to the application.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman reported that, having taken account of:

- The Secretary of State's Guidance under Section 182 of the Licensing Act 2003
- Cheshire East Borough Council's Statement of Licensing Policy
- The four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm)
- All the evidence, including the representations made at the meeting, the written representations of the objectors and agreements reached with the Police and Environmental Health

the following course of action had been agreed:

RESOLVED

That the application to grant a Premises Licence for 1 The Courtyard at 26 West Street, Congleton be granted as follows:

Hours for the Sale and Supply of Alcohol

Sunday to Thursday	09.00 to 00.00
Friday, Saturday and Sundays preceding Bank Holidays	09.00 to 02.00
New Years Eve	09.00 to 03.30

Regulated Entertainment (as applied for)

Sunday to Thursday	09.00 to 00.00
Friday, Saturday and Sundays preceding Bank Holidays	09.00 to 02.00
New Years Eve	09.00 to 03.30

Late Night Refreshments

Sunday to Thursday	23.00 to 00.00
Friday, Saturday and Sundays preceding Bank Holidays	23.00 to 02.00
New Years Eve	23.00 to 03.30

Hours Premises Open to the Public

Sunday to Thursday	09.00 to 00.30
Friday, Saturday and Sundays preceding Bank Holidays	09.00 to 02.30
New Years Eve	09.00 to 04.00

Note: The Sub Committee imposed the terminal hours referred to above in order to prevent harm to the objective of the prevention of public nuisance, in the light of the close proximity of residential properties.

and subject to the following conditions –

1. The Designated Premises Supervisor or other nominated member of staff, shall take reasonable steps to regularly monitor the level of noise emanating from the premises, with particular regard to the level which can be heard at the boundary of the nearest residential property.
2. Regulated entertainment outdoors after 22.00 hours shall be at 'background' level only.
3. The Designated Premises Supervisor or other nominated member of staff, shall take reasonable steps to ensure that open vessels are not taken into the courtyard area after midnight.

Note: Conditions 1 to 3 have been imposed in order to prevent harm to the objective of the prevention of public nuisance. Conditions 4 to 14 were suggested by the Police and Environmental Health Department and are imposed on the grant of the licence as follows -

4. The proof of age scheme Challenge 25 will be operated for all sales of alcohol.
5. The Designated Premises Supervisor will regularly attend, or delegate to another responsible member of staff to attend, meetings of the local Pubwatch and actively support its aims.

6. A CCTV system will be installed at the premises to the satisfaction of the Police Licensing Officer and it must record at all times the premises are open to the public. Unedited images must be securely retained for at least 28 days and copies made freely available upon request to a constable or an employee of the Police Authority, Local Authority or SIA.
7. At all times the premises are open to the public there will be a member of staff on duty who is competent to operate the CCTV system and provide any copies requested.
8. Every Friday and Saturday and on New Years Eve there will be at least one door supervisor employed at the premises from 8pm until the premises close to the public, except when the ONLY part of the premises open to the public is the Tiamo restaurant at the front of the premises when this condition will not apply.
9. The premises licence holder shall take all responsible steps to ensure that no open vessel is taken out of the premises onto any public footway or highway.
10. Noise or vibration shall not emanate from the premises so as to cause a nuisance to nearby residents.
11. Refuse such as bottles shall be disposed of from the premises at a time (i.e between 08:00 to 20:00) when it is not likely to cause a disturbance to residents in the vicinity of the premises.
12. There shall be placed at all exits from the premises in a place where they can be seen and easily read by the public, notices requiring customers to leave the premises and the area quietly.
13. Whilst regulated entertainment is taking place, all windows and doors shall remain closed.
14. Regulated entertainment outside to cease by midnight (00:00).

The Sub Committee wished to highlight the fact that should problems relating to the licensing objectives be linked to the operation of licensable activities at this premises then Responsible Authorities or Interested Parties could call for a review of the licence at any time.

Both parties were informed of the right to appeal decisions to the Magistrates Court within 21 days of the date of the meeting.

The meeting commenced at 2.00 pm and concluded at 4.35 pm

Councillor Paul Whiteley

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Act Sub-Committee**
held on Monday, 20th December, 2010 at The Capesthorpe Room - Town
Hall, Macclesfield SK10 1DX

PRESENT

Councillor P Whiteley (Chairman)

Councillors M Hardy and J Wray

OFFICERS IN ATTENDANCE

Mr J Hopper (Licensing Officer) and Mrs K Khan (Licensing Solicitor)

30 APPOINTMENT OF CHAIRMAN

RESOLVED

That Councillor Paul Whiteley be appointed Chairman for the meeting.

31 DECLARATIONS OF INTEREST

No interests were declared in respect of the business of the meeting.

(The meeting was adjourned at 2.05pm and reconvened at 2.20pm).

32 APPLICATION FOR A PREMISES LICENCE - CAPESTHORNE PAVILION, CAPESTHORNE HALL, CONGLETON ROAD, SIDDINGTON, MACCLESFIELD, CHESHIRE

The Sub Committee considered a report regarding an application by Mrs Natasha Jane Dodds and Ms Vicki Lee Thompson for the grant of a Premises Licence for Capesthorpe Pavilion, Capesthorpe Hall, Congleton Road, Siddington, Macclesfield, Cheshire under Section 17 of the Licensing Act 2003.

The applicant and a representative of the other applicant together with an objector attended the hearing and made representations with respect to the application.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman reported that, having taken account of:

- The Secretary of State's Guidance under Section 182 of the Licensing Act 2003
- Cheshire East Borough Council's Statement of Licensing Policy

- The four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm)
- All the evidence, including the representations made at the meeting, the written representations of the objectors and the representations of the Police.

The following course of action had been agreed:

RESOLVED

That the application to grant a Premises Licence for Capesthorpe Pavilion, Capesthorpe Hall, Congleton Road, Siddington, Macclesfield, Cheshire be granted as follows:

Indoor sporting events

Monday to Sunday 12.00 to 01.00

Boxing or wrestling

Monday to Sunday 12.00 to 01.00

To take place indoors

Live music

Monday to Sunday 12.00 to 01.00

The performance of live music will take place both indoors and outdoors.

Non Standard timings. New Year till 02.00

Recorded Music

Monday to Sunday 12.00 to 01.00

The playing of recorded music will take place both indoors and outdoors.

Non Standard timings. New Year till 02.00

Performance of dance

Monday to Sunday 12.00 to 01.00

The performance of dance will take place both indoors and outdoors.

Non Standard timings. New Year till 02.00

Anything of a similar description to that falling within live, recorded music and dance

Monday to Sunday 12.00 to 01.00

This entertainment will take place indoors.

Provision of facilities for making music

Monday to Sunday 12.00 to 01.00

The facilities for making music will take place both indoors and outdoors.

Non Standard timings. New Year till 02.00

Provision of facilities for dancing

Monday to Sunday 12.00 to 01.00

The facilities for dancing will take place indoors.

Non Standard timings. New Year till 02.00

Provision of facilities for entertainment of a similar description to that falling within making music and dance

Monday to Sunday 12.00 to 01.00

The entertainment facility will take place both indoors and outdoors.

Non Standard timings. New Year till 02.00

Late Night Refreshment

Monday to Sunday 23.00 to 01.00

The provision of late night refreshment will take place both indoors and outdoors.

Non Standard timings. New Year till 02.00

Sale and supply of alcohol

Monday to Sunday 12.00 to 01.00

The sale of alcohol will be for consumption on the premises.

Non Standard timings. New Year till 02.00

Hours Premises are open to the public

Monday to Sunday 09.00 to 01.30

Non Standard Timings. New Year till 02.30

The Committee wished to highlight the fact that should problems relating to the licensing objectives be linked to the operation of licensable activities at this premises then Responsible Authorities or Interested Parties may call for a review of the licence at any time.

Parties who made relevant representations were reminded of the right to appeal the decision to the Magistrates Court within 21 days.

The meeting commenced at 2.00 pm and concluded at 3.50 pm

Councillor P Whiteley (Chairman)

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **General Licensing Sub-Committee**
held on Thursday, 2nd December, 2010 at The Capesthorne Room - Town
Hall, Macclesfield SK10 1DX

PRESENT

Councillor P Whiteley (Chairman)

Councillors C Andrew, B H Dykes, M Parsons and A Ranfield

OFFICERS IN ATTENDANCE

Mr J Hopper (Licensing Officer) and Mrs K Khan (Licensing Solicitor)

22 APPOINTMENT OF CHAIRMAN

RESOLVED

It was moved and seconded that Councillor P Whiteley be appointed as Chairman for the meeting.

23 APOLOGIES FOR ABSENCE

None.

24 DECLARATIONS OF INTEREST

None.

25 EXCLUSION OF THE PUBLIC AND PRESS

To consider passing a resolution under Section 100(A)(4) of the Local Government Act 1972 to exclude the public and press from the meeting for the following item(s) of business on the grounds that they involve the likely disclosure of exempt information in accordance with paragraphs 1 and 2, pursuant to part 1 of Schedule 12 (A) of the Act.

RESOLVED

That the Exclusion Resolution be moved as printed.

26 10-11/07 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES

The Sub-Committee considered a report regarding an application for a Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee's attention was drawn to the Council's Statement of Policy about Relevant Convictions and Members were invited to consider if the applicant was a "fit and proper" person to be granted a licence.

The applicant and his prospective employer were in attendance throughout the hearing and spoke in support of the application.

At this point in the proceedings, the applicant, his prospective employer and the Licensing Officer withdrew from the meeting whilst the Sub-Committee reached its decision.

Following full consideration of the application, taking into account all the evidence, including written and oral representations, the Sub-Committee determined the application.

The applicant, the applicant's prospective employer and the Licensing Officer re-joined the meeting to be informed of the Sub-Committee's decision.

RESOLVED –

That the application for a Hackney Carriage/Private Hire Driver's Licence be approved subject to the following:

- 1) On the first anniversary of the grant of the Hackney Carriage/Private Hire Drivers Licence the applicant be required to submit a copy of his DVLA driving Licence to evidence the fact that no further driving convictions had been obtained;
- 2) On the first anniversary of the grant of the applicant's Hackney Carriage/Private Hire Drivers Licence the applicant was required to submit a report from his employer about his work as a driver within the preceding twelve months;
- 3) That the applicant successfully completes the Council's Hackney Carriage/Private Hire theory test.

The applicant was reminded of the right to appeal the decision to the Magistrates Court within 21 days.

(Prior to consideration of the following item the meeting was adjourned for 5 minutes).

27 10-11/08 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES

The Sub-Committee considered a report regarding an application for a Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee's attention was drawn to the Council's Statement of Policy about Relevant Convictions and Members were invited to consider if the applicant was a "fit and proper" person to be granted a licence.

The applicant and his prospective employer were in attendance throughout the hearing and spoke in support of the application.

At this point in the proceedings, the applicant, his prospective employer and the Licensing Officer withdrew from the meeting whilst the Sub-Committee reached its decision.

Following full consideration of the application, taking into account all the evidence, including written and oral representations, the Sub-Committee determined the application.

The applicant, the applicant's prospective employer and the Licensing Officer re-joined the meeting to be informed of the Sub-Committee's decision.

RESOLVED –

That the application be refused on the grounds that the applicant was not a “fit and proper” person to hold a Hackney Carriage/Private Hire Driver's Licence.

The applicant was reminded of the right to appeal the decision to the magistrates Court within 21 days.

28 10-11/09 CONSIDERATION OF FITNESS TO HOLD A HACKNEY CARRIAGE DRIVER'S LICENCE

The Sub-Committee considered a report regarding the future of a Hackney Carriage Driver's Licence.

The Sub-Committee's attention was drawn to the Council's Statement of Policy about Relevant Convictions and Members were invited to consider if the Licence Holder was a “fit and proper” person to continue with a Hackney Carriage Driver's Licence.

The Licence Holder and his employer were in attendance throughout the hearing and spoke in support of the application.

At this point in the proceedings, the Licence Holder, his employer and the Licensing Officer withdrew from the meeting whilst the Sub-Committee reached its decision.

Following full consideration of the application, taking into account all the evidence, including written and oral representations, the Sub-Committee determined the future of the Licence.

The Licence Holder, the Licence Holder's employer and the Licensing Officer re-joined the meeting to be informed of the Sub-Committee's decision.

RESOLVED –

That the Licence Holder remained a fit and proper person to hold a hackney carriage drivers Licence and therefore resolved to take no formal action in relation to the future of the Licence.

However, the Sub-Committee wished to give the Licence Holder a formal warning about any future conduct. The Licensing Authority would take a very serious view of any future convictions and the Licence Holder was made aware that any such convictions could place the future of the licence in jeopardy.

The meeting commenced at 10.00 am and concluded at 12.45 pm

Councillor P Whiteley (Chairman)

CHESHIRE EAST COUNCIL

REPORT TO: LICENSING COMMITTEE

Date of Meeting:	10th January 2011
Report of:	Legal Team Leader (Regulatory)
Subject/Title:	Sexual Entertainment Venues - Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 (as amended)

1.0 Report Summary

- 1.1 The report provides background information in relation to the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 'the 1982 Act' made by section 27 of the Policing and Crime Act 2009. The report sets out the statutory provisions in relation to the adoption of the power to regulate 'sexual entertainment venues' within the amended Schedule and details the consultation responses received in relation both to the principle of adoption and the draft policy.

2.0 Recommendations

- 2.1 The Licensing Committee is requested:

- 2.1.1 to consider the responses received in relation to the consultation exercise on the principle of adoption of the amendments to Schedule 3 of the 1982 Act;

- 2.1.2 in the light of the consultation responses, to resolve whether to recommend to Council that the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009, are adopted and shall apply within the Borough of Cheshire East; and

- 2.1.3 if the Committee resolves to recommend to Council that the provisions should be adopted, to determine that the recommendation includes a statement that the provisions of Schedule 3, as amended, will come into force in the Borough of Cheshire East on 4th April 2011.

- 2.2 Subject to the decision in 2.1.2 above, and without prejudice to the subsequent decision of Council, the Licensing Committee is requested:

- 2.2.1 to consider to the consultation responses received in response to the consultation exercise on the draft policy in relation to the licensing of sexual entertainment venues; and

- 2.2.2 to resolve whether:

- (a) to approve the policy as originally drafted; or
- (b) to make amendments to the policy.

and, if amendments to the policy of a significant nature are proposed, to approve a further period of consultation on the proposed amendments.

- 2.2.3 to determine the fee levels to apply in relation to sexual entertainment venue applications;
- 2.2.4 to recommend to the Constitution Committee that Council be requested to amend the Constitution in order to make the amendments to the Licensing Committee's terms of reference and the officer delegations set out in Appendix E in relation to the exercise of functions in relation to the licensing of sexual entertainment venues.

3.0 Reasons for Recommendations

- 3.1 The consultation period in relation to the regulation of sexual entertainment venues has concluded and a number of responses have been received. The Licensing Committee is asked to consider the consultation responses and to make a number of decisions in the light of the consultation responses.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications including - Climate change - Health

- 6.1 The report requests that consideration is given to consultation responses received in relation to a draft policy.

7.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

- 7.1 There will be a cost implication relating to publication of the requisite statutory notices. Whilst the costs will be dependant upon the charges made by the newspapers in question, the costs may be in the region of £3,500. Budget provision in relation to these costs will be met from in relation to these costs will be met by way of budget virement from the Licensing Printing & Stationery budget.
- 7.2 Subject to the decision in relation to adoption, the Committee is requested to determine the level of fees to apply to applications in relation to sexual entertainment venues. The legislation provides the Council with the ability to

determine a 'reasonable fee' in relation to the grant, renewal or transfer of a sex establishment licence. Further information in relation to fees is set out within paragraph 10.9 of the report.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Section 27 of the Policing and Crime Act 2009, which came into force on 6th April 2010, amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in order to provide local authorities with the power to regulate 'sexual entertainment venues.' Further details about the statutory definition of 'sexual entertainment venues' are provided within paragraph 10 of the report.
- 8.2 If a local authority wishes to exercise the 'new' powers within Schedule 3 of the 1982 Act it must formally resolve that the provisions are to have effect in its area. The procedure for adoption is set out within section 2 of the 1982, which provides that the local authority must pass a resolution specifying that the amendments made by section 27 of the 2009 Act to Schedule 3 shall apply to its area and must specify the date on which the resolution shall come into force. The specified day must be more than one month after the date on which the resolution was passed. The local authority is also required to publish notice that a resolution has been made for two consecutive weeks in a local newspaper circulating in the area. The first publication may not be later than twenty-eight days before the date specified in the resolution for the provisions to come into force.
- 8.3 Paragraph 13 of Schedule 3 provides the authority for the Council to "make regulations prescribing standard conditions applicable to licences for sex establishments, that is to say, terms, conditions and restrictions on or subject to which licences under this Schedule are in general to be granted, renewed or transferred.." Paragraph 13(1A) states that no standard condition may be prescribed in so far it "relates to any matter in relation to which requirements or prohibitions are or could be imposed under the Regulatory Reform (Fire Safety) Order 2005." Paragraph 13(3) provides that regulations may prescribe conditions regulating – (a) the hours of opening and closing of sex establishments; (b) displays or advertisements on or in such establishments; (c) the visibility of the interior of sex establishments to passers-by; and (d) any change from one kind of sex establishment to another kind of sex establishment. Where the authority has made standard conditions every licence granted, renewed or transferred is presumed to have been granted, renewed or transferred subject to the standard conditions unless they have been expressly excluded or varied.
- 8.4 Paragraph 12 of Schedule 3 sets out the grounds for refusal of an application. Certain grounds, for example that the applicant is under 18 years old or is disqualified, are mandatory grounds for refusal. Other grounds, including those relating to the appropriate number of such establishments in the 'relevant locality,' are discretionary grounds. Further information in relation to the grounds for refusal is set out within the body of the report.

8.5 Paragraph 19 of Schedule 3 provides that the applicant for the grant, variation renewal or transfer of a licence shall pay ‘a reasonable fee determined by the appropriate authority.’

8.6 Additional detail in relation to the interpretation of the legislation is provided in relation to specific issues within paragraph 10.0 of the report.

9.0 Risk Management

9.1 Full and thorough consideration of any consultation responses received would be required to reduce any risk of challenge to any subsequent decisions.

10.0 Background and Options

10.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 makes provision for the regulation of ‘sex establishments.’ Prior to the enactment of the Policing and Crime Act 2009, the definition of ‘sex establishments’ was limited to sex shops and sex cinemas. Section 27 of the Policing and Crime Act 2009, which came into force on 6 April 2010, extends the definition of ‘sex establishment’ to include ‘sexual entertainment venues.’

10.2 A ‘sexual entertainment venue’ for the purposes of the 1982 Act is “any premises at which relevant entertainment is provided before an 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).”

10.3 If a local authority has resolved before 6 April 2010 that Schedule 3 of the 1982 Act is to apply within its area, then the amendments in relation to sexual entertainment venues within the 2009 Act do not apply to the area of the local authority; however, the local authority may resolve that Schedule 3 of the 1982 Act, as amended by section 27 of the 2009 Act, is to apply to its area.

10.4 As members will recall, at the meeting on 13th September 2010, the Committee authorised the Licensing Manager to carry out a consultation exercise in relation to both the principle of adoption of the amended legislation and on the draft policy. The consultation exercise was carried out between 7th October 2010 and 29th December 2010. As Members will note there is some reference within some of the responses to moral issues. For the avoidance of doubt, Members are reminded (as per paragraph 3.23 of the Home Office Guidance) that objections in relation to applications should “not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12 [of Schedule 3].”

10.5 Principle of adoption

10.5.1 The Licensing Authority has received seventy-three consultation responses, details of which are set out Appendices B and C. As Members will note seventy

of the responses support the principle of adopting the legislation, one response is not in support of adoption, and two responses do not explicitly comment on the principle of adoption but make statements about the regulation of sexual entertainment venues.

10.5.2 As Members will note, paragraph 2.1.2 requests that, if the Committee resolves to adopt the amendments to the legislation, that the recommendation to Council includes a recommendation that the date that the resolution to adopt comes into force is 4th April 2011. As set out within the legal implications, the local authority the resolution must specify the date on which the resolution shall come into force. The specified day must be more than one month after the date on which the resolution was passed. The Council would also be required to publish notice that a resolution has been made for two consecutive weeks in a local newspaper circulating in the area. The first publication may not be later than twenty-eight days before the date specified in the resolution for the provisions to come into force. The Committee's recommendation will be reported to the meeting of Council on 24th February 2011, therefore the date of 4th April 2011 would provide sufficient time to comply with the statutory requirements.

10.6 Policy – discretionary grounds for refusal

10.6.1 As Members will be aware, one of the discretionary grounds for refusal is “*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.*”

10.6.2 The draft policy (attached as Appendix A) currently states at paragraph 3.6 that:

The Council will consider the extent of the locality on a case by case basis taking into account the particular circumstances of each case. However, the Council will not seek to define ‘locality’ as the whole of the Council’s administrative area or an entire town.

A number of consultation responses suggest that paragraph 3.6 should be amended ‘to remove the idea that an entire town cannot be seen as a relevant “locality”.’ This suggestion is amplified within the representation made by HOPE in North East Cheshire which states: ‘The reference to “or an entire town” in the last sentence of paragraph 3.6 may be subject to misinterpretation, fetter council discretion and unnecessarily narrows the definition of locality in each case. It is therefore suggested that these words are deleted because case law does not appear to support this requirement.

10.6.3 Paragraph 3.36 of the Home Office Guidance states as follows in relation to locality:

When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, whilst a local authority is not prevented from defining the exact area of the

relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless a local authority's view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, for example, by concluding that two sex establishments 200 miles away from one another were in the same locality. Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.

The Guidance refers to the case of R v Peterborough City Council ex parte Quietlynn as authority for the final point within this paragraph.

10.6.4 As Members will recall, the policy as currently drafted, does not seek to place a figure on the number of sexual entertainment venues which it considers appropriate in any locality within the Council's administrative area but rather states (i) that each application will be determined on its own merits; and (ii) that consideration will be given to the locality in each case and to the number of Sexual Entertainment Venues suitable for that particular locality. A number of consultation responses suggest that the policy should be amended in this regard to 'have a zero tolerance policy for all sex establishments in the Borough of nil per ward.' The responses suggest that the Council should determine that each Ward is a 'relevant locality' for the purposes of the Act and that the policy should states that the appropriate number of sexual entertainment venues for each Ward is nil.

10.6.5 A further discretionary ground within paragraph 12 of Schedule 3 is on the basis that: *"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.*

The draft policy currently sets out certain factors (such as the existence of 'sensitive uses' such as worship and education in the relevant locality) which would generally render the grant or renewal of a licence inappropriate.

Consultation responses received suggest that the policy should be changed so that it "covers a wide range of areas and explains a zero tolerance approach for the main town centres, smaller towns, villages and rural communities, business parks and industrial estates, as being unsuitable for sex establishments for various reasons." Responses also suggest an extended description and list of inappropriate locations for lap dancing venues. The responses suggest the addition of reference to, for example, community facilities including swimming pools, leisure centres, mental health centres, sheltered accommodation, disability centres; historic buildings, tourist attractions, conservation areas, restoration areas, improvement areas, planned improvement areas; pedestrian routes or transport links (such as stations or bus stops); residential accommodation (without the need for this to be a predominant use); shopping

areas, other retail units (and their uses); and other alcohol and entertainment licensed premises.

Members are requested to consider the representations made in relation to paragraph 3.8 of the draft policy and determine whether an amendment should be made to this paragraph.

10.7 Policy – Application process and hearing procedure

10.7.1 Submission of application

- (a) The representation from HOPE in North East Cheshire suggests that the requirements in relation to plans should be expanded. It is acknowledged that the requirements in relation to plans may be clarified by stating that these must show the layout of the premises including: (i) performers changing facilities; (ii) those areas to which the public are to be admitted (shown outlined in red); (iii) toilets; (iv) entrances and exits from the premises (including emergency exits); (v) any stage area (including an annotation as to the height of the stage); (vi) the location of any fixed structures (such as bar area or fixed tables/seating); (vii) the area to be used for customer seating. The point about the size of the plans (i.e. large enough to be easily read) is noted.
- (b) At paragraph 16 of the HOPE representation it is suggested that the warning about false statements should be included in the policy. This warning is set out before the declaration on the final page of the application form. However, this could be repeated in the policy if Members felt that this was necessary.
- (c) A further point is raised about planning consents. Clearly any licence granted by the Licensing Authority would not override the need to obtain any relevant planning approval from the Local Planning Authority. Whilst the policy should not seek to duplicate the planning legislation, a reminder about the planning regime could be included within the policy if Members so wish.
- (d) Paragraph 22 of the HOPE representation states that there is no stipulation in the application process about accompanying fees. This is incorrect, within the bullet points at paragraph 4.1 it is stated that the application form is to be submitted together with the licence fee. To ensure clarity about what will be considered to be a valid application, it may be appropriate to amend the second sentence in paragraph 4.1 to read “The following must be submitted with the completed application form in order to form a valid application:..”
- (e) It is acknowledged that the following amendments to the application form may be of assistance to ensure clarity: (i) the inclusion of a question about the form of ‘relevant entertainment’ which is proposed to be provided at the premises; and (ii) an amendment which would enable the form to be utilised

for renewal, variation and transfer applications in addition to applications for grant.

- (f) In the light of the comments submitted by the Sustainable Communities Scrutiny Committee in relation to CRB checks, it is suggested that paragraph 4.1 could be amended to state that applicants (including directors/the company secretary where the applicant is a company and each of the partners if the applicant is a partnership) are required to submit a basic CRB disclosure.

10.7.2 Advertising requirements

- (a) The representation from HOPE in North East Cheshire suggests that advertising requirements “should state that any notice must be posted in a prominent position for the whole of the time period allowed and so it can be easily read by passers-by”. The current drafting of the policy in this regard (paragraph 4.3) mirrors the requirement within paragraph 10(10) of Schedule 3, i.e. “notice of it shall in addition be displayed for 21 days beginning with the date of the application on or near the premises and in a place where the notice can conveniently be read by the public.” It is suggested that advertising requirements, which went beyond the statutory requirements in this regard, would be challengeable.
- (b) The representation further suggests that the size of the notice should be A3 with details printed legibly in black ink or typed in black in a font of a size equal to or larger than 16. Paragraph 10(13) of Schedule 3 states that subject to the requirement that the notice must identify the premises in question, the local authority may prescribe the form of notice. Members are requested to determine what is reasonable in terms of the form of notice. For assistance, Members may be interested to note that the Licensing Act 2003 (Premises Licence and Club Premises Certificate) Regulations 2005 prescribe that notices in relation to application under the 2003 Act must be no smaller than A4 and with font size equal to or larger than 16.
- (c) The representation suggests that it would be helpful to state that the application will not be considered if the advertising requirements have not been met. As a matter of law, if the application is not advertised in accordance with statutory requirements then the application will be invalid, however the policy may be amended to clarify this if Members so wish.
- (d) Form of notice – it is suggested within the HOPE representation that the form of notice at Appendix 2 of the draft policy be amended to set out which forms of relevant entertainment the application proposes to operate at the premises.
- (e) It is suggested the Members may wish to consider an amendment to the application process within the policy and/or an additional condition which provides that the Council requires applicants for variations to the terms, conditions or restrictions on a licence to comply with the same notice

requirements as those which apply to an application for the grant or renewal of a licence.

10.7.3 Waiver – Paragraph 7 of Schedule 3 makes provision for the local authority to ‘waive’ the requirement for a licence where it considers that requiring a licence would be unreasonable or inappropriate. The draft policy states, at paragraph 3.11 that waivers are unlikely to be appropriate in relation to relevant entertainment and would only be considered in exceptional circumstances. The Police have requested confirmation that they would be consulted in relation to any application for a waiver. There is no officer objection to an amendment which clarifies that the Council would seek to consult the Police in relation to such applications. It may also be of assistance to clarify that the Council would require applicants to supply all of the information requested within the application form appended to the draft policy.

10.7.4 Paragraph 18 of the HOPE representation seeks an amendment to paragraph 4.4 in relation to those who may object. It should be clarified that the existing drafting was in no way intended to suggest that there was a limit on the individuals/groups that can object to such applications, but rather merely sought to provide examples. Given the concern about misinterpretation which has been raised, it may be simplest to remove the examples from paragraph 4.4 and to replace the second paragraph of 4.4 with the following (mirroring the Home Office Guidance):

Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 of Schedule 3 for refusing a licence. Objections should not be based on moral grounds/values and local authorities are not in a position to consider objections which are not relevant to the grounds set out in paragraph 12.

10.7.5 Hearing procedure – the representation from HOPE (paragraphs 43- 46) makes comment about the hearing procedure. There is no officer objection to an amendment to the hearing procedure in the manner proposed in order to clarify that objectors have the opportunity, having been asked questions by the other parties to the hearing, to clarify anything which may have been misunderstood.

10.8 Policy – standard conditions

10.8.1 In addition to setting out the proposed policy relating to the factors relevant to the determination of an application, the policy document sets out the application process to be adopted by the Council together with a set of proposed standard conditions. The provisions of paragraph 12 of Schedule 3 in relation to standard conditions are detailed within paragraph 9.3 above. The proposed standard conditions within the attached policy deal with matters including: hours of opening, conduct of the premises, signs doors and window displays, and the employment of persons on the premises, and are based on the conditions which were previously endorsed on Public Entertainment Licences (issued under the 1982 Act). Members are reminded that any conditions imposed on a licence must be necessary and proportionate.

10.8.2 Opening hours – at present condition 3 does not seek to impose standard opening hours and the licensed hours would therefore be determined on a case by case basis depending on the hours applied for and other relevant factors, including the nature of the area in which the premises were located and the content of any objections received. A number of representations (including that from HOPE) suggest that “the opening times in the day should be restricted from 9am and 6pm” and that there should be a restriction on opening on Sundays and Bank Holidays. Members are requested to consider the issue of opening hours. In doing so, Members are reminded that any conditions imposed must be necessary and proportionate in the light of the aims the Act seeks to achieve.

10.8.3 Definitions – in the representations from both the Police and from HOPE a point is raised about individuals working at the premises who are self-employed. It is suggested, in line with the recommendation from the Police, that a further definition be added to condition 1 as follows (and subsequent amendments made throughout the following conditions to reflect the defined term):

‘Employee’ means all persons working on the premises including not only those directly employed by the management of the premises but the self-employed, contractors or their staff promoting or providing any service or Relevant Entertainment; and the term ‘employed’ shall be read in the same context.

10.8.4 Condition 9 – the responses from both HOPE and the Police have highlighted the fact that this condition is effectively duplicitous. In the light of the requirements within conditions 23 – 29 it is acknowledged that condition 9 may be deleted.

10.8.5 Conditions 7 and 38 – the Police have suggested that performers should be required to provide their names and home addresses, rather than just ‘addresses,’ to ensure that they can be identified at a later date if required. There is no officer objection to such an amendment.

Condition 21 – this condition states “Performers not currently performing shall not be in any public part of the Premises in a state of undress.” In the light of the representation from the Police in this regard, Members are asked to consider whether they wish to clarify this condition by stating that, for the purpose of this condition, ‘performers’ include any employees on the premises who work in a state of nudity and that they shall not be in any public part of the Premises in a state of undress when not ‘on duty.’

10.8.6 Conditions general

The representation from HOPE provides additional suggestions in relation to the standard conditions (paragraphs 29 – 32). Members are asked to consider the suggestions contained therein. The following points are highlighted in this regard for consideration:

(a) the current conditions within the draft policy include a requirement that there shall be no physical contact between performers or customers (condition

19). There is a suggestion within the representations that there should be a prescribed separation distance of one metre. Members are asked to consider whether such a condition is necessary in the light of condition 19 and also whether such a condition is proportionate in the light of the difficulty of enforcement of a precisely prescribed separation distance.

- (b) The current conditions include a requirement that a CCTV system be installed to the satisfaction of the Police Licensing Officer. The representation from HOPE cites CCTV conditions suggested by other authorities. It may be suggested that the drafting of the existing condition, by requiring the approval of the Police, is sufficient to ensure that the system is appropriate.

10.9 Fees

10.9.1 As set out above, the Council is able to determine a 'reasonable fee' in relation to the grant, renewal or transfer of a sex establishment licence. Paragraph 3.22 of the Home Office Guidance states that local authorities should have regard to the following documents when determining their fees: (i) The European Services Directive: Guidance for Local Authorities; and (ii) LACORS Guidance on the impact of the Service Directive on council's setting and administering local licence fees within the service sector.

10.9.2 Paragraph 12d of the European Services Directive: Guidance for Local Authorities states:

Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should a service provider feel that the levels of fees are being used as an economic deterrent or to raise funds for Local Authorities. Enforcement costs should not be assimilated with this application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.

10.9.3 The LACORS guidance reiterates the point about economic deterrent, stating: "The principles of Article 13(2) of the EC Directive 123/2006 mean that any fees charged for establishing a service that falls within the scope of the Directive can only be based on cost recovery and cannot be set at an artificially high level to deter specific service sectors from an area." The Guidance also provides information in relation to what elements may be included when a local authority sets its fees. A relevant extract from the Guidance in this regard is reproduced as Appendix D.

10.9.3 Members will recall that in December 2008 the Licensing Committee set the fee levels to apply to the grant and renewal of sex shop licences (also issued under the provisions of Schedule 3 of the 1982 Act). In setting those fees Members were aware that fees must be limited to covering the Council's costs in carrying out the function under the Act. The procedure relating to the processing of an

application for a Sexual Entertainment Venue Licence is the same as that in relation to an application for a Sex Shop Licence; it was therefore suggested that the fee levels in relation to a Sexual Entertainment Venue Licence should mirror those in relation to Sex Shops, i.e.

New application: £2,260

Renewal: £1,130

In addition, it was suggested that the fee level in relation to a transfer application should be set as £500.

10.9.4 A number of consultation responses suggest that the Council should charge fees at the following levels: new application £8,000, renewal £5,000, transfer fee £1,100.

10.9.5 Members are asked to consider the level of fees in relation to new applications, renewals and transfers. In addition, it is noted that the legislation makes provision for a fee to be charged in relation to variation applications.

10.10 Delegations

10.10.1 The existing licensing delegations within the Council's Constitution make provision for applications in relation to sex shops and sex cinemas to be dealt with by the Licensing Committee, subject to certain delegations to the Head of Safer and Stronger Communities. The detail of the existing delegations is set out within paragraphs 1A and 2A of Appendix E.

10.10.2 If the Committee resolves to recommend adoption, it is suggested that it will be necessary to amend the delegations to ensure that they include the power to deal with applications for sexual entertainment venues. The proposed delegations at paragraphs 1B and 2B of Appendix E suggest an amendment to refer to 'sex establishments' (thereby including sexual entertainment venues).

10.11 Policy in relation to sex shops and sex cinemas

10.11.1 As is set out above 'sex establishments' for the purposes of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 include sex shops, sex cinemas and sexual entertainment venues. The policy before the Committee today, relates solely to sexual entertainment venues. The Council does not currently have a policy in relation to the licensing of sex shops and sex cinemas (although standard conditions in relation to sex shops have been approved) and each application for such a licence is determined on its own merits.

10.11.2 A number of the consultation responses received suggest that the Council should develop a policy in relation to the licensing of sex shops and sex cinemas. The Legal Team Leader (Regulatory) recognises the benefits of adopting a policy in relation to such licences and proposes that a further piece of work in relation to this policy is undertaken in due course.

12.0 **Overview of Year One and Term One Issues**

12.1 None

13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Mrs K Khan
Designation: Solicitor, Legal Services
Tel No: 01270 685847
Email: kate.khan@cheshireeast.gov.uk

Background papers:

Home Office Guidance – Sexual Entertainment Venues, Guidance for England and Wales
The European Services Directive: Guidance for Local Authorities
LACORS Guidance on the impact of the Service Directive on council's setting and administering local licence fees within the service sector.

Appendix A - Draft Policy
Appendix B - Table of representations
Appendix C – Representation from HOPE in North East Cheshire
Appendix D – Extract from Guidance (re fees)
Appendix E - Delegations

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CESHIRE EAST BOROUGH COUNCIL

DRAFT

POLICY ON THE LICENSING OF SEXUAL ENTERTAINMENT VENUES

**Schedule 3, Local Government
(Miscellaneous Provisions) Act 1982 (as
amended)**

1.0 PREFACE

- 1.1 On [insert date] Cheshire East Borough Council resolved to adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') by section 27 of the Policing and Crime Act 2009 with effect from [insert date].
- 1.2 Any person wishing to operate a Sexual Entertainment Venue as defined by Schedule 3 requires a licence, unless the requirement for a licence has been waived by the Council. This document sets out the Council's policy in relation to the licensing of Sexual Entertainment Venues within its administrative area.
- 1.3 A consultation on this policy was undertaken between [insert date] and [insert date] and was formally adopted on [insert date].
- 1.4 This policy will be kept under review and amendments proposed in the light of any changes in the relevant legislative provisions.

2.0 INTRODUCTION

- 2.1 It is intended that this policy will be a guide for both applicants and those other parties who have an interest in the licensing of sexual entertainment venues. Whilst the policy provides framework guidance, the Council, as the Licensing Authority, will ultimately determine each individual application on its own merits.
- 2.2 Cheshire East has a population of 358,900 and covers an area of 116,638 hectares. Cheshire East's administrative area contains the industrial town of Crewe, the old mill towns of Macclesfield, Bollington and Congleton, the market towns of Nantwich, Knutsford and Sandbach, the salt town of Middlewich, the town of Wilmslow as well as the smaller settlements of Holmes Chapel, Alsager and Poynton.

3.0 POLICY

3.1 Meaning of 'Sexual Entertainment Venue'

'Sexual Entertainment Venue' is defined within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) ('the Act') as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer." The following are not Sexual Entertainment Venues for the purpose of Schedule 3 of the Act

- (a) sex cinemas and sex shops;
- (b) premises at which the provision of relevant entertainment as mentioned in sub-paragraph (1) is such that, at the time in question and including any relevant entertainment which is being so provided at that time—
 - (i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;
 - (ii) no such occasion has lasted for more than 24 hours; and
 - (iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period mentioned in sub-paragraph (i));

3.2 Relevant Entertainment

‘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).”

In accordance with the Guidance from the Home Office, the Council expects that ‘Relevant Entertainment’ will generally apply to the following types of activity:

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

However this list is not exhaustive and, taking into account that the exact nature of these descriptions may vary, each case will have to be dealt with on its own merits.

3.4 Mandatory grounds for refusal

Paragraph 12 of Schedule 3 to the 1982 Act prescribes that a licence for a sexual entertainment venue shall not be granted to:

- (a) a person under the age of 18; or

(b) to a person who is for the time being disqualified under paragraph 17(3) of the Schedule; or

(c) to a person, other than a body corporate, who is not resident in the United Kingdom, or was not so resident throughout the period of six months immediately preceding the date when the application was made; or

(d) to a body corporate which is not incorporated in the United Kingdom; or

(e) to a person who had, within a period of twelve months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

The application form, a copy of which is attached at Appendix 1 asks questions in relation to the above issues.

3.5 Discretionary grounds for refusal

Paragraph 12 of Schedule 3 also provides that the authority may refuse (i) an application for the grant or renewal of a licence on one or more of the grounds listed at (a) to (d) below; and (ii) an application for a transfer on either or both of the grounds at (a) and (b):

(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.

3.6 Relevant locality

'Relevant locality' for the purposes of paragraph 12 of Schedule 3 of the Act means:

- (i) in relation to the premises, the locality where they are situated;
and
- (ii) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

The Council will consider the extent of the locality on a case by case basis taking into account the particular circumstances of each case. However, the Council will not seek to define 'locality' as the whole of the Council's administrative area or an entire town.

3.7 Relevant number

As set out within paragraph 3.5 above paragraph 12 of Schedule 3 provides that a local authority may refuse an application if it is satisfied 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.

The Council does not seek within this policy to place a figure on the number of sexual entertainment venues which it considers appropriate in any locality within the Council's administrative area.

Consideration will be given to the locality in each case and to the number of Sexual Entertainment Venues suitable for that locality.

The Council is able to determine that the appropriate number for a locality is nil.

3.8 Character of relevant locality and uses of premises in the vicinity

When considering whether it would be appropriate to grant the licence the Council will take into consideration factors such as:

- the uses to which premises in the vicinity are put, for example whether they are commercial, industrial or residential;
- the users of premises in the area;

Whilst each application will be determined on its own individual merits, the grant of a licence will generally be considered inappropriate where the characteristics of the locality include the following sensitive uses:

- (a) an area predominantly comprising residential accommodation;
- (b) parks and children's play areas;
- (c) schools and youth centres;

- (d) places of worship; and
- (e) community facilities.

3.8 Duration of licence

Unless previously cancelled or revoked a licence will remain in force for twelve months or such shorter period specified in the licence as the Council determines is fit.

3.9 Conditions

Where a licence is granted the standard conditions attached at Appendix 3 will be attached.

Where it is reasonable and proportionate to do so, additional conditions may be imposed on a licence.

3.10 Waiver

The Act makes provision for the Council to grant a waiver from the requirement to hold a Sexual Entertainment Licence in any case where it considers that to require a licence would be unreasonable or inappropriate. A waiver may be for such period as the Council thinks fit.

The Council may at any time give a person who would require a licence but for a waiver, notice that the waiver is to terminate on a date not less than 28 days from the date the notice is given.

Whilst each application will be considered on its own merits, in light of the exemption in relation to the provision of relevant entertainment on an infrequent basis¹, the Council takes the view that waivers are unlikely to be appropriate in relation to Relevant Entertainment and would only be considered in exceptional circumstances.

4.0 APPLICATION PROCESS

4.1 Submission of application

The Council's application form in relation to Sexual Entertainment Venues is attached as Appendix 1. The Council requests that the application form is submitted together with:

- a scale plan of the Premises;
- The Licence Fee²

¹ See paragraph 3.1 above and paragraph 2A(3)(b) Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

² Information in relation to fees is published on the Council's website and are available from the Licensing Section

- A copy of the completed notice to be displayed on the Premises (see notification requirements below);
- A CRB disclosure (where the applicant is an individual)

A copy of the application must also be served on the Chief Officer of Police:

- (a) in a case where the application is made by means of a 'relevant electronic facility'³, by the appropriate authority not later than 7 days after the date the application is received by the authority;
- (b) in any other case, by the applicant not later than 7 days after the date of the application.

The relevant addresses for service on the Police are as follows:

Area of former Boroughs of Crewe & Nantwich and Congleton:
Police Licensing Officer
Cheshire Constabulary
Crewe & Congleton Area
The Police Station
Middlewich Road
Sandbach
Cheshire
CW11 1HU

Area of former Borough of Macclesfield:
Police Licensing Officer
Cheshire Constabulary
Macclesfield Division
Brunswick Street
Macclesfield
Cheshire
SK10 1HQ

4.2 Renewal applications

Where, before the date of expiry of a licence, an application has been made for its renewal, it shall be deemed to remain in force until the withdrawal of the application or its determination by the Council.

³ "relevant electronic facility" means— (a) the electronic assistance facility referred to in regulation 38 of the Provision of Services Regulations 2009, or (b) any facility established and maintained by the appropriate authority for the purpose of receiving applications under this Schedule electronically.

4.3 Advertising requirements

In accordance with paragraph 10 of the Schedule, applicants for the grant, renewal or transfer of a licence are required to give public notice of the application. Notice shall be given:

- by displaying a notice in a prescribed form (see Appendix 2) on or near the Premises in a place where the notice can be conveniently read by the public for a period of at least 21 days beginning with the date on which the application was made to the Council; and
- by publishing an advertisement (in the form prescribed) in a local newspaper circulating in the Council's area not later than 7 days after the date the application was made to the Council.

Applicants are requested to: (i) send a copy of the completed notice to the Council with the application form; and (ii) to notify the Council of the name of the newspaper in which the advertisement is to appear together with the date of publication.

4.4 Objections

Objections to an application for the grant, renewal or transfer of a Licence must be made in writing stating in general terms the grounds of the objection. Objections should be made not later than 28 days after the date of the application.

The Act permits a wide range of persons to raise objections in relation to applications for Sexual Entertainment Venues. Objectors may include local residents, residents associations and local businesses. Cheshire Constabulary is a statutory consultee in relation to applications for Sexual Entertainment Venues.

Where objections in relation to an application for the grant, renewal or transfer of a licence are received by the Council, copies of the objections will be provided to the Applicant. However, the name and address of an objector will not be disclosed to the Applicant without the consent of the objector to such disclosure.

4.5 Determination of applications

In cases where objections have been made (other than objections which are outside the remit of the 1982 Act) the determination of applications will be referred to a meeting of the Council's Licensing Committee or Licensing Sub-Committee.

4.6 Hearing procedure

A Committee or Sub-Committee determining an application in relation to a Sexual Entertainment Venue will follow the hearing procedure set out at Appendix 4. A copy of the hearing procedure will be sent to the relevant parties when they are notified of the date of the meeting.

4.7 Tacit authorisation

The Council has determined that tacit authorisation (for the purposes of the Provision of Services Regulations 2009) is not to apply to applications for Sexual Entertainment Venue Licences. In making this decision the Council has considered the public interest inherent in ensuring that applications are fully considered before a licence is granted, particularly in the light of the potential significant adverse impact on local communities of inappropriately located or inadequately managed premises.

4.8 Appeals

In cases where the Council refuses an application for the grant, renewal or transfer of a Sexual Entertainment Venue licence the applicant may appeal the decision to the Magistrates' Court within 21 days (of the date when the applicant is notified of the decision), unless:

(1) the application was refused under the grounds in paragraph 12(3)(c) or (d) in which case the applicant can only challenge the refusal by way of judicial review; or

(2) the application was refused on any of the grounds specified in paragraph 12(1) of Schedule 3 of the 1982 Act, in which case the applicant shall not have a right of appeal unless he seeks to show that the ground did not apply to him.



**Application for a Sexual Entertainment Venue Licence
Schedule 3, Local Government (Miscellaneous Provisions) Act 1982**

NOTE: If additional information is submitted on separate sheets please quote the relevant question number in relation to the additional information provided.

1	Applicant's details	
1.1	Is the Applicant:	(a) an individual (b) a partnership or other unincorporated body (c) a body corporate [please delete as appropriate]
1.2	Full name of applicant	
1.3	Give the following information on behalf of the applicant: (a) Telephone number(s) (b) Address to which communications are to be sent (c) If different from the address in (b) above, the Applicant's permanent address (if an individual) or registered or principal office (if a company etc)	
1.4	If the applicant is an individual please supply the following information: (a) Date of Birth (b) Place of Birth (c) Date on which became a UK resident (if not born in the UK)	
1.5	If the applicant is a body corporate or an unincorporated body please provide the following information in respect of each of	[Please continue on a separate sheet if required]

	<p>the Directors, the Company Secretary or other persons responsible for the management of the body. In the case of a partnership provide details of each partner</p> <p>(a) Full name</p> <p>(b) Address</p> <p>(c) Capacity</p> <p>(d) Date of Birth</p> <p>(e) Place of Birth</p> <p>(f) Date on which became a UK resident (if not born in the UK)</p>	
1.6	<p>Where the applicant is a company please answer the following questions.</p> <p>(a) Is the applicant a wholly or partly owned subsidiary of another company?</p> <p>If the answer to (a) is yes please provide details of the parent company or holding company.</p> <p>(b) What type of company is the applicant?</p> <p>(c) In what country is the company incorporated?</p> <p>(d) What is the date of incorporation of the company?</p> <p>(e) Is the applicant or any person whose name is given in response to question 1.5 concerned in any way with other businesses which controls or manages sex establishments? If yes please provide details.</p>	
1.7	<p>What is the nature of the applicant's interest in the Premises?</p> <p>(a) Freehold (b) Leasehold</p> <p>[please delete as appropriate]</p> <p>If the applicant's interest is leasehold please provide the details of the landlord.</p>	

1.8	<p>Is the whole of the business owned by the applicant?</p> <p>If not, please provide details of the individual/company which owns the remainder of the business</p>	
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2	Premises Details	
2.1	Address of Premises	
2.2	Telephone number of Premises	
2.3	<p>Are the whole of the Premises to be used under the Licence?</p> <p>If no, please describe (by reference to a plan if necessary):</p> <p>(a) which part of the Premises are to be used for the purposes of the Licence:</p> <p>(b) the use to which the remainder of the Premises are put;</p> <p>(c) the names of those who are responsible for the management of the remainder of the Premises.</p>	
2.4	<p>Are the Premises constructed or adapted so as to permit access to and from the Premises for members of the public who are disabled?</p> <p>If the answer is no, please provide information in relation to the applicant's proposals for affording such access.</p>	[please continue on a separate sheet if required]
2.5	<p>Are the Premises in use as a Sexual Entertainment Venue at the date of this application?</p> <p>If the answer is yes, please give the name and address of the persons or body who now operate the business and (if known) the date upon which the Premises were first used for these purposes.</p>	

3	Details of the Business	
3.1	Under what business or trading name will be the business be known?	
3.2	Please provide details of the times (days and hours) during which the Premises is proposed to be open to the public.	

4	Persons responsible for management	
4.1	<p>Please provide the following information in relation to each individual who is to be responsible for the management of the Premises in the absence of the Licence Holder:</p> <p>(a) Full name</p> <p>(b) Address</p> <p>(c) Capacity</p> <p>(d) Date of Birth</p> <p>(e) Place of Birth</p> <p>(f) Date on which became a UK resident (if not born in the UK)</p>	[please continue on a separate sheet if required]

7	Previous refusals and convictions		
7.1	<p>Have the Applicant ever been refused or had a Sexual Entertainment Licence revoked by any licensing authority?</p> <p>If yes, please provide full details (please continue on a separate page if necessary)</p>	Yes / No	

7	Previous refusals and convictions	
7.2	<p>Does the Applicant or any individual named in response to questions 1.5 or 4.1 have previous convictions or cautions?</p> <p>If the answer is yes, please provide of a separate sheet the following information in relation to each individual who has a previous conviction or caution:</p> <p>(a) Name</p> <p>(b) Date of conviction</p> <p>(c) Convicting court</p> <p>(d) Nature of conviction</p> <p>(e) Sentence</p>	Yes / No
7.3	<p>Have you any reason to believe that a prosecution may be pending against the Applicant or any of the individuals named in response to questions 1.5 or 4.1?</p> <p>If yes please provide details</p>	Yes / No
7.4	<p>Is there in force against the applicant or any of the persons named in response to question 1.5 a disqualification from holding a licence for a sex establishment under the Local Government (Miscellaneous Provisions) Act 1982?</p>	Yes / No

8	Additional details	
8.1	<p>Please provide any additional information which the applicant would wish the Council to take into account when considering this application.</p>	[please continue on a separate page if necessary]

APPLICANTS ARE REMINDED THAT ANY PERSON WHO, IN CONNECTION WITH THE APPLICATION FOR THE GRANT OR RENEWAL OF A SEXUAL ENTERTAINMENT VENUE LICENCE MAKES A FALSE STATEMENT WHICH HE KNOWS TO BE FALSE IN ANY MATERIAL RESPECT OR WHICH HE DOES NOT BELIEVE TO BE TRUE, IS GUILTY OF AN OFFENCE AND LIABLE ON SUMMARY CONVICTION TO A FINE NOT EXCEEDING TWENTY THOUSAND POUNDS (£20,000)

Declaration	
I hereby declare that the above information is true to the best of my knowledge and belief.	
Signature	
Name	
Capacity	
Date	

We will use the information you give in this form and in any supporting documentation you send us, to process your application. We may check information you have provided, or information about you that someone else has provided with other information held by us. We may also get information about you from certain third parties, or give them information to:

- make sure the information is accurate
- prevent or detect crime, and
- protect public funds

These third parties include Government departments, other departments of the Council and other local authorities. We will not give information about you to anyone else unless the law allow us to.

Please submit the completed application to the Licensing Section at the relevant address provided below:

	Congleton (01270) 537112	Crewe & Nantwich (01270) 537114	Macclesfield (01625) 504206
LICENSING AUTHORITY Cheshire East Borough Council	Licensing Section Municipal Buildings Earle Street, Crewe CW1 2BJ	Licensing Section Municipal Buildings Earle Street, Crewe CW1 2BJ	Licensing Section Macclesfield Town Hall Market Place, Macclesfield, Cheshire SK10 1DX



**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT
1982**

**Notice of Application for the [Grant] [Renewal] of a Sexual
Entertainment Venue Licence**

NOTICE IS HEREBY GIVEN that on

I/we
of
.....

made application to Cheshire East Borough Council for the [grant] [renewal] of
a Licence to use the premises named below as a Sexual Entertainment
Venue.

Address of Premises:.....
.....

Any objections to this application should be made not later than 28 days after
..... being the date of the application. Objections must be made
in writing, stating in general terms the grounds of objection, to The Licensing
Section, Cheshire East Borough Council [Town Hall, Market Place,
Macclesfield SK10 1DX] [Municipal Buildings, Earle Street, Crewe, CW1 2BJ].

Signed:

SEXUAL ENTERTAINMENT VENUES**Local Government (Miscellaneous Provisions) Act 1982 (Schedule 3)****CONDITIONS**

These conditions are imposed by the Council pursuant to its powers under paragraph 13(1) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended) ('the 1982 Act')

Definitions	<p>1. In these conditions, unless the context otherwise requires:</p> <p>'Council' means Cheshire East Borough Council</p> <p>'Licence Holder' means the holder of a Sexual Entertainment Venue Licence</p> <p>'Premises' means any premises within the Council's area licensed as a Sexual Entertainment Venue</p> <p>'Relevant Entertainment' shall have the meaning given within paragraph 2A of Schedule 3 of the 1982 Act.</p> <p>'Sexual Entertainment Venue' has the meaning set out within Schedule 3 of the 1982 Act.</p> <p>For the purposes of these conditions:</p> <p>(a) Words importing the singular meaning where the context so admits include the plural meaning and vice versa; and</p> <p>(b) Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.</p>
Display of Licence	<p>2. The Licence or a clear copy and any special conditions attached thereto shall be prominently displayed at the Premises at all times so as to be readily and easily seen by all persons using the Premises. The licence shall be adequately protected against theft, vandalism or defacement.</p>

Hours of opening	<p>3. The Premises shall not be open for any purpose of the Licence except during the following hours:</p> <p>[insert hours granted]</p>
Responsibility of Licence Holder	<p>4. The Licence Holder shall maintain good order and take all reasonable precautions for the safety of the public and employees and, except with the consent of the Council, shall retain control over all portions of the premises.</p> <p>5. The Licence Holder shall in particular ensure that none of the following shall take place:</p> <ul style="list-style-type: none"> • Unlawful possession and/or supply of drugs controlled by the Misuse of Drugs Act 1971; • Indecent behaviour, including sexual intercourse; • The offer of any sexual or other indecent service for reward; • Acts of violence against person or property and/or the attempt of threat of such acts. <p>6. The Licence Holder shall ensure that the public are not admitted to any part or parts of the Premises other than those which have been specified in the Licence.</p> <p>7. The Licence Holder will maintain a register which shall be kept on the Premises to clearly record the identity of persons nominated in accordance with conditions 30 and 31 hereof on duty during the entertainment, the day and times of the start and finish of the entertainment, and the names and addresses of the performers. The register shall be retained for a period of not less than twelve months after the last entry in the register. The register shall be available at all times for inspection by the Police or an authorised officer of the Council.</p> <p>8. Where the Licence Holder is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the control or management of the body is to be notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director secretary or manager are to be furnished within 14 days of a request in writing from the Council.</p>

	<p>9. The Licence Holder shall ensure that neither he, nor any person promoting or providing entertainment on the Premises (or any person acting on behalf of such a person), shall display advertisements promoting Relevant Entertainment or the Premises in an unlawful manner.</p> <p>10. The Licence Holder shall inform the Council within seven days if he is convicted of any offence</p>
Conduct of the premises	<p>11. The Licence Holder or any other person concerned in the conduct or management of the premises shall not seek to obtain custom by means of personal solicitation or touting from the premises, immediately outside the premises or in the vicinity of the premises, nor allow the premises to be used by prostitutes. Solicitation shall be taken to include the distribution of leaflets.</p> <p>12. The Premises shall be used only for the purposes specified in the Licence.</p> <p>13. No person under the age of eighteen years shall be admitted to the Premises or be employed in the business of the Sexual Entertainment Venue.</p> <p>14. Customers who appear to be under the age of 21 must be asked to provide photographic proof of their age. The only means of identification which may be accepted are a photocard driving licence, a passport or a recognised proof of age card which includes the 'PASS' hologram on it.</p> <p>15. The Licence Holder shall ensure that performers and members of the public have separate entrances for entering and exiting from the Premises, performers to use staff entrances.</p> <p>16. There shall be agreed in writing with the Council arrangements for restricted access to the dressing rooms used by the performers and such restricted access shall be maintained at all times until all performers using the dressing rooms have vacated the room.</p>
Provision of Relevant Entertainment	<p>17. The performance shall only take place in the designated area of the Premises approved by the Council and in accordance with the staging and seating plan approved by the Council.</p>

	<p>18. Performers shall only perform on the stage area or to seated customers or in such other areas of the Premises as may be agreed in writing with the Council. No audience participation in a performance shall be permitted. During the performance, performers shall not (a) touch customers, (b) climb onto furniture, or (c) simulate sex acts.</p> <p>19. There shall be no physical contact between the performers and customers before, during or after the performance.</p> <p>20. Notices setting out the restriction contained in Condition 19 shall be displayed in prominent positions within the Premises.</p> <p>21. Performers not currently performing shall not be in any public part of the Premises in a state of undress.</p> <p>22. Any person who touches or attempts to touch a performer or directs lewd, vulgar or obscene language or gestures thereto shall be immediately removed from the Premises by the Licence Holder or member of staff acting on his behalf.</p>
<p>Signs, doors and window display</p>	<p>23. A notice shall be displayed in a conspicuous position at each entrance to any part of the Premises where the performance is to take place stating that 'NO PERSON UNDER 18 YEARS WILL BE ADMITTED'. The notice must also include a statement that proof of age may be required.</p> <p>24. The business or trading title of the Premises which must have received the prior written approval of the Council (in accordance with condition 44 hereof) <u>may</u> be displayed in letters no more than 150mm high.</p> <p>25. With the exception of the signs required and permitted by condition 23 and 24 above, the Licence Holder must ensure that no sign, words, poster, photograph, sketch, painting, display or advertisement is displayed outside or in the vicinity of the Premises which indicate or suggest that Relevant Entertainment takes place at the Premises.</p> <p>26. The exterior design of the Premises shall be such that the interior of the Premises is invisible to passers by.</p>

	<p>27. External doors shall be closed at all times other than when persons are entering or leaving the Premises. The external doors shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.</p> <p>28. The Premises shall be fitted with an inner entrance door or screen so that no part of the interior of the premises or any of the contents of the premises shall be visible when persons are entering or leaving the Premises.</p> <p>29. The windows and openings of the Premises shall be of a material or covered with a material which will render the interior or any items within the Premises invisible to passers-by.</p>
<p>Employment of persons on the Premises</p>	<p>30. The Licence Holder, or some responsible person over the age of eighteen nominated by him in writing for the purpose, shall be in charge of and upon the Premises at all times that the Premises is open to the public. Such written nomination shall be continuously be available for inspection at the Premises by a Police Officer or by an authorised officer of the Council.</p> <p>31. In addition to the Licence Holder or nominated person, there shall be a nominated female present to oversee the activities of female performers and a like nominated male present to oversee the activities of any male performers.</p> <p>32. The person in charge shall not be engaged on any duties which will prevent him from exercising general supervision and he shall be assisted as necessary by suitable adult persons to ensure adequate supervision. The person in charge should be conversant with these conditions, a copy of which should be held on the premises</p> <p>33. A notice showing the name of the person in charge of the Premises at the time they are open under the licence shall be conspicuously exhibited in a position where it can be seen by customers throughout the period during which he is responsible for the conduct of the Premises.</p> <p>34. The Licence Holder shall at all times keep and</p>

	<p>maintain at the Premises a written record of the names, addresses and dates of birth of all persons employed within the licensed premises whether upon a full time or part time basis, and shall upon request by an authorised officer of the Council make such records available for inspection to him.</p> <p>35. Any individual employed on the Premises to conduct a security activity (within the meaning of the Private Security Industry Act 2001) must be licensed by the Security Industry Authority.</p> <p>36. A register of SIA staff working at the premises shall be maintained, kept at the premises and made available for examination upon request to a Police Officer or authorised officer of the Council or the SIA.</p> <p>37. The Licence Holder must ensure that a suitable number of trained staff are employed to supervise the interior of the Premises whilst performances are being given.</p> <p>38. Performers shall be aged not less than 18 years. The Licence Holder must maintain complete records of the names, addresses and dates of birth of performers including identity checks which are satisfactory to the Council.</p>
Alterations to the Premises	<p>39. No alterations (including temporary alterations) shall be made to the Premises without the prior written consent of the Council. This condition shall not require notice to be given in respect of routine maintenance works.</p> <p>40. Where alterations necessitate the Premises being closed for a period of time, the premises shall not reopen for the purpose of the licence, until the licensee has been notified in writing by the Council of the satisfactory completion of the work</p>
Change of use	<p>41. No change of use of any portion of the Premises from that approved by the Council shall be made until all necessary consents have been obtained from the Council. For the avoidance of doubt this includes a change from one class of sex establishment (e.g. a sex shop) to a different class of sex establishment (e.g. a sex cinema).</p>
CCTV	<p>42. A CCTV system will be installed at the premises to the satisfaction of the Police Licensing Officer</p>

	<p>and it must record at all times the Premises are open to the public. Unedited images must be retained for at least 31 days and copies made freely available upon request to the Police or an authorised officer of the Council.</p> <p>43. At all times the Premises are open to the public there will be a member of staff on duty who is competent to operate the CCTV system and to provide any copies requested</p>
Business title	<p>44. The Licence Holder must obtain the consent of the Council for the business or trading title to be used in relation to the Premises. An application must be made to the Council to change the business or trading title and the Council shall have the discretion to allow or refuse such a change.</p>

SEXUAL ENTERTAINMENT VENUES
Schedule 3, Local Government (Miscellaneous Provisions) Act 1982

COMMITTEE PROCEDURE

1	Chairman	The Chairman will: (i) call the matter to be considered; (ii) call for any declarations of interest; (iii) ask all parties to introduce themselves; (iv) summarise the procedure to be followed at the hearing;
2	Licensing Officer	Will introduce and summarise the application, highlighting areas of contention or dispute.
3	Committee Members	May ask questions of the Licensing Officer
4	Applicant	Will present his/her case, calling witnesses, as appropriate.
5	Police (if they have made representations)	The Police may ask <u>questions</u> of the applicant, by way of clarification.
6	Objectors	To be invited to ask <u>questions</u> of the applicant, by way of clarification. <i>It is normal practice for a spokesperson only to speak on behalf of a group of residents.</i>
7	Committee Members	Each in turn may ask <u>questions</u> of the applicant.
8	Applicant	May make a <u>statement</u> or ask his witnesses to clarify any matters which he feels are unclear, or may have been misunderstood.
9	Police (if they have made representations)	Will make their representations (if any).
10	Applicant	Or his representative or witnesses to ask <u>questions</u> of the Police by way of clarification.
11	Objectors	May ask <u>questions</u> of the Police, by way of clarification.
12	Committee Members	May ask <u>questions</u> of the Police
13	Objectors	The objectors will be invited to speak and to present the basis of their objections.
15	Applicant	Or his representative or witnesses may ask <u>questions</u> of the objectors by way of clarification.
16	Committee Members	May ask <u>questions</u> of the objectors
17	Chairman	To invite both Police and Objectors to make their closing

		addresses.
18	Applicant	Or his representative will <u>briefly summarise the application</u> and comment on the representations made.
19	Committee	<u>Will retire</u> to consider the application.
20	Committee	Will return to <u>give its decision</u> , with reasons, which will be announced by the Chairman and subsequently confirmed in writing.

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APPENDIX B

CONSULTATION RESPONSES

	RESPONDENT	SUBMISSION
1.	Resident of Wilmslow	Re. Wilmslow Express lap dancing etc I am aware of this facility though not a client. I find no grounds to justify further legislation in matters pertaining to licensing. I am satisfied, on the grounds of experience, that matters pertaining to public order, ethics, psychological factors, sociological and theological matters are in good order. A similar (failed) facility in Alderley Edge was noisy and intrusive. This may have been due to the conduct of clientele and not due to management failings. The facility in Grove Street Wilmslow is indicative of good management and the responsible and reasonable respect shown by the clientele. Such venues may attract negative conduct of irresponsible clients. That is not an issue for licensing. Negative opinions concerning matters of administration and social psychology appear to come from a given minority of highly vocal people in a sub cultural strata.
2.	Sandbach Town Council	At the Sandbach Town Council Planning Committee meeting held Monday, 1 November, Councillors discussed the above consultation. Following discussion, Members resolved to confirm the Council's full support of CEC adopting the amendments to Schedule 3 of the 1983 Act; thus ensuring stringent control over the venues, as per section 27 of the Policing and Crime Act 2009 quoted in your consultation document.
3.	Independent Sexual Violence Advisor (Cheshire East) Rape and Sexual Abuse Support Centre (Cheshire & Merseyside)	I would like to put forward our support, as an organisation providing service to victims of rape and sexual abuse/violence in Cheshire East, for the proposed adoption of the amendments to Schedule 3 of the 1982 Act and introduction of a regime for the regulation of sexual entertainment venues in the Borough. As part of our work against sexual violence we aim to help reduce stereotypes and myths around sex and reducing the sexualisation of women is a big part of this. Having local regulation of proposed sexual entertainment venues will be of benefit to the local community, our cause of reducing sexualisation of women and for the women that work within these clubs.
4.	Alsager Town Council	Further to a meeting of the Alsager Town Councils Planning Committee held on 2 nd November 2010, the Committee fully support the introduction of the Draft Policy on the Licensing of Sexual Entertainment Venues Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 (as amended).
5.	Poynton Town Council	This issue featured on the agenda of Poynton Town Council's Planning meeting of Monday 1 st November 2010. A unanimous resolution was passed, the text of which is given below: RESOLVED: That the Clerk respond to the consultation, stating that Poynton Town Council was strongly in favour of Cheshire East Council adopting the provisions of Section 27 of the Policing and Crime Act 2009, thereby allowing the local authority to refuse an application on potentially wider grounds than is permitted under the Licensing Act 2003, and giving local people a greater say over the regulation of lap dancing and similar venues in their area.
6.	Mottram St Andrew Parish Council	The consultation documents were considered by the Parish Council both before and at their Meeting on 15 th November and I am directed to advise you that they support the proposal to adopt the amendment to Schedule 3 and that the draft Policy introduces sensible controls in relation to the type of establishment envisaged. The fee levels were considered modest taking into account the potential for profit generated by such a venue. We hope these views are of some assistance.
7.	Middlewich Town	Thank you for the opportunity to comment on the proposals for the licensing of

	Council	<p>sexual entertainment venues. The Town Council is in favour of Cheshire East Council adopting Schedule 3 of the 1982 Act and of the proposed fee levels.</p> <p>In respect of the draft policy, the only comment the Town Council made was to recommend that Cheshire East Council be asked to include the Town Council as a consultee in respect of licensing applications of any description in Macclesfield and that they also be allowed to address the Licensing Committee in respect of any such applications.</p>
8.	26 residents (22 residents of Wilmslow, 1 resident of Alderley Edge, 3 letters address not provided)	<p>I strongly urge Cheshire East Borough Council to adopt section 27 of the Policing and Crime Act 2009, so that local authorities can have more powers to control the number and location of lap dancing clubs and similar venues in our area.</p> <p>I would like you to have the power to refuse an application on wider grounds than is currently permitted and give local people a greater say.</p> <p>Many residents find 'sexual entertainment venues' totally inappropriate for this small attractive town and would welcome this new regulation.</p>
9.	Macclesfield resident	<p>I am responding to the 'sex club deadline' article in my local paper. I do object strongly to any application for lap dancing clubs or similar opening in my town. Macclesfield is not hugely populated like, for example, Manchester, where this sort of establishment would be in the city centre away from residential areas. I want to be able to go out for a meal or a drink, in my home town without being offended by such clubs. The opening of such establishments would attract a certain clientele which I feel we do not have at present in our town. Plus I feel it would cause problems with disorderly conduct when people are refused entry for one reason or another. Please keep Macclesfield clean and do not allow such in our town. I do not feel the majority want or need such activities on our doorstep.</p>
10	Wilmslow Resident	<p>I strongly urge Cheshire East Borough Council to adopt section 27 of the Policing and Crime Act 2009, so that local authorities can have more powers to control the number and location of lap dancing clubs and similar venues in our area.</p> <p>I would like you to have the power to refuse an application on wider grounds than is currently permitted and give local people a greater say.</p> <p>Many residents find 'sexual entertainment venues' totally inappropriate for this small attractive town and would welcome this new regulation.</p> <p>PS I find it unacceptable that any establishment in our village should be permitted to have a 04.00 am closing time.</p>
11	Wilmslow Resident	<p>I am writing to strongly urge Cheshire East Borough Council to adopt section 27 of the Policing and Crime Act 2009, to enable local authorities to have more powers of control the number and location of lap dancing clubs and similar venues in our area.</p> <p>I would like my views to be taken into consideration before you grant or refuse an application for a licence locally.</p> <p>It is felt that sexual entertainment venues are highly inappropriate for our small, attractive town and the new regulation would be highly welcome.</p>
12	Macclesfield Resident	<p>I strongly urge Cheshire East Borough Council to adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and introduce a regime for the regulation of sexual entertainment venues in the Borough.</p> <p>We would like you to have the power to refuse an application on wider grounds than is currently permitted, introduce greater regulation and give local people a greater say.</p>

		I find 'sexual entertainment venues' totally inappropriate to small towns in Cheshire and back greater regulation.
13.	Bollington Town Council	To let you know that Bollington Town Council feels that the draft regulations do provide the right checks and balances to control the location of these venues.
14.	Resident of Alderley Edge	<p>I note from the Cheshire East website that a consultation exercise is currently underway and that:</p> <p><i>"Section 27 gives local authorities more powers to control the number and location of lap dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where they are adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the 2003 Act [the Licensing Act 2003] and will give local people a greater say over the regulation of lap dancing and similar venues in their area."</i></p> <p>I strongly urge Cheshire East Borough Council to adopt Section 27, so that they can exercise greater control over the number and location of lap dancing clubs and similar venues in our area.</p>
15.	Wilmslow Resident	<p>I am writing in response to your public consultation exercise to request that Cheshire East Council adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and introduce improved regulation of sexual entertainment venues in Cheshire East.</p> <p>We have a lap dancing venue in the middle of Wilmslow, which many people opposed at the time it opened, to no avail. I do not consider it acceptable to have this kind of 'sexual entertainment venue' on a mainstream high street where it becomes implicit that sex is a commodity to be sold like any other high street commodity. It is not, and the presence of these venues in these locations gives me great concern for the impact they have on our young people.</p>
16.	Resident of Macclesfield	<p>I am writing in support of the proposal for the new consultation regime to be adopted by Cheshire East Borough Council as this gives the local community a greater say. Thank you for putting the notice of the consultation in the Macclesfield Express. This was a good idea as many people do not scan the council website for new developments.</p> <p>In relation to the draft I think it should be made clear that the whole town could be a relevant locality for the purposes of consultation. Macclesfield is actively trying to rebrand itself through the work of paid employees and community groups and many people want to develop the town as a cultural and tourist centre based on its historic roots as a silk town. People are planning for the anniversary next year and we are seeing good developments like an ice rink in the town centre.</p> <p>When the last request for a license change was made for lap dancing in Macclesfield there was not one person who was willing to say that they wanted the development apart from the applicants. This says to me that it is a shameful and seedy business. I am also canvassing local councillors and other representatives about this issue as they also have an investment in plans for the town.</p>
17.	Cheshire Constabulary	In general Cheshire Police welcome the proposal, by Cheshire East Borough Council, to adopt legislation that will enable it to regulate Sexual Entertainment Venues. The legislation, if adopted, will allow local communities with legitimate concerns about a Sex Entertainment Venue, either proposed to operate or already operating, in their neighbourhood to have a greater say in those matters. It will also allow the Council, where it considers it appropriate, to set a limit on the number of Sexual Entertainment Venues in a particular area.

		<p>In relation to the proposed fee levels I don't seek to comment on them as it is not particularly a police matter other than to note the disparity with some other authorities who have set levels significantly higher.</p> <p>Below you will find some comments about your proposed conditions and mention of the 'waiver' in your proposed draft policy.</p> <p>Conditions</p> <p>1. 'Definitions' should include what is meant by the terms employed/employee (s) to ensure it captures all intended persons, i.e. it will include self employed persons, contractors or their staff promoting or providing any service or relevant entertainment.</p> <p>7. & 38. These conditions should require performers to provide their names and home addresses, not just addresses. Otherwise performers could just provide an agency address or even the address of the venue itself and this would not help to identify who they were should it ever be an issue.</p> <p>9. What would amount to promoting relevant entertainment or the premises in an 'unlawful manner', i.e. contrary to what legislation? Are you thinking of the Obscene Publications Act, for example, in which case, would this not be duplication of existing legislation?</p> <p>21. How would this condition work with topless barmaids, glass collectors etc. who will always be in a state of partial undress when they are working, albeit not actually performing? Or do you take the view that these people would be 'performing' whilst carrying such duties?</p> <p>25. Typing error at 'indicate of suggest'.</p> <p>Waiver</p> <p>The Council clearly have the power to grant a waiver, if they see fit, and I note that your draft policy comments that waivers are unlikely and would only be granted in exceptional circumstances. However I would have preferred to see a policy decision that waivers would only ever be granted after a full application, which would crucially allow for full consultation to firstly take place. I do not seek in anyway to shackle the Council in its decision making powers but if waivers would only be granted in exceptional circumstances then surely those exceptional circumstances should justify the Police being allowed to comment. The draft policy doesn't appear to ensure consultation would always take place before a waiver is, exceptionally, granted.</p>
18.	<p>25 responses, of which:</p> <p>19 residents of Macclesfield, 1 resident of Prestbury, 1 resident of Wilmslow, 1 resident of Congleton and one respondent who provided a Manchester address</p> <p>1 response on behalf of Knutsford Methodist Church and 1 response on</p>	<p>I am writing to express my support for Cheshire East Borough Council introducing and adopting the new regime but changing the draft policy to have a Zero Tolerance Policy for all Sex Establishments including Lap dancing. In particular, I would support the following:</p> <ol style="list-style-type: none"> 1. For the Council to say yes to a new regime for the licensing of lap dancing, so that like sex shops and sex cinemas, local people have a greater say, as any person can object not just those who live or work near the proposed venue. 2. To change the policy to have a zero tolerance policy for all sex establishments in the Borough of nil per ward. For example, see the zero tolerance policies of Haringey Borough Council; Mid Sussex District Council; and Hackney and Oldham Council. 3. To remove from the policy the idea in paragraph 3.6 that an entire town cannot be seen as a relevant "locality". Other policies such as Mid Sussex and Oldham Council have covered towns. All areas need protecting including

	behalf of Macclesfield United Reform Church	<p>town centres.</p> <ol style="list-style-type: none"> 4. To change the policy, so that it covers a wide range of areas and explains a zero tolerance approach for the main town centres, smaller towns, villages and rural communities, business parks and industrial estates, as being unsuitable for sex establishments for various reasons. For example, see the policy of Mid Sussex District Council. 5. To raise the proposed application fees to: new application £8,000, renewal £5,000, transfer fee £1,100 (see fees for Harrogate Borough Council/Oxford City Council/South Hams District Council). 6. To extend the description and list of inappropriate locations for lap dancing venues. I believe the list should specifically include being near swimming pools, leisure centres, mental health centres, sheltered accommodation, disability centres, historic buildings, tourist attractions, conservation areas, restoration areas, improvement areas, planned improvement areas, pedestrian routes or transport links (such as stations or bus stops), residential accommodation (without the need for this to be a predominant use), shopping areas, other retail units (and their uses), and other alcohol and entertainment licensed premises. All of these are inappropriate locations due to the character of the locality especially for sensitive users such as families, children, the disabled, the elderly or to help prevent crime and disorder. For example, see the policies by South Hams; Mid Sussex District Council; Oxford City; and Oldham Council. 7. To extend the list of standard conditions for lap dancing to protect families, children, the public, performers and nearby occupiers. I would propose for example: <ul style="list-style-type: none"> • Restricting opening hours to 9am to 6pm excluding Sundays/Bank Holidays and public holidays; • Specifying premise noise and vibration control so that noise does not give rise to a nuisance to nearby occupiers; • Requiring a minimum of 4 door supervisors on duty whilst the premise is open to the public; High visibility fluorescent jackets to be worn by all door supervisors whilst outside the premises so that the public can identify them; • Prohibiting soliciting and advertising outside the premises including leaflets or cards and exchange of personal details between customers and performers, to prevent prostitution; • and tightening conditions on performances between performers and customers including the requirement for the distance of one metre between performers and customers. For example, see the conditions for Cornwall, Oxford City; and Oldham Council. 8. To consult upon and change the policy to include sex shops and sex cinemas to also have a zero tolerance policy. <p>AS ABOVE WITH THE FOLLOWING ADDITIONAL COMMENTS:</p> <p><u>Macclesfield Residents (x2)</u> We are both Macclesfield born and bred and have children and grandchildren growing up here and we want our town to be a clean and happy environment for both residents and visitors alike.</p> <p><u>Wilmslow Resident</u> As a parent of two young children I do not want to be faced with these kind of venues – we already have one in Wilmslow, which is a family-orientated community</p> <p><u>Knutsford Methodist Church</u> I am writing having heard of the concerns of my colleagues in Churches in Macclesfield. There is real concern that without the zero policy for all sex establishments the nature of towns and market towns in the Borough will be altered. We need a Council who are willing to give a moral lead to the citizens and seek to protect the vulnerable both the communities in which they are sited and those who</p>
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	<p>work in the establishments. There is considerable concern about such 'employees' being the most vulnerable in society and subject to abuse in its many forms. I urge the council to take a moral stance on this issue.</p> <p><u>Macclesfield Resident</u> As a local resident I want Macclesfield to stay a place of interest where families feel safe and free to shop and visit places of historical attraction such as the silk museum. A lap dancing club would certainly discourage families from visiting the town centre. There are already too many places in Macclesfield where alcohol and other licensed premises provide entertainment. At the weekend in particular Macclesfield has become a no-go area due to alcohol abuse which produces fighting in the streets. A lap dancing facility would only add to the problems already created in the town.</p> <p><u>Macclesfield Resident</u> Macclesfield is aiming to looking to improve the town. A lap dancing venue would do nothing to enhance it, rather the opposite. We would be inviting people into the town who come for the wrong reasons, sexual rather than cultural.</p> <p><u>Macclesfield Residents (x2)</u> We are church going residents of Macclesfield and feel lap dancing would be degrading for the area. We also feel the young women will one day wish they had never done this. It is depraving to these women.</p> <p><u>Macclesfield resident</u> Strongly support zero tolerance. Macclesfield resident/parent/church goer.</p> <p><u>Macclesfield resident</u> I don't want our young people to get the impression that 'lap dancing,' which most people associate with inappropriate sexual behaviour, is OK and acceptable.</p> <p><u>Macclesfield resident</u> We are not a fluid international centre, we respect gender and women properly and therefore need to keep Macclesfield a family town.</p> <p><u>Macclesfield resident</u> For several reasons I endorse the zero tolerance policy but mainly because we are trying to improve the image of Macclesfield as an area of traditional markets and historic character. Lap dancing clubs would only serve to harm this. More importantly as a mother of four I am concerned that children and families can enjoy the town centre without being exposed to unwanted and inappropriate images.</p> <p><u>Macclesfield resident</u> I do not want to encourage the young people of our town to think that it is morally acceptable that a part of the sex industry should be seen as commonplace or acceptable in our society. I stand for a reasonable and moral approach to relationships and a respect and dignity for the human person and therefore such places of 'adult entertainment' should not be allowed near young adults and older children who live in Macclesfield.</p> <p><u>Macclesfield resident</u> I feel that all residents in the Macclesfield area should be entitled to express their views on matters affecting the town.</p> <p><u>Macclesfield resident</u> A lap dancing club would be detrimental rather than act as an improvement to the character of Macclesfield. Its very nature is a boost to crime and the future sexualisation of our children.</p>
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		<p><u>Macclesfield resident</u> A resident of Macclesfield, I write as a parent of two girls in their early twenties, to support zero-tolerance of lap-dancing, which would attract people with sex on their mind, and increase the risk of incidents of sexual harassment, assault and rape. Zero-tolerance would support the strengthening of government legislation on the safeguarding of children, young people and vulnerable adults to protect them from harm. Zero-tolerance will make it more likely that people Macclesfield residents will enjoy the relaxed and safe evening café culture and create a better environment in Macclesfield. Zero-tolerance will help prevent crime and disorder, and anti-social behaviour, be that verbal, physical, sexual, emotional or psychological, which is provocative or threatening to the public (including the vulnerable). Such nuisance negatively impacts public safety (real and perceived in Cheshire East and undermines measures to protect children from harm.</p> <p><u>Macclesfield resident</u> I am writing as a Macclesfield resident for thirty years, a member of the Broken Cross Methodist Church and a volunteer at Youth Just Drop In. I would like to see a zero tolerance policy in Macc for all sex establishments as we do not wish to spoil the character of this pleasant town I also have concerns for the young people at JDI.</p> <p><u>Macclesfield resident</u> I support a zero tolerance policy for sexual entertainment venues in Macclesfield. I taught English here in an 11-18 school and I have the welfare of young people at heart. My husband and I moved to Macclesfield in 1978 and, because we were so happy here, decided to stay when we retired. I have no wish to see the character of the town changed for the worse. The safety of young people and the elderly would be compromised if such establishments were allowed. Macclesfield at night should be as pleasant and welcoming as it is in the day.</p> <p><u>Macclesfield United Reform Church</u> I feel that the character of the town will suffer if it is seen as a place where sexual entertainment venues are one of the key attractions rather than the rich heritage and historical interest of a key mill town of the industrial revolution, and a gateway to the countryside around.</p>
19.	Wilmslow resident	<p>I strongly urge Cheshire East Borough Council to adopt section 27 of the Policing and Crime Act 2009, so that local authorities can have more powers to control the number and location of lap dancing clubs and similar venues in our area.</p> <p>I would like you to have the power to refuse an application on wider grounds than is currently permitted and give local people a greater say.</p> <p>Many residents of small towns in Cheshire find 'sexual entertainment venues' totally inappropriate and would welcome this new regulation.</p>
20.	Wilmslow Resident	<p>We strongly believe that Cheshire East Borough Council should adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 which introduces a regime for the regulation of sexual entertainment venues in the Borough.</p> <p>You should have the power to refuse an application on wider grounds than is currently permitted, introduce greater regulation and give local people a greater say, and we would encourage you to seek those powers</p> <p>'Sexual entertainment venues' are totally inappropriate for small towns in Cheshire, we are confident that many residents would welcome greater regulation.</p>
21.	Wilmslow Business Operator	<p>I run a small business in Wilmslow and I would like you to adopt Section 27 of the policing and Crime Act 2009, so that local authorities can use more powers to control the number and location of lap dancing clubs and similar venues in the area.</p>

		<p>I would be grateful if you had the power to refuse an application on wider grounds than is currently permitted and for local residents and businesses to be able to influence those decisions.</p> <p>Although we have not had any direct problems with the current lap dancing club in the area we feel it would be inappropriate for the area for more clubs with sexual entertainment to open without more consideration of the effect on existing businesses and residents.</p> <p>I would be grateful of your consideration of this matter.</p>
22.	Wilmslow resident	<p>New Regulation of Sexual Entertainment Venues</p> <p>I urge you to adopt section 27 of the Policing and Crime Act 2009 so that Cheshire East can have more power to control the number and regulate sexual entertainment venues.</p> <p>As in paragraph 3.2 you recognise the principle purpose of this entertainment is to sexually stimulate the audience, have you identified the percentage of that audience who would look for sex having visited such an establishment?</p> <p>In paragraph 3.5 you state that the local authority may refuse to grant the licence if it was felt to be inappropriate for the locality. I have canvassed many people and I have yet to find one who feels Wilmslow is an appropriate locality for lap dancing. Why does Cheshire East Council currently disagree with local residents?</p> <p>When a business wishes to add to their premises, for example 'Barinda', external seating area, signs were placed and local people were contacted directly by your council. Could sexual entertainment venues have the same system?</p> <p>Paragraph 3.8 points out that the licence could be inappropriate to other users of premises in the area. The current licence holder is only yards from residential areas, churches and Wilmslow Preparatory School. Could schools, local churches and existing businesses be contacted for their views before further licences are issued?</p> <p>In the Sexual Entertainment conditions you state that indecent behaviour including sexual intercourse should not take place. Firstly, what is your definition of indecent behaviour, secondly, as these venues offer 'private one on one rooms how can this be policed?</p> <p>Would you consider adding regulations regarding dress? In my opinion topless dancing and see-through fabrics provide indecent behaviour, what are your findings?</p> <p>Finally, I would like you to have the power to refuse an application on wider grounds than is currently permitted and give local people a greater say.</p>
23.	Macclesfield resident	<p>As a resident of Macclesfield town centre, objector to the recent Repent lap dancing licence application, and one of the founding members of Macclesfield Barnaby Festival (established last year to promote and enhance the cultural and community life of Macclesfield) I applaud CEC for bringing forward this consultation and absolutely support the proposal of the Council to adopt the amendments to Schedule 3 of the 1982 Act, and introduce a new regime for the regulation of sexual entertainment.</p> <p>Generating the determination to build confidence in a town and fuel growth takes enormous time, skill and energy of its people. There needs to be good will and determination from community and business organisations, and the support of local government. In Macclesfield we are seeing such a coming together, and a strong partnership emerging at this time. There are few commercial interests which have</p>

the capacity to undermine this kind of momentum – but the establishment of sexual entertainment venues is one of them. What takes years to build, can be undone very quickly. Therefore it is extremely important to consider this policy very carefully.

In response to the consultation on the draft policy :

General points :

I would however like to see the proposals **extended** to cover other sex establishments such as sex shops or sex cinemas, and not just lap-dancing venues.

The policy appears to have a **neutral approach** to the licensing of sexual entertainment venues. However the nature of the area covered by Cheshire East, the declared priorities of the recent CEC Visitor Economy consultation, Local Area Partnership application and stated aims, and everything which affects the Macclesfield area specifically (Macclesfield Redevelopment Plan process, Cheshire's Peak District branding, "Make it Macclesfield" proposed branding, Barnaby Festival and related community and town centre events such as the hugely successful Treacle Markets, Macc ice rink, new town centre bars and restaurants, and recent addition to the Silk Road project of the UN World Tourism Organisation) suggests there **should be a presumption not to license sexual entertainment**. This would demonstrate clear strategic direction and 'joined up' thinking by CEC, minimise speculative or mischievous applications, and would not of course prevent every application being judged on its merits.

Specific points :

3.6 Relevant locality

The Council may not seek to define "locality" as the whole of the administrative area, or town, but it seems unnecessary to state in its policy that the Council is not able to determine the entire town or area as a relevant locality. There are some areas within Cheshire East where locally elected representatives, community organisations and commercial and entities may decide that premises for sexual entertainment are not appropriate in their town. The ability to judge every case on its merits must surely mean that this option should be open to the Council, including that it see fit to define "locality" as the whole town. Why restrict the Council's options at this point?

3.8 Character of the relevant locality and use of premises in the vicinity

The list of characteristics generally considered to be inappropriate seems unnecessarily limited or prescriptive, not allowing for the unique characteristics of areas – which after all give them their quirky individuality or strong sense of identity, and may be of great relevance to the suitability of an application.

As a founder member of the Barnaby Festival, the exemption of historic or culturally significant buildings or conservation areas is of particular concern to me. Also culturally important venues or fixtures, as well as entertainment venues of other types (there are currently plans for a performance venue/ theatre/ outdoor piazza in Macclesfield) need a voice. In addition, transport hubs create an important first impression for new arrivals and should be considered as a place where the public have to spend periods of time. However, there are also others. I suggest the removal of a list so as not to limit the number of categories, or be extended to include the following:

Historic buildings, restoration areas, improvement areas, planned improvement areas, conservation areas or tourist attractions;

Transportation areas including but not limited to bus stops, bus terminals, train stations;

		<p><i>Entertainment centres, venues or public or private indoor or outdoor spaces used for cultural and artistic purposes, where the presence of a place of sexual entertainment could have tangible economic or intangible reputational/cultural impact;</i></p> <p><i>Public buildings including but not limited to swimming pools, leisure centres, public parks, youth centres/clubs, mental health centres, disability centres, and sheltered housing.</i></p>
24.	Comments made by Sustainable Communities Scrutiny Committee (meeting on 4 th November 2010).	<ol style="list-style-type: none"> 1. Endorsed the principle of adopting amendments to Schedule 3 of the 1982 Act; 2. Recommend that company directors/secretary undergo CRB checks 3. Note the importance of being able to sufficiently enforce the regulations post grant of a licence.

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APPENDIX C

*HOPE IN NORTH EAST CHESHIRE
RESPONSE TO THE CHESHIRE EAST BOROUGH
COUNCIL
DRAFT POLICY ON THE LICENSING OF SEXUAL
ENTERTAINMENT VENUES*

DECEMBER 2010

Executive Summary

1. **Hope in North East Cheshire** which represents 39 churches in Macclesfield and surrounding areas, welcomes the opportunity to respond to this consultation.
2. We wholeheartedly support the Council adopting the amendments to Schedule 3 of the 1982 Act and introducing a new regime for the regulation of sexual entertainment venues in the Borough. However, the draft policy in this consultation only covers sexual entertainment venues such as lap-dancing venues, and not other sex establishments such as sex shops or sex cinemas.
3. Since the Licensing Act 2003 came into force there has been a vast increase in the number of lap dancing clubs around the country. In 1997 there were 24 venues; now there are approximately 300. Local businesses, places of worship, and local residents are often dismayed at the proliferation of these clubs due to the effect they have on local areas. The clubs can create an uncomfortable atmosphere for local people, including women and children, who may feel unsafe within the immediate vicinity, where men leaving the premises may be both intoxicated with alcohol and sexually aroused.
4. We were grateful to the Licensing Committee for refusing a lap dancing application for Repent Nightclub in Macclesfield, in January 2010. The restrictions in the Licensing Act meant that only those who lived or worked near this proposed venue were counted as relevant objections. In Macclesfield this meant that about 450 objected to Repent Nightclub becoming a lap dancing venue but only about 45 objections were counted as relevant.
5. We support the Council adopting the new regime and hope it is accompanied by a more robust policy. A positive change of adoption is that local people are allowed to have a greater say during the decision-making process with objectors not being restricted to those who just live or work near the proposed venue. We recommend that the draft policy in paragraph 4.4. is amended to clarify that the Act is widely drafted and make it explicit that it allows “any person” to object within the required period.ⁱ
6. A further positive change is that the new regime allows local authorities to refuse an application for a licence on potentially wider grounds than is currently permitted under the 2003 Licensing Act. These include the number of similar premises in the locality, the character of the locality and the use of other premises in the vicinity.
7. We submit that the level of fees proposed; £2,260 for a new application, £1,130 for a renewal, and £500 for transfer, are too low. Such applications may be controversial and generate a high level of response, resulting in more administrative work for the Council. We believe that the fee levels should reflect this to be cost effective. Therefore, the fees suggested could be as follows: new application £8,000, renewal £5,000, transfer fee £1,100.ⁱⁱ
8. Whilst case law has determined that the Council is not able to define “locality” as the whole of the administrative area, an examination of case law does not support the assertion that the Council is not able to determine the entire town as a relevant locality. In fact, other Council policies have done so, even determining that the relevant number of sexual encounter venuesⁱⁱⁱ for the town centre is zero.
^{iv} Therefore, “or an entire town” in the last sentence of paragraph 3.6. should be deleted, as such a

description may be misinterpreted and unnecessarily fetters the council discretion on the definition of what is, and what is not the relevant “locality”.

9. It should be noted in the policy that existing licences under the transitional measures can be refused and that there are no ‘grandfather rights’ for existing venues who will in future have to apply for a new type of licence. The policy does not include any comments on the EU services Directive.^v It is important that the Cheshire East policy makes these points clear.
10. The Cheshire East draft policy has a neutral approach to the licensing of sexual entertainment venues. In paragraph 3.7, it states that the Council does not seek to place a figure on the number of sexual entertainment venues it considers appropriate in any locality, but will consider the number suitable for that locality and the Council is able to determine the appropriate number is nil.
11. In general terms, we would like to see a much more robust policy which shows a zero tolerance of such establishments, as can be found in the draft policy of Haringey (Nil per ward) and the policy of Mid Sussex District Council.^{vi} A robust type of policy would provide the most protection for Cheshire East to achieve greener, cleaner, sustainable communities and neighbourhoods to enable a good quality of life for all.^{vii} A suitably worded policy would not prevent each case being treated on its merits but it would make it easier for the Council to use its discretion to reject such applications should it choose to do so, which is the aim of the new regime. The Oldham Council proposed policy specifies nil per town centre and has a robust policy for other areas for the relevant number, in the description of an unsuitable locality.^{viii}
12. Mid Sussex District Council operates a zero tolerance policy on sex establishments. The zero policy on sex entertainment venues does not prevent applications being made to the Council for such licences. Any application must be considered by the Licensing Committee in accordance with the principles and guidelines contained in the policy. Whilst it will consider each application on its merits and relevant representations, it also details why main town centres, smaller towns, villages and rural communities, business parks and industrial estates are not suitable for sexual entertainment venues for various reasons. It is important that any description makes it clear that this is a non-exhaustive list.^{ix} It would be helpful if Cheshire East’s policy was redrafted in more robust terms to provide reasons why a wide range of locations are not suitable for such venues.^x
13. The policy for Cheshire East only covers sexual entertainment venues. Many other Councils’ have covered all sex establishments in their new policies. Cheshire East does not have a policy for sex shops and sex cinemas and it would be useful if this draft policy is adopted to consider the need to consult upon and amend this policy to include all sex establishments, which in our submission should also be based upon a zero tolerance policy.^{xi}
14. In summary, as well as adopting the new regime a more robust policy would be helpful for local people, including extending the list of inappropriate characteristics of the relevant locality, more conditions on lap dancing in Appendix 3 and allowing local people more of a say in the Committee procedure.

Response to Consultation¹

3.6 Relevant locality

1. Please see paragraph 8 of the Executive summary. The case of *Misbehaving Ltd 2004*, describes the case of *Quietlynn Limited -v- Peterborough City Council* (1986) 85 LGR 249, a Court of Appeal case in relation to the issue of relevant locality.^{xii}
2. The reference to "or an entire town" in the last sentence of paragraph 3.6. may be subject to misinterpretation, fetter council discretion and unnecessarily narrows the definition of locality in each case. It is therefore suggested that these words are deleted because case law does not appear to support this requirement.^{xiii}

3.8 Character of the relevant locality and use of premises in the vicinity

3. It would be helpful for local people to extend the stipulations on the inappropriate list of characteristics where sex establishments will be generally considered as such. The intention of the new regime is to allow local people to have a greater say over the regulation of lap dancing clubs and similar venues in their area.^{xiv} A more extensive list will assist that aim.
4. It is suggested that the current list is changed from:
Whilst each application will be determined on its own individual merits, the grant of a licence will generally be considered inappropriate where the characteristics of the locality include the following sensitive uses:
(a) an area predominantly comprising residential accommodation;
(b) parks and children's play areas;
(c) schools and youth centres;
(d) places of worship; and
(e) community facilities.

Proposal to change to: *Applications made for a Sexual Entertainment Venue Licence will not generally be deemed appropriate if the premises is near or in a location or area containing any of the following:*

- (i) Historic buildings, restoration areas, improvement areas, planned improvement areas, conservation areas or tourist attractions;*
 - (ii) Transportation areas including but not limited to bus stops, bus terminals, train stations;*
 - (iii) Schools, play areas, nurseries, children's centres or similar premises;*
 - (iv) Shopping areas;*
 - (v) Residential accommodation;*
 - (vi) Places of worship;*
 - (vii) Community facilities or public buildings including but not limited to swimming pools, leisure centres, public parks, youth centres/clubs, mental health centres, disability centres, and sheltered housing;*
 - (viii) Other retail units (and their uses);*
 - (ix) Alcohol or entertainment licensed premises;*
- The above from (i) to (ix) also including but not limited to, access to and from such places.*

¹ Detailing the paragraph of the policy to which the comments relate.

5. The main reason for the suggested changes is to take account of approaches by other Councils' policies or draft policies that have a far more extensive list in determining the inappropriate character of a relevant locality for sexual entertainment venues.^{xv} This does not prevent the Council exercising its own discretion on an individual application basis, but it does mean that should the Council decide a locality is inappropriate then the draft policy will help to support such a decision.

6. The draft policy for Cheshire East suggests (a) *an area predominantly comprising residential accommodation*. The removal of the description "an area predominantly comprising" would be helpful. Policies or draft policies by other Councils are more extensive and simply refer to residential accommodation/areas (Oxford City Council /Oldham Council and South Hampshire District Council).

7. The draft policy for Cheshire East suggests (b) *parks and children's play areas*, (c) *schools and youth centres*; (e) *community facilities*. This fails to provide adequate protection for children and the vulnerable. The list is not as extensive as proposed in (iii) and (iv) above or by other policies such as that of South Hampshire District Council. The prevention of locating a sex establishment close to mental health centres, disability centres and sheltered housing is also important in protecting the vulnerable in society. Swimming pools and leisure centres are likely to be places sensitive to usage by children and families which also have not been included.

8. Oxford City Council's policy suggests that Historic Buildings or tourist attractions are relevant as inappropriate localities, and these have not been included in the Cheshire East Policy. The proposal being made here in (i) also includes restoration areas, conservation areas, improvement or planned improvement areas. The reason for these proposed inclusions is because the character of the relevant locality is likely to be detrimentally effected in such areas by a sex establishment.

9. Case law supports the fact that sex establishment renewals do not have to be granted. In the London Borough of Wandsworth case,^{xvi} the licence was not renewed because of the change in the locality brought about by improvement initiatives. This decision was upheld despite the fact that the applicant had improved his premises. This case supports the insertion in the list of character of the relevant locality of improvement areas being inappropriate for the location of sex establishments. This is of particular concern for Macclesfield as there are a number of initiatives being undertaken to improve Macclesfield town centre including *Create a Difference in Macclesfield*.^{xvii}

10. Earlier this year when a lap dancing application was made by the Repent nightclub in Macclesfield; It was of great concern that the proposed location was right next to a bus stop and central bus station where women and children would be waiting alone at night. It raised concerns of public safety including fear of crime due to the possibility of women and female young people in the vicinity encountering men leaving the club under the influence of both alcohol and sexual stimulus.

11. Assuming the rules of the club are properly followed and the premise does not operate as a brothel, it is likely that men will leave the premises not only sexually stimulated but also sexually frustrated. Innocent women who may have no choice but to wait for a bus may become vulnerable targets for such pent up sexual frustrations. Hence, the suggested inclusion as inappropriate areas for the character of the relevant locality being: *Transportation areas including but not limited to bus stops, bus terminals, train stations*.

12. Unlike the Oldham Council's policy the draft policy does not include as inappropriate localities,(a) retail units (and their uses) and (b) being near alcohol or entertained licence policies. Crime and disorder may be

an issue and the use to which any premises in the vicinity including retail units are put is also relevant to the law under Schedule 3 of the 1982 Act, as well as considering the character of the relevant locality.^{xviii}

3.9 Conditions

13. We submit that the list of standard conditions for sexual entertainment venues needs to be amended and extended. Please see our response under the Appendix 3 heading.

4.0 APPLICATION PROCESS

4.1 Submission of application

14. A scale plan of the premises will provide insufficient detail for the application process. For example, the Mid Sussex District Council's draft policy^{xix} is much more detailed and suggests:

The form must be accompanied by the following:

- *five sets of floor plans, drawn to scale and showing all means of entry and exit, any parts used in common with any other building and indicating how the premises lie in relation to the street;*
- *five sets of plans showing the existing and front elevation of the premises depicting all signage;*
- *five sets of plans (scale 1:500) showing the sex establishment in relation to other premises within 100 metres;*
- *five sets of plans (scale 1:50) showing the layout of the sex establishment;*
- *the correct fee as set by the Council's Licensing Committee.*

15. It is important to state that the plans should always be provided in a large enough size to be easily read.

16. Paragraph 4.1 of the Cheshire East policy should also include (a) a warning of a fine of £20,000 if a false statement is made,^{xx} (b) the need for planning consents and (c) to allow for Council Officer access to the proposed venue.^{xxi}

4.3 Advertising requirements

17. In order to allow local people a greater say it is important that notices are displayed correctly so that they are fully drawn to the attention of local people. The notice displayed should be at the proposed site rather than on or near the premises unless it is impossible to place it on the premises or to do so would restrict it being noticed, in which case near would be acceptable. Advertising requirements should state that any notice must be posted in a prominent position for the whole of the time period allowed and so it can be easily read by passers-by. The size of the notice should be A3 with details printed legibly in black ink or typed in black in a font of a size equal to or larger than 16. It would be helpful to state that the application will not be considered if the advertising requirements have not been met.^{xxii}

4.4 Objections

18. Paragraph 4.4. should make it clear that the legislation in the Local Government (Miscellaneous Provisions) Act 1982 says that "any person" can object. Paragraph 4.4 gives the wrong impression that this includes only those groups mentioned and not individual persons. Churches and other places of worship are not mentioned. The LGMP Act 1982 is supposed to be much wider than the Licensing Act 2003 (because it does not have the requirement to live or have a business in the vicinity in order to object) and the

draft policy under consideration incorrectly gives the impression that persons who can object are from a much narrower field, which is not the case.^{xxiii}

4.5 Hearing procedure

19. We submit that the procedure could be amended to allow local people more of a say. Please see our response under Appendix 4.

Appendix 1 and Appendix 2

20. The application and advertising notice should be amended to take account of the above comments made under paragraphs 4.1. and 4.3. The size of the advertisement and font are particularly important for the partially sighted, and also to prevent them being missed by the general public.

21. The application could ensure that the applicant agrees that all staff whether employed or self-employed (as many lap dancers are) should have enhanced Criminal Record Bureau checks prior to working on the premises. This should also be a suggested licence condition.

22. There are no stipulations in the application process about accompanying fees, together with a warning that the licence application may be revoked if payment or suitable arrangement to pay is not made with the Council.^{xxiv}

23. The application and the public advertisement notice should specify and state the exact type of activity the application relates to. The Home Office guidance list the relevant entertainment as including: Lap dancing; Pole dancing; Table dancing; Strip shows; Peep shows; Live sex shows. As the list is not exhaustive an "other" category (please explain) should be included.

24. The application for a licence and the public advertisement notice should be clear to the general public detailing that the applicant for a sexual entertainment venue is making an application or renewal application to allow full nudity.

Appendix 2

25. The Notice on page 16, according to paragraph 4.3 of the draft policy needs to be labelled Appendix 2.

Appendix 3

Sexual Entertainment Venues Conditions

Comments on Conditions

Condition 3- Hours of Opening

26. Please consider amending the condition on the hours of opening to restrict them so that it does not include Sundays/Bank Holidays or public holidays. Christians regard Sunday as a day of religious significance for worship and rest. Bank Holidays also fall on days of religious significance such as Christmas and Easter. Public Holidays are likely to be times when more mothers and children are out and about. The opening times in the day should be restricted from 9am to 6pm. These measures would help to ensure the safety of women and children and help remove the uncomfortable fear of crime in the evenings.^{xxv}

Condition 4- The Responsibility of the Licence Holder

27. The Licence Holder should not only be responsible for the safety of the public and employees but also for any self-employed persons. Lap dancers often work in a self-employed capacity.

Condition 9-Unlawful Advertising

28. The condition is vague as to what unlawful means and contradicts the aims of condition 10 and conditions 23 to 29. We suggest that this should be replaced by a proposed condition 7(g) and 7(h) suggested by the police for the Repent Nightclub in Macclesfield application^{xxvi} at the start of this year, namely:

No nudity visible outside- Entertainment, including dancing, which involves nudity or sexual performance of any kind shall be visible from outside the premises.

No External Adverts- There shall be no display outside the premises of photographs or other images which indicate that entertainment involving nudity or sexual performance takes place on the premises.

Condition 11 –No Personal Solicitation

29. We submit that the last sentence of condition 11 could be improved by the addition of the words in red to be more specific about the description of what solicitation may include. *Solicitation shall be taken to include standing outside the premises scantily clad or not fully dressed or the distribution of leaflets or business cards.*

Condition 13 –No admission or employment in the business for under 18's

30. It would be helpful if this restriction made it clear that this age restriction also applied to the self-employed, as lap dancers are often self employed. *No person under the age of eighteen years shall be admitted to the Premises or be employed in the business of the Sexual Entertainment Venue. Employed includes being self-employed.*

Condition 19 and 20- Notices on No physical contact

31. It would be helpful if condition 20 could specifically add that such notices be included on every table. *Notices setting out the restriction contained in Condition 19 shall be displayed in prominent positions within the Premises including on every table.* In order to be more practical, condition 19 could add at the end of the sentence: *except for the placing of money or tokens in a garter or into the hands of the dancer at the beginning or conclusion of a performance.*^{xxvii}

Conditions 23 and 44- Business or Trading Title

32. We would appreciate these conditions to add the following sentence: *The business or trading title must have particular regard to the need to not be religiously offensive.* Whilst not part of the Licensing Act considerations, Repent nightclub was previously called Preachers. The building itself in Macclesfield was formerly used for Christian Mission work. Both names for the club appeared to be mocking and taunting Christian beliefs on the importance of the need to repent from sin to obtain God's forgiveness and the preaching of God's message. The choice for names of the club was religiously insensitive to Christian beliefs and practice, and offensive in view of the previous use of the premises.

Condition 30-Employment of Persons on the Premises

33. The nominated person in charge holds a position of responsibility in such premises. It is unlikely that an 18 year old would have sufficient experience or expertise to undertake such a role. It is suggested that the age should be 25 or at the very least over 21.

Condition 41-Change of Use

34. It may be appropriate to consider a change in the example used as this draft policy only covers sexual entertainment venues, and not all categories of sex establishments.^{xxviii}

Appendix 3

Sexual Entertainment Venues Conditions

Suggested Additional Standard Conditions *in italics*

35. Performances (Please see Oxford City Council's Conditions)

-Whilst dancers are performing there shall be a minimum distance of one metre between the dancer and the seated customers and prominent, clear notices shall be displayed at each table stating this requirement.^{xxix}

Reason- This is a commonly known, clear and important rule usually found in lap dancing licence conditions. Whilst conditions 19 and 20 cover the no physical contact rule, it does not cover the important distance from the customer.^{xxx}

-No performances shall include any sex act with any other performer, persons in the audience or with the use of any object.

-No audience participation shall be permitted.

-Signs displaying the rules concerning the performance relevant entertainment will be displayed throughout the premises and be clearly visible to patrons. This will include any private booth area.

-In the event that the relevant entertainment be performed for private viewing, the patron shall be informed of the duration and price of the relevant entertainment, and the details shall be specified in a clearly visible notice in each area designated for private relevant entertainment.

-All dance booths are to be equipped with a panic alarm for safety.

- At all times during the performance, performers shall have direct access to a dressing room without passing through, or in close proximity to the audience.

-On leaving the premises, performers who wish to be, shall be escorted by a staff member to their vehicle or other safe location.^{xxxii}

Reason- To help prevent prostitution, for the health and safety of the performers and audience and for consumer price protection.

36. Performances (Please see Cornwall Council's Draft Policy Conditions).^{xxxii}

- *Performers must remain clothed in public areas and all other areas except while performing in areas specified by the Council as where relevant entertainment may be provided.*
- *At the conclusion of performances all articles of clothing removed during that performance must be put back on. This does not prevent performers going to their non-public changing area to change their attire.*
- *Performers may not accept any telephone number, email address, address or contact information from any customer, except in the form of a business card which must be surrendered to the Licensee or their representative before leaving the Premises.*
- *Performers may not give any telephone number, email address, address, contact information or business card to any customer or in any way solicit themselves.*
- *The Licensee must ensure that during the performance of a table or lap dance:*

- (1) *customers must be seated in an upright position against the back of the booth or seat with their hands by their sides before a dancer can start a table dance;*
 - (2) *customers must remain seated during the entire performance of the dance;*
 - (3) *for the purpose of restraint only, Performers may only touch a customer above the customer's chest with their hands only;*
 - (4) *Performers must not sit on, or straddle the customer;*
 - (5) *Performers must not place their feet on the seats.*
- *The Licensee must ensure that during performances of relevant entertainment:*
- (1) *Performers may not perform any act that clearly simulates any sexual act;*
 - (2) *Performers must never intentionally touch the genitals, anus or breasts of another dancer or to knowingly permit another dancer to intentionally touch their genitals, anus or breasts;*
 - (3) *Performers may not intentionally touch a customer any time during the performance unless absolutely accidentally or due to a third party;*
 - (4) *Performers may not use inappropriate, suggestive or sexually graphic language at any time;*
 - (6) *Performers must not engage in communications that could be deemed as acts of prostitution or solicitation, even if the Performer has no intention of carrying out the act;*
 - (7) *Performers must only perform nude or semi-nude dancing (of any description) within areas specified by the Council.*
- *The Licensee must ensure that during performances of relevant entertainment:*
- (1) *Customers may not dance at any time except in areas specifically designated by the Council as being separate from areas for sexual entertainment.*
 - (2) *Customers must remain appropriately clothed at all times.*

Reason- To help prevent prostitution, and for the health and safety of the performers and audience.

37. Door Supervisors (see Oldham Council's Proposed Sexual Entertainment Policy)

-A minimum of 4 SIA door supervisors shall be on duty when the premises or open to the public. The door supervisors should be so positioned so that 2 are present at all times on the entrance to the premises, at least 1 door supervisor should patrol the public areas and at least one door supervisor should monitor the interaction between any performer and their customer. Where the premises has more than one entrance there must be at least 2 door supervisors per entrance. A written record should be kept of all door supervisors employed and this record should have, at the minimum, the following amount of information. Name, SIA badge number, time shift started, time shift finished, signature, date.^{xxxiii}

Reason- The current conditions 35 and 36 need to be supplemented as they do not even have a requirement for any number. This condition is to ensure the security and safety of the public and performers.

38. Door Supervisors-Night safe condition.

-High visibility fluorescent jackets to be worn by all door supervisors whilst outside the premises.

Reason- To help identify the door supervisors from the customers, and for night visibility safety reasons. Bedfordshire Police in their guidance on preparing an operating schedule under the Licensing Act state that: *Door Supervisors working at or on the door must wear fluorescent jackets. This is to ensure that they are easily identifiable by the public, police and CCTV operators.*^{xxxiv}

39. An operating manual and club rules (Please see Oxford City Council's Conditions).^{xxxv}

(Replace Thames Valley Police with Cheshire Police where appropriate):

Management Operation Manual

- A Management Operation manual detailing all aspects of procedure when the premises is operating relevant entertainment shall be produced and approved by Thames Valley Police. This document shall be on going and under constant review. **The management operation manual should be always available for public inspection and the first version should be publicly available for scrutiny with the application for a licence.**

Club Rules

-The premises must provide a copy of its Club Rules to the Council and Thames Valley Police. **The Club Rules should be always available for public inspection and the first version should be publicly available for scrutiny with the application for a licence.**

- All performers and staff shall be aware of the Club Rules.

- All dancers, staff and door supervisors shall read a copy of the rules relating to operating relevant entertainment. They shall sign and date a copy which shall be retained by the premises as part of their due diligence.

Reason- To improve the management and control of the premises and for police input to this end. To the condition provided by Oxford City Council has been added the need to have this management operation manual with the application for the licence. The absence of an operation manual in an application is unusual and demonstrates a lack of, or poor management considerations. The absence of such a manual should be part of the grounds for considering rejecting the application. The manual should be specific to the proposed application and not a poor imitation of other manuals. The application should also include the Club rules and the proposed contract with lap dancers again specific to the proposed application, and not a poor imitation of other ones from elsewhere.

40. CCTV plans, tamper proof CCTV, and more detailed conditions

Comment: The CCTV conditions proposed in conditions 42 and 43 for Cheshire East Borough Council are not as extensive or specific as conditions proposed elsewhere and could be improved, so that the operation of CCTV and the rules are more detailed and clearer. **(Please see Oxford City Council's Conditions/Oldham Council's and Cornwall Council's Proposed Policy).**^{xxxvi}

41. Staff Enhanced Criminal Records Bureau Check ((Please see Oxford City Council's Conditions)^{xxxvii}

-All staff employed **or self-employed** to work at any premises licensed as a Sexual Entertainment Venue shall be required to provide an Enhanced Criminal Records Bureau disclosure to the Licensing Authority in which the premises is located.

Reason -To ensure all employed and self-employed staff including lap dancers do not have a criminal record in order to prevent possible future crime. There is a need to add "or self-employed" as many lap dancers are regarded as self-employed.

42. **Noise and Vibration** (Please see Oldham Council's Proposed Policy Conditions).^{xxxviii}

-The Licensee shall ensure that no noise shall emanate from the licensed premises or vibration transmitted through the structure of the licensed premises which gives rise to a nuisance to the occupiers of premises in the vicinity of the licensed premises.

-Without prejudice to the generality of this condition the licensee shall ensure that no form of loudspeaker or sound amplification is sited on or near the exterior of the licensed premises or in or near any foyer, doorway, window or opening to those premises or in or near any foyer, doorway, window or opening to those premises.

- The licensee must ensure that appropriate measures are taken to prevent any nuisance which may be caused by the operation or use of the ventilation or other equipment.

Reason- Premise noise control to prevent noise disturbance to nearby domestic, retail, leisure and office occupiers.

Appendix 4-Committee Procedure

43. There are 20 procedural points in total and the applicant is mentioned in 5 out of 20 but objectors in only 3. In order to give local people a greater say, which is the intention of this change in the law, then a further stage should be introduced in the Committee procedure between points 18 and 19. We suggest as follows:

Objectors *the objectors or their representative will briefly summarise their objections and comment on the representations made and the applicant's summary.*

44. The Objectors are only allowed to present the basis of their objections in point 13, they should however, be allowed greater scope to object and the condition should be more like condition 4 for the applicant. The reason for the change would be to allow local people a greater say. It is suggested that condition 13 is changed as follows:

Objectors *The objectors or their representative will be invited to speak and to present his or her case and the grounds of objection, calling witnesses as appropriate.*

45. The Committee procedure in Appendix 4 should have an end note to make it clear that in the Committee procedure any person can be an objector, as follows:

Note: *under Schedule 3 paragraph 10(15) of the Local Government Miscellaneous Provisions Act 1982: Any person may object to an application for the grant, renewal or transfer of a licence under this Schedule and therefore be an objector.*

46. It would be helpful for the policy itself to state that representatives of an objector in the Committee procedure may include an MP, local Councillor, legal representative or a friend.

References and End Notes

ⁱ See Schedule 3 paragraph 10(15) of the Local Government Miscellaneous Provisions Act 1982:

“Any person objecting to an application for the grant, renewal or transfer of a licence under this Schedule shall give notice in writing of his objection to the appropriate authority, stating in general terms the grounds of the objection, not later than 28 days after the date of the application.”

http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1982/cukpga_19820030_en_13#sch3

ⁱⁱ See Appendix 2 page 11- Fees for Harrogate Borough Council: Grant £8,000, Variation £4,000, Annual Licence Fee £8,000, Transfer Fee £177, Change of Name £177

http://www.harrogate.gov.uk/pdf/062010_SEV%20combined%20appendicies%201%202%203.pdf

Oxford City Council -Sexual Entertainment Venue Licensing - Fees

The fee for a new Sexual Entertainment Venue Licence is £5,500.00

The fee for renewal of a Sexual Entertainment Venue Licence is £5,000.00

The fee to transfer a Sexual Entertainment Venue Licence is £1,100.00

The fee to vary a Sexual Entertainment Venue Licence is £1,100.00

<http://www.oxford.gov.uk/PageRender/decB/SexualEntertainmentVenueLicensingFees.htm>

South Hams District Council: Application fee of £5,600; http://www.southhams.gov.uk/draft_south_hams_-_sex_establishment_licensing_policy.pdf

ⁱⁱⁱ Usually referred to as Sexual Entertainment Venues.

^{iv} See Oldham Council’s Proposed Sexual Entertainment Policy-paragraph 3.5 states that:

The Council has determined that the number of sexual encounter venues relevant for the town centre is zero.

<http://www.oldham.gov.uk/licensing-proposed-sexual-entertainment-venue-policy.pdf>

See Mid Sussex District Council’s Policy on the Licensing of Sex Establishments:

This mentions towns as well as other areas as being relevant localities in paragraphs 2.2 to 2.4 of the draft policy:

<http://www.midsussex.gov.uk/Nimoi/sites/msdcpublish/resources/100526%20full%20report.pdf>

^v For example this is mentioned in paragraph 3.53 of the Home Office guidance.

Haringey Council state as follows on page 4 of their draft policy:

The Council has a duty to promote gender equality, consider crime

and disorder and ensure fair and rational determination of applications.

The Authority is compliant with the EU Services regulations 2009.

This policy is:

- *non discriminatory*
- *justified by an overriding reason relating to the public interest.*
- *Proportionate to that public interest objective*
- *Clear and ambiguous*
- *Objective*
- *Made public in advance and*
- *Transparent and accessible.*

All applications must be properly determined as they have an overriding reason relating to the public interest, therefore tacit authorisations further to EU Services Directive will not apply.

^{vi} See Haringey Council’s Draft Sex Establishment Policy:

Haringey Council has listed all of the 19 wards in the Borough and has determined that the appropriate number is nil, as detailed in the following quote:

“3.4. The Council has considered the character of its wards and determined that the appropriate number of sex establishments for each ward is nil. The Council’s vision is to achieve greener, cleaner, sustainable communities and neighbourhoods to enable a good quality of life for all. The Council’s “nil per ward policy” responds to this concern and in addition to the above is based on the following factors which justify this safeguarding step: It will not allow licences to be granted where the appropriate number is exceeded.”

See http://www.haringey.gov.uk/draft_sex_establishment_licensing_policy.pdf see paragraphs 3.2 to 3.4

Draft policy for sex establishments’ consultation between 30 September and 15 December 2010 for Haringey Borough. The Council of Haringey is made up of 57 councillors. Each of the 19 wards that make up the borough has three councillors, elected by residents of that ward every four years. <http://www.haringey.gov.uk/index/council/decision-making.htm>

Oldham Council’s Proposed Sexual Entertainment Venue Policy:

3.5 Relevant Number – Town Centre

While the Council recognise that different parts of the Borough have different characteristics it also recognises that the Town Centre is the main locality where a business offering relevant entertainment may wish to operate.

The Council has determined that the number of sexual encounter venues relevant for the town centre is zero.

Notwithstanding the fact the number of sexual entertainment venues for town centre has been set to zero, the Licensing Authority will still consider applications for that locality. However, the applicant will have to demonstrate to the Licensing Authority why they should depart from that policy.

3.6 Relevant Number – Other Localities

For all other localities within the Borough the Licensing Authority will treat each application on its own merits. However applicants should be aware that there will be a general presumption for refusal where the characteristic of the locality is made up of:

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

<http://www.oldham.gov.uk/licensing-proposed-sexual-entertainment-venue-policy.pdf>

See Mid Sussex District Council's Policy which is based on a Zero policy.

The Council, in determining applications, **will also** consider the following factors:

- a) the proximity of residents to the premises, including any sheltered housing and accommodation for vulnerable persons
- b) the proximity of educational establishments to the premises
- c) the proximity of places of worship to the premises
- d) access routes to and from schools, play areas, nurseries, children's centres or similar premises
- e) the proximity to shopping centres
- f) 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)
- g) the potential impact of the licensed activity on crime and disorder and public nuisance
- h) the potential cumulative impact of licensed premises in the area taking into account the days and hours of operation of the activity and the character of the locality where the premises are situated
- i) the nature and concerns of any objections received from residents/establishments objecting to the licence application.
- j) any evidence of complaints about noise and/or disturbance caused by the premises.
- k) current planning permission/planning requirements on the premises
- l) any current planning policy considerations
- m) proximity of other sex establishments
- n) whether there is planned regeneration of the area
- o) any current licensing permissions related to the premises in relation to activities, uses and hours
- p) comments/observations of the Police and Council personnel, including compliance with licensing conditions, relevant history (including noise complaints) together with details of previous convictions/prosecutions pending.
- q) The suitability and fitness of an applicant to hold a licence.

<http://www.midsussex.gov.uk/Nimoi/sites/msdcpbpublic/resources/100526%20full%20report.pdf>

See item 34 which passed the Mid Sussex District Council's policy on the licensing of sex establishments commencing on the 1st of September 2010: <http://www.midsussex.gov.uk/Nimoi/sites/msdcpbpublic/resources/1007213.pdf>

^{viii} Oldham Council's Proposed Sexual Entertainment Venue Policy:

3.5 Relevant Number – Town Centre

While the Council recognise that different parts of the Borough have different characteristics it also recognises that the Town Centre is the main locality where a business offering relevant entertainment may wish to operate.

The Council has determined that the number of sexual encounter venues relevant for the town centre is zero.

Notwithstanding the fact the number of sexual entertainment venues for town centre has been set to zero, the Licensing Authority will still consider applications for that locality. However, the applicant will have to demonstrate to the Licensing Authority why they should depart from that policy.

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

<http://www.oldham.gov.uk/licensing-proposed-sexual-entertainment-venue-policy.pdf>

^{ix} For example Mid Sussex District Council policy which has been adopted states on page 4/13 "The areas are too numerous to list due to the size of the District."

<http://www.midsussex.gov.uk/Nimoi/sites/msdcpbpublic/resources/100526%20full%20report.pdf>

^x It would be preferable if this approach was combined with a nil per ward policy, but if the neutral policy in paragraph 3.7 was retained, it would be possible to make the policy more robust by providing a similar description for the local areas in Cheshire East where such establishments would be considered unsuitable, listing all the main towns, small towns, rural areas etc, together with the other suggestions in this response to make the policy more robust. See paragraph 2 of the Mid Sussex District Council policy starting from page 3/12.

<http://www.midsussex.gov.uk/Nimoi/sites/msdcpbpublic/resources/100526%20full%20report.pdf>

^{xi} See report to Cheshire East Council on the 13th of September 2010 on an application for a sex shop renewal:

[http://moderngov.cheshireeast.gov.uk/ecminutes/Published/C00000271/M00003277/AI00009987/\\$PrivateShopReportcommittee.docA.ps.pdf](http://moderngov.cheshireeast.gov.uk/ecminutes/Published/C00000271/M00003277/AI00009987/$PrivateShopReportcommittee.docA.ps.pdf)

^{xii} See paragraphs 33 to 35 of the Misbehaving Ltd case of 2004 : <http://www.bailii.org/nie/cases/NIHC/QB/2004/61.html>

^{xiii} Please see paragraphs 33 to 35 of the Misbehaving Ltd case of 2004 : <http://www.bailii.org/nie/cases/NIHC/QB/2004/61.html>

Whilst considering that the weak draft policy for Cheshire West and Chester needs considerable amendment, it does have the correct interpretation of case law as outlined in paragraphs 33 to 35 on relevant locality where it states that:

5.3 It would be inappropriate for the Council to treat the whole borough as "the relevant locality". In accordance with case law, the Council shall decide a locality as a matter of fact to be determined by the particular circumstances of each case and not by drawing boundaries on a map.

http://www.cheshirewestandchester.gov.uk/news_and_events/council_consultations/sex_establishment_consultati-1.aspx

^{xiv} See paragraph 1.3 of the Home Office Guidance on Sexual Entertainment Venues:

<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=23464>

<http://www.lacors.gov.uk/lacors/upload/24193.pdf>

^{xv} Similar to Oxford City Council:

Applications made for a Sexual Entertainment Venue Licence will not generally be deemed to be appropriate if the premises is near or in locations or areas containing any of the following:

- (i) Historic buildings or tourist attractions
- (ii) Schools, play areas, nurseries, children's centres or similar premises
- (iii) Shopping complexes
- (iv) Residential areas
- (v) Places of Worship

<http://www.oxford.gov.uk/PageRender/decB/SexualEntertainmentVenueLicensing.htm>

and South Hampshire District Council:

....whilst treating each application upon its own merits, the

Council will not licence premises in proximity to:

- (a) a residential area;
- (b) premises, areas or access routes to such premises or areas which are designed for or attract children or families, such as school, play areas, parks,

children's centres, youth clubs, nurseries or leisure facilities, or any other similar establishment;

- (c) a place of public religious worship;
- (d) historic buildings, cultural attractions and tourist attractions;
- (e) educational establishments;
- (f) community facilities and public buildings;
- (g) an area with a history of social difficulties;
- (h) a gateway to an identifiable locality.

http://www.southhams.gov.uk/draft_south_hams_sex_establishment_licensing_policy.pdf

Epsom and Ewell Borough Council:

9. RELEVANT LOCALITY

9.1 When determining an application, the Authority will have regard to the character of the relevant locality, the use of the premises in the vicinity and the layout, character, condition or location of premises.

9.2 The Authority shall have a general policy presumption against the granting of licences which are;

- a) Adjacent to, or in the vicinity of places of worship; or
- b) Adjacent to, or in the vicinity of schools or other educational establishments;
- or c) Adjacent to, or in the vicinity of public buildings or community facilities; or
- d) Adjacent to, or in the vicinity of family residential areas; or
- e) Adjacent to, or in the vicinity of a family leisure area
- f) Adjacent to, or in the vicinity of public buildings or community facilities; or
- g) In an area earmarked for regeneration of a particular kind.

http://www.epsom-ewell.gov.uk/NR/rdonlyres/648DF4F4-47AB-47A9-AA89-583EF1596613/0/SexualEntertainmentPolicy_3_.pdf

See Oldham Council's Proposed Sexual Entertainment Venue Policy:

3.5 Relevant Number – Town Centre

While the Council recognise that different parts of the Borough have different characteristics it also recognises that the Town Centre is the main locality where a business offering relevant entertainment may wish to operate.

The Council has determined that the number of sexual encounter venues relevant for the town centre is zero.

Notwithstanding the fact the number of sexual entertainment venues for town centre has been set to zero, the Licensing Authority will still consider applications for that locality. However, the applicant will have to demonstrate to the Licensing Authority why they should depart from that policy.

3.6 Relevant Number – Other Localities

For all other localities within the Borough the Licensing Authority will treat each application on its own merits. However applicants should be aware that there will be a general presumption for refusal where the characteristic of the locality is made up of:

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

<http://www.oldham.gov.uk/licensing-proposed-sexual-entertainment-venue-policy.pdf>

See Mid Sussex District Council's Policy which is based on a Zero tolerance policy:

The Council, in determining applications, **will also** consider the following factors:

- a) the proximity of residents to the premises, including any sheltered housing and accommodation for vulnerable persons
- b) the proximity of educational establishments to the premises
- c) the proximity of places of worship to the premises
- d) access routes to and from schools, play areas, nurseries, children's centres or similar premises
- e) the proximity to shopping centres
- f) 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)
- g) the potential impact of the licensed activity on crime and disorder and public nuisance
- h) the potential cumulative impact of licensed premises in the area taking

into account the days and hours of operation of the activity and the character of the locality where the premises are situated

- i) the nature and concerns of any objections received from residents/establishments objecting to the licence application.
- j) any evidence of complaints about noise and/or disturbance caused by the premises.
- k) current planning permission/planning requirements on the premises
- l) any current planning policy considerations
- m) proximity of other sex establishments
- n) whether there is planned regeneration of the area
- o) any current licensing permissions related to the premises in relation to activities, uses and hours
- p) comments/observations of the Police and Council personnel, including compliance with licensing conditions, relevant history (including noise complaints) together with details of previous convictions/prosecutions pending.
- q) The suitability and fitness of an applicant to hold a licence.

<http://www.midsussex.gov.uk/Nimoi/sites/msdcpublic/resources/100526%20full%20report.pdf>

^{xvi} See London Borough of Wandsworth Ex parte Darker Enterprises Limited, R v. [1999] EWHC Admin 34 (15th January, 1999)
<http://www.bailii.org/ew/cases/EWHC/Admin/1999/34.html>

^{xvii} See Create a Difference in Macclesfield <http://www.createadifference.co.uk/>

^{xviii} See Schedule 3 paragraph 12 of the 1982 Act.
<http://www.legislation.gov.uk/ukpga/1982/30/schedules>

^{xix} See paragraph 3.1. of the Mid Sussex District Council's Policy which states as follows:

3.1 Making an application

Applications should be made in writing on the Council approved form to the Licensing Officer, Mid Sussex District Council.

The form must be accompanied by the following :

- five sets of floor plans, drawn to scale and showing all means of entry and exit, any parts used in common with any other building and indicating how the premises lie in relation to the street;
- five sets of plans showing the existing and front elevation of the premises depicting all signage;
- five sets of plans (scale 1:500) showing the sex establishment in relation to other premises within 100 metres;
- five sets of plans (scale 1:50) showing the layout of the sex establishment;
- the correct fee as set by the Council's Licensing Committee

Applicants are warned that any person who, in connection with an application for the grant renewal or transfer of a licence, makes a statement which s/he knows to be false in any material respect, or which s/he does not believe to be true, is guilty of an offence and liable to summary conviction to a fine not exceeding £20,000.

Any licence approved by the Council does not constitute any approval under other Acts (eg the Town and Country Planning Act 1990) or Byelaws. The applicant must ensure that all other necessary consents and approvals are obtained prior to operation.

The Council will not determine an application for grant of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the sex establishment.

<http://www.midsussex.gov.uk/Nimoi/sites/msdcpublish/resources/100526%20full%20report.pdf>

^{xx} This is in the application form itself, but it would help to enforce the importance of this measure if included in the policy as well.

^{xxi} See paragraph 3.1 of the Mid Sussex District Council's policy:

<http://www.midsussex.gov.uk/Nimoi/sites/msdcpublish/resources/100526%20full%20report.pdf>

^{xxii} See Paragraph 3.1 of the Mid Sussex District Council's policy:

Applicants are required to post an A3 notice at the proposed site for 21 days from the date the application is lodged with the Council, setting out the application details. Guidance on these Notices is available from the Licensing Officer. The notice must be posted in a prominent position for the whole of that time and be easily read by passers-by.

<http://www.midsussex.gov.uk/Nimoi/sites/msdcpublish/resources/100526%20full%20report.pdf>

See the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, regulation 25 for the Licensing Act 2003 on advertising. It suggests that the notice here has to be larger than A4 and makes similar requirements on the font size.

Whilst this is under the LGMP Act 1982 not the Licensing Act 2003, it would seem reasonable to have similar requirements:

<http://www.legislation.gov.uk/ukxi/2005/42/regulation/25/made>

^{xxiii} See the October 2010 section 182 guidance on the Licensing Act 2003 which even within the constraints of this Act says that 8.6 It is expected that "a person involved in business" will be given its widest possible interpretation, including partnerships, and need not be confined to those engaged in trade and commerce. It is also expected that the expression can be held to embrace the functions of charities, churches and medical practices.

<http://www.homeoffice.gov.uk/publications/alcch/guidance-section-182-licensing?view=Binary>

The LGMP Act 1982 is far wider and says:

Schedule 12 paragraph 10(15) of the Local Government Miscellaneous Provisions Act 1982:

"Any person objecting to an application for the grant, renewal or transfer of a licence under this Schedule shall give notice in writing of his objection to the appropriate authority, stating in general terms the grounds of the objection, not later than 28 days after the date of the application."

http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1982/cukpga_19820030_en_13#sch3

^{xxiv} Harrogate Council's draft Policy: Appendix 2

If a cheque is dishonoured by a bank this will result in the revocation of the Sexual Entertainment Venue Licence issued by the Council unless satisfactory arrangements are made for payment of the outstanding fees is made within 5 working days of the initial contact with the Council.

http://www.harrogate.gov.uk/pdf/062010_SEV%20combined%20appendices%201%202%203.pdf

^{xxv} See Oxford City Council's general condition in Part II rules which apply to all types of sex establishments, therefore applying to sexual entertainment venues which are a new category of sex establishment, which state that:

Times of Opening

5. Except with the previous consent of the Council a Sex Establishment shall not be open to the public before 9 a.m. and shall not be kept open after 6 p.m. unless otherwise permitted.

6. The premises shall not open on Sundays or any Bank Holidays or any public holidays, unless otherwise permitted.

<http://www.oxford.gov.uk/Direct/SexualEntertainmentVenueStandardConditions.pdf>

However, we submit that Sundays and Bank Holidays should be automatically banned and not dependent on Council discretion.

^{xxvi} See Repeat application for a lap dancing venue in Macclesfield :

[http://moderngov.cheshireeast.gov.uk/ecminutes/Published/C00000271/M00003019/AI00007102/\\$App36AddPages.tifA.ps.pdf](http://moderngov.cheshireeast.gov.uk/ecminutes/Published/C00000271/M00003019/AI00007102/$App36AddPages.tifA.ps.pdf)

<http://moderngov.cheshireeast.gov.uk/ecminutes/ieListDocuments.aspx?Cid=271&Mid=3019&Ver=4>

[http://moderngov.cheshireeast.gov.uk/ecminutes/Published/C00000271/M00003019/AI00007102/\\$NMC14327.docA.ps.pdf](http://moderngov.cheshireeast.gov.uk/ecminutes/Published/C00000271/M00003019/AI00007102/$NMC14327.docA.ps.pdf)

^{xxvii} See Condition 16 in the Oxford City Council's Conditions in Part V:

<http://www.oxford.gov.uk/Direct/SexualEntertainmentVenueStandardConditions.pdf>

^{xxviii} See Condition 26 in Appendix D for Cornwall Council's Draft Policy which can be downloaded from the link below:

No change from a sex entertainment venue to either a sex cinema or a sex shop (including a mail-order shop), or a sex shop to either a sex cinema or sex entertainment venue, or from a sex cinema to either a sex shop or sex entertainment venue, shall be made without the approval of the Council. This will require consideration of an appropriate application.

<http://www.cornwall.gov.uk/Default.aspx?page=24779>

^{xxix} See Condition 15 in the Oxford City Council's Conditions in Part V:

<http://www.oxford.gov.uk/Direct/SexualEntertainmentVenueStandardConditions.pdf>

^{xxx} See Oxford City Council's conditions 13,14, 17,18,19,20 and 34 in Part V:

<http://www.oxford.gov.uk/Direct/SexualEntertainmentVenueStandardConditions.pdf>

Condition 14 Oxford City Council's Standard Conditions in Part V:

<http://www.oxford.gov.uk/Direct/SexualEntertainmentVenueStandardConditions.pdf>

Also similar to a condition put forward by the Police for the proposed lap dancing venue at Repent in Macclesfield January 2010: Condition 8-Where performers who are not being collected from the door of the premises by taxi or other transport, will be chaperoned back to their vehicles by escorts provided by the licence holder. This is necessary for the safety of the persons performing in the premises.

^{xxxii} See Conditions 45 to 53 in Appendix D Cornwall Council Draft Policy which can be downloaded from this link:

<http://www.cornwall.gov.uk/Default.aspx?page=24779>

^{xxxiii} See Oldham Council's Proposed Sexual Entertainment Policy Condition 33:

<http://www.oldham.gov.uk/licensing-proposed-sexual-entertainment-venue-policy.pdf>

^{xxxiv} See paragraph 6.3. on page 6:

<http://www.bedfordshire.police.uk/aboutus/strategiesandpublications/licensing/licensing.pdf>

^{xxxv} See Oxford City Council's Conditions 9,6,7 and 8 in Part V:

<http://www.oxford.gov.uk/Direct/SexualEntertainmentVenueStandardConditions.pdf>

^{xxxvi} Oldham Council's Proposed Sexual Entertainment Venue Policy condition 32:

A tamper proof digital CCTV system shall be installed to the satisfaction of a Greater Manchester Police Crime Reduction Officer.

<http://www.oldham.gov.uk/print/licensing-proposed-sexual-entertainment-venue-policy.pdf>

Closed Circuit Television (CCTV) (Oxford City Council's Conditions 25,26,27,28 ,29,30 and 31 in Part V)

25. A CCTV system shall be installed to cover all entrances and exits to the premises, and areas where relevant entertainment will take place. This system must be installed and fully operational before the premises opens for the licensable activity applied for. All cameras shall continually record whilst the premises are open to the public and video recordings shall be kept available for a minimum of 28 days with date and time stamping.
26. At the time of installation or upgrading of any CCTV system it shall comply with the current and relevant Thames Valley Police guidelines for Standard Minimum Closed Circuit Television Requirements (Issue 1, July 2004). To obtain a clear head and shoulders image of every person entering the premises on the CCTV system, persons entering the premises should be asked to remove headwear, unless worn as part of religious observance.
27. The CCTV system shall incorporate a recording facility and any recordings shall be retained and stored in a suitable and secure manner for a minimum of one calendar month. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system will comply with other essential legislation, and all signs as required will be clearly displayed. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity.
28. A plan shall be submitted illustrating the position of all cameras and shall be with the approval of Thames Valley Police.
29. A member of staff who is fully trained in the use of the system shall be on duty at all times when the premises is open till the premises is clear of customers, cleared of staff and closed.
30. The premises will provide any footage upon request by Thames Valley Police or the Licensing Authority within 24 hrs of the request.
31. The recordings for the preceding two days shall be made available immediately upon request, and recordings outside this period shall be made available within 24 hours.

<http://www.oxford.gov.uk/Direct/SexualEntertainmentVenueStandardConditions.pdf>

See Cornwall Council in draft policy:

11.3 Operation of CCTV to the Council's satisfaction

CCTV REQUIREMENT – MINIMUM SPECIFICATION

1. A minimum of one high resolution (minimum of 450tvl) colour day/night camera, complete with an auto iris vari-focal lens, fitted in a heated weatherproof external housing, for external coverage of entrances.
2. A minimum of one high-resolution colour camera complete with an auto iris vari-focal lens shall be fitted to each public entrance/exit. Door entrance cameras must be capable of providing good quality head and shoulder images of persons entering/leaving the premises, in order to provide assistance with identification of patrons, if required.
3. There must be sufficient cameras located within the premises to cover all public areas, that are capable of providing good quality head and shoulder images of persons within the premises (in order to provide assistance

with identification of patrons, if required). These cameras must be able to operate within the normal operational lighting levels of the premises.

4. Lighting in the foyer and outside must be of sufficient brightness to enable camera images to be recorded to the quality stated at condition 2 above.
5. In addition to the control equipment it is recommended that an additional high-resolution 15" monitor must be sited in or near the bar area or foyer entrance. This will give customers and staff visible reassurance on the installation and quality images provided.
6. All equipment shall have constant time/date generation. This shall include a system to ensure automatic update in relation to the beginning and end of British Summer Time. If the system is not capable of achieving this requirement the Licence holder or a nominated person must ensure that a manual facility is available to carry out this update as an alternative.

Recording/image capture system

Although it will be acceptable for images to be recorded using conventional time lapse analogue video recorders, it is recommended that if a digital multiplex recorder is installed it must meet the following requirements:

1. The unit shall have an on board CD/DVD writer/re-writer, to enable evidence recovery.
2. If a CD/DVD is used to transfer the digital CCTV images from a digital hard drive CCTV system then a write once CD-R/DVD-R medium must be used. The disc containing the recorded images needs to be able to be played back on a modern Windows system such as Windows 2000 Professional, Windows XP or Windows 7. The Licence holder or a nominated person must ensure that their data transfer system is capable of being upgraded to take into account development of Windows operating systems.
3. The playback software needs to be written to the CD-R/DVD-R at the same time of writing the CCTV images. This software must be able to play back the images at full screen resolution with forward and reverse replay, including pause and slow motion.
4. There must be a "SAVE AS" feature so that a still image can be saved and exported to an external system in either BITMAP or JPEG format.
5. The system must be capable of downloading/copying all the stored CCTV footage to another medium in its native format, i.e. an external hard driver that can be played back via a windows based computer.
6. There shall be sufficient members of trained staff available during the hours of operation of the premises to be able to download evidence at the request of the Police or an Authorised Officer of the Council.
7. CCTV warning signs shall be fitted in public areas of the premises.
8. The installing company must provide a letter certifying compliance with this specification, a copy of which must be provided to the Licensing Authority and Devon & Cornwall Police.
9. The CCTV system must be maintained and checked every twelve months to ensure the system is operating correctly. The installing/maintenance company must produce a letter confirming that the system is fully functional and meets the specified requirements.
10. Recordings **must** be kept for a minimum of 31 days. This period may be reduced for premises that have a large number of cameras, long recording time with high resolution recordings that will make it impossible for the premises to adhere to the 31 days. The Council's Licensing Team and the Police Licensing section must be consulted in these circumstances for authorisation of the reduction of the retention period.
11. Recordings of incidents at the premises must be made secure for inspection by the Police.

12. An Authorised Officer may, at any time, request a recording. Failure to comply with this request will be regarded as a serious breach of this condition.
13. The Licence holder or a nominated person must be able to demonstrate that they operate a recording management system that prevents recordings being tampered with, stolen, or misplaced. This should include a back-up system to ensure there is no failure to record. Recording equipment shall be housed in a secure room/cabinet where access and operation is strictly limited to authorised persons.
14. Unauthorised persons should not be allowed access to the system or view personal data as it could contravene the Data Protection Act or jeopardise any criminal investigation.
15. In the event of a system malfunction, the Licence holder or a nominated person must immediately notify the Licensing Authority **Tel:** _____ and Police Licensing Department **Tel:** _____. Details of such malfunction must be recorded in the premises incident book. Arrangements for its repair must be made without delay. The Licensing Authority and Police Licensing must be notified when the operation of the system is restored.

Any requirements contained within this section would not override any specific condition attached to an authorisation under the Licensing Act 2003.

In Appendix D in conditions for Cornwall Council draft policy:

18. In the event that an authorisation under the Licensing Act 2003 does not require the provision of a CCTV system, then the Licensee shall ensure a closed-circuit television system is installed internally and externally to the satisfaction of the Council. Appropriate notices must be displayed in accordance with the Data Protection Act 1998, advising that CCTV is in operation. In addition the Licensee must ensure that the requirement under that Act regarding registration with the Data Protection Commissioner is complied with.
19. CCTV recordings will be made available for viewing by authorised officers of the licensing authority or the police. Copies of such recordings must be provided upon request.
20. CCTV must be capable of monitoring the whole of the premises, in particular any private booths or rooms to ensure the safety and security of performers and other persons within the premises. The CCTV system must be monitored by a dedicated member of staff or security personnel at all times that the premises are in operation.

–Draft policy for Cornwall Council can be downloaded from a link at the bottom of this page.

<http://www.cornwall.gov.uk/Default.aspx?page=24779%20>

^{xxxvii} See Oxford City Council's Conditions- Condition 5 in Part V:

<http://www.oxford.gov.uk/Direct/SexualEntertainmentVenueStandardConditions.pdf>

^{xxxviii} See Oldham Council's Proposed Sexual Entertainment Policy Condition 27:

<http://www.oldham.gov.uk/print/licensing-proposed-sexual-entertainment-venue-policy.pdf>

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2. Requirements under the EC Services Directive that impact on fees charged by councils to carry out services

Where local councils charge businesses a fee for granting them permission to carry out a service within their area, then the amount charged and the process for charging fees must comply with the requirements of the EC Services Directive.

The principle behind the EC Services Directive is to ensure that any processes for registrations consents, permits or licences that must be obtained in order to provide a service are **non-discriminatory, justified, proportionate, clear, objective, made public in advance, transparent and accessible**. These principles also apply to the setting and charging of fees for relevant service areas.

The Directive also includes specific requirements that apply to the charging of fees. Regulation 18(4) of the domestic legislation² states, *'Any charges provided for by a competent authority, which the applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the authorisation procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.'*

The EC Services Directive also includes requirements relating to the online processing of applications, licences and administrative processes. These requirements also apply to the processing of fees and further information is provided in section 7.1 on this specific area.

3. Practical implications of the EC Services Directive on setting and charging fees

3.1 Non-discriminatory, justified, proportionate, clear, objective, made public in advance, transparent and accessible

The general principles of the Services Directive apply to all processes, applications and administrative procedures that are required in order to establish a service, including establishing, charging and processing of fees. Many of the requirements within the Services Directive in relation to setting licence fees are already practiced by a large number of councils with the aim of ensuring a fair and transparent approach for local businesses and communities.

In accordance with the EU Services Directive councils will need to ensure that full details of any fees and payment processes for the fees are easily accessible online for those considering establishing a service in their area. Details of fees need to be made available online, either by utilising the Point of Single Contact (PSC) website established by BIS or on a council's own website. BIS have produced guidance on the PSC.³

3.2 Economic deterrent

The principles of Article 13(2) of EC Directive 123/2006 mean that any fees charged for establishing a service that falls within the scope of the Directive can only be based on cost

² Domestic legislation can be found at <http://www.berr.gov.uk/whatwedo/europeandtrade/europe/services-directive/legislation/page51283.html>

³ Guidance from BIS on the Point of Single Contact (PSC) is available at <http://www.berr.gov.uk/whatwedo/europeandtrade/europe/services-directive/page9583.html>

recovery and cannot be set at an artificially high level to deter specific service sectors from an area.

In the past some licensing authorities have set fee levels extremely high in order to deter certain service sectors from setting up within their local area. For example, there are cases of councils setting extremely high fees for sex shops licences. Where this has occurred it is likely to be as a result of public opinion and / or aimed at protecting the local community. The Services Directive does mean that councils will have to review such fees and potentially reduce them if they are not reasonable and proportionate to the cost of the procedure.

Although the Services Directive prevents the use of fees as a tool to deter specific service sectors from a local area, it is still possible to apply acceptance criteria for the authorisation schemes provided that they meet the requirements set out by the Directive.

Regulation 15(1) of the domestic legislation states, '*An authorisation scheme (provided for by a competent authority) must be based on criteria which preclude a competent authority from exercising its power of assessment in an arbitrary manner.*' According to regulation 15(2) the criteria referenced in regulation 15(1) must be, among other things, justified by an overriding reason relating to the public interest (ORRPI)⁴, proportionate to that public interest objective and made public in advance. This means that councils can set criteria for authorisation schemes as long as the criteria comply with regulation 15(2). For example, if a council proposed authorisation criteria for sex shops to specify that such services could only be within a set geographic area or further than set distance from schools, it must ensure that these requirements satisfy the test set out by the Directive, which is that they must be non-discriminatory, justified by an ORRPI and proportionate. This could also be used to restrict the number of services operating within an area.

If local councils strict criteria for certain authorisation schemes, it is vital that the decision-making process for such criteria is transparent and clear to the public.

3.3 Setting fees – what can be included

Individual councils may choose to review the fees they charged to the service sector for authorisation schemes in consideration of regulation 18(4) of the Services Directive. This process may be undertaken to check that fees do not exceed the cost of the authorisation process, as highlighted in section 3.2, or to ensure that fees charged do actually cover the costs incurred by the council during the authorisation process, or simply because the fees set have not been reviewed recently.

Councils may want to consider the following elements when setting licence fees for the service sector. It should be noted that this list is for **consideration only**, as councils may choose not to charge for all the elements listed or there may be additional areas of work carried out during the licensing process that were not highlighted during the development of this guidance.

⁴ ORRPI 'overriding reasons relating to the public interest' as defined by Article 4(8) means reasons recognised in the case law of the Court of Justice, including the following grounds: public policy, public security, public safety, public health, preserving the financial equilibrium of the social security system, the protection of consumers, recipients of services and workers; fairness of trade transactions, combating fraud, the protection of the environment, the health of animals, intellectual property, the conservation of the national and historic and artistic heritage, social policy objectives and cultural policy objectives.

Initial application costs could include -

- **Administration** – This could cover basic office administration to process the licence application, such as resource, photocopying, postage or the cost of handling fees through the accounts department.
- **Initial visit / s** – This could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include 'on-costs' in this calculation. Councils will need to consider whether 'on-costs' include travel costs and management time.
- **Third party costs** – Some licensing processes will require third party input from experts, such as veterinary attendance during licensing inspections at animal related premises.
- **Management costs** – Councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the 'on-costs' attached to officer time already referenced above.
- **Local democracy costs** – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.

Councils should understand that it is unlikely that any money will have been provided through the Revenue Support Grant (RSG) to support the enforcement of the licensing regime. As such, some councils choose to include further costs within the licence fee to cover additional visits and / or general enforcement costs for the regime. Where councils choose to include costs for these elements within the licence fee it is important that they read section 3.4 of this guidance in addition to the points below.

Further enforcement costs could include -

- **Additional monitoring and inspection visits** – Councils may wish to include a charge for routine risk based visits to premises in between licensing inspections where this is standard for all premises. As with the initial licensing visit, councils can consider basing this figure on average officer time, travel and management costs as suggested above.
- **Enforcement costs** – Councils may want to consider how enforcement costs associated with complaints and working with non-compliant businesses are funded. The majority of enforcement activity will be aimed at ensuring compliance with the licensing regime to protect both the public from rogue service providers and the trade from unregulated competition and as such can be considered a valid licence fee expense. Enforcement costs can include advice provided to businesses. Any calculations for ongoing enforcement action will need to consider that some cases may result in prosecution as a last result and an element of these costs can be recovered through the court processes. However, this decision ultimately should be taken at a local level in consideration of council policies and financial procedures.

3.4 Administering payment of fees

The Department for Business, Innovation & Skills (BIS) has advised that where a council includes costs for the ongoing regulation of a licensing regime within the licence fee, such as

costs of additional visits or enforcement costs, then these specific elements of the licence fee cannot be charged to unsuccessful licence fee applicants. This may pose practical issues for councils that would normally request payment of the full fee from the outset of the application.

Where councils do include ongoing enforcement costs within the licence fee and require payment of an application fee in advance of the licence being awarded, two possible payment approaches could be as follows -

(i) Councils could charge the full costs as an application fee for all applicants and then refund the elements relating to ongoing enforcement if the applicant is unsuccessful. Councils could consider deducting any administrative charges for the refund process from the amount refunded to the applicant.

(ii) Alternatively councils may choose not to include the charges for ongoing enforcement in the initial application fee and only request these from successful applicants as a further licence fee once their licence has been approved. Councils should consider that charging additional fees at later date may create additional work and costs associated with chasing late payments, which would also have a detrimental impact on relations with businesses. Councils could opt to include payment of the second fee as condition of the licence.

The process adopted should be simple and cost effective for both the council and business.

3.5 Political considerations

The Directive does not prevent councils from choosing not to pass all costs onto the business. Councils may subsidise fees charged to attract businesses to a local area in the current economic climate, encourage certain service sectors to a local area or because licence fees may not have been reviewed for a while and it would not be appropriate to pass a sudden increase in charges onto businesses. Where councils do make such decisions they may want to consider whether / how this information is shared with their local community. Any subsidy of this nature could not however be financed by licence fees levied against other licence holders.

3.6 Ongoing review of fees

Councils should schedule regular reviews of fees charged to the service sector and any overriding reasons relating to the public interest (ORRPI) that are established.

4. Further information

4.1 Guidance on online payment processes

Regulation 32 states, *'A competent authority must ensure that (a) all procedures and formalities relating to access to, or the exercise of, a service activity and to the exercise thereof may easily be completed, at a distance and by electronic means (through the electronic assistance facility referred to in regulation 38 or otherwise), and (b) its website affords access to that electronic assistance facility.'*

This means that each council will need to ensure that any fees charged to set up a service within their area can be paid online. Further guidance has been produced by BIS on this area

APPENDIX E

1A. Current terms of referenceGeneral Licensing Sub-Committee (page 95)

Function	Full Committee	Sub-Committee
Power to licence sex shops and sex cinemas (including first grant, renewal, transfer and variation of standard conditions)	<p>First grant: all cases before the licensing Committee.</p> <p>Renewal: if there are objections which are not withdrawn and which cannot be dealt with under the authority delegated to officers</p> <p>Transfer: if there are objections which are not withdrawn and which cannot be dealt with under the authority delegated to officers</p> <p>Variation of standard conditions</p>	

Schedule of functions (page 97)

All Council (non-executive) functions relating to:

(a) licensing and registration functions in respect of:

(iii) sex shops and sex cinemas

1B. Proposed terms of referenceGeneral Licensing Sub-Committee

Function	Full Committee	Sub-Committee
<i>Power to licence sex establishments (including first grant, renewal, transfer and variation of conditions)</i>		<p><i>First grant.</i></p> <p><i>Renewal: if objections are received and are not withdrawn</i></p> <p><i>Transfer: if objections are received and not</i></p>

		<i>withdrawn</i> <i>Variation of conditions</i>
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Schedule of functions

All Council (non-executive) functions relating to:

(b) licensing and registration functions in respect of:

(iii) sex establishments

2A. Current delegations in relation to sex establishments

(pages 134/135)

25.2 Subject to the exceptions listed below, the Head of Safer and Stronger Communities is authorised to discharge the following licensing functions:-

25.2.5 Power to renew or transfer licences for sex shops and sex cinemas where:-

25.2.5.1 there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and

25.2.5.2 no objections have been received, or those that have been received should in the officer's opinion be set aside on the grounds that the Council could not lawfully take them into account.

25.3 In the following circumstances, the power delegated to the Head of Safer and Stronger Communities in respect of general licensing functions shall stand referred to the body set out below:-

25.3.4 The determination of applications for the renewal or transfer of licences for sex shops and sex cinemas where there are objections which are not be withdrawn and cannot be dealt with under the authority delegated to officers be referred to the Licensing Committee.

(page 159)

Subject to the exceptions listed below the Head of Safer and Stronger Communities is authorised to discharge the following Council (non-executive) functions.

(h)	<i>Power to renew or transfer licences for sex shops and sex cinemas</i> [where (i) there has been no material change	Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.
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	to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and (ii) no objections have been received or those that have been received should in the officer's opinion be set aside on the ground that the Council could not lawfully take them into account]	
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(iv) The determination of applications for the renewal or transfer of licences for sex shops and sex cinemas where there are objections which are not be withdrawn and cannot be dealt with under the authority delegated to officers be referred to the Licensing Committee.

2B. Proposed delegations in relation to sex establishments

25.2 Subject to the exceptions listed below, the Head of Safer and Stronger Communities is authorised to discharge the following licensing functions:-

25.2.5 Power to renew or transfer licences for sex establishments where:-

25.2.5.1 there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and

25.2.5.2 no objections have been received, or those that have been received have been withdrawn.

25.3 In the following circumstances, the power delegated to the Head of Safer and Stronger Communities in respect of general licensing functions shall stand referred to the body set out below:-

25.3.4 The determination of applications for the renewal or transfer of licences for establishments where objections have been received and have not been withdrawn, shall be referred to the General Licensing Sub-Committee.

Subject to the exceptions listed below the Head of Safer and Stronger Communities is authorised to discharge the following Council (non-executive) functions.

(h)	<p><i>Power to renew or transfer licences for sex establishments</i></p> <p><i>Where (i) there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and (ii) no objections have been received</i></p>	<p><i>Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.</i></p>
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(iv) The determination of applications for the renewal or transfer of licences for sex establishments where objections are received and have not been withdrawn, shall be referred to the General Licensing Sub- Committee.

CHESHIRE EAST COUNCIL

LICENSING COMMITTEE

Date of Meeting: 10th January 2010
Report of: Legal Team Leader (Regulatory)
Subject/Title: Information report: Police Reform and Social Responsibility Bill

1.0 Report Summary

- 1.1 The report provides information on the content of the Police Reform and Social Responsibility Bill as it relates to the licensing regime.

2.0 Recommendations

- 2.1 The Licensing Committee is requested to note the report in relation to the provisions of the Police Reform and Social Responsibility Bill.

3.0 Reasons for Recommendations

- 3.1 The Police Reform and Social Responsibility Bill, introduced to the House of Commons on 30th November 2010, contains provisions which relate to the amendment of the Licensing Act 2003. The Licensing Committee is requested to note the information report in relation to the content of the Bill.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications including - Climate change - Health

- 6.1 None.

7.0 Financial Implications 2010/11 and beyond (Authorised by the Borough Treasurer)

- 7.1 None.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 As set out within the body of the report, if enacted, the provisions of the Bill would amend the Licensing Act 2003. Details of the proposed changes are set out in paragraph 10.0.

9.0 Risk Management

- 9.1 N/A

10.0 Background and Options

- 10.1 On 30th November 2010 the Government introduced the Police Reform and Social Responsibility Bill to the House of Commons. The Bill contains provisions which would, if enacted, make a number of amendments to the Licensing Act 2003. A number of the clauses within the Bill would give force to proposals contained within the recent Home Office consultation document, "Rebalancing the Licensing Act."

- 10.2 Attached as Appendix A is an extract from the Explanatory Notes accompanying the Bill which provides the details of the proposals in relation to the licensing regime. As Members will note, key changes within the Bill include:

- Adding licensing authorities to the list of 'responsible authorities;'
- Adding Primary Care Trusts to the list of 'responsible authorities;'
- Removal of the test of 'vicinity' from the 2003 Act so that residents do not have to show that they live 'in the vicinity of the premises' in order to make a relevant representation. There is also an amendment to provide for regulations to require the licensing authority to advertise applications in a way that "ensure it comes to the attention of all persons who it may affect."
- A doubling in the maximum fine for premises which persistently sell alcohol to children to £20,000.
- An amendment to the evidential burden so that rather than requiring licensing authorities to take steps which are "necessary" that they take steps which are "appropriate" for the promotion of the licensing objectives;
- Amendments to the provisions relating to early morning alcohol restriction orders which have the effect of enabling a licensing authority to make an order of any duration between 12 midnight and 6am. An order can be made, amongst other things, at different times on different days
- The police and local authorities exercising environmental health functions would be able to object to Temporary Event Notices on the basis of all the licensing objectives in the 2003 Act. Licensing authorities would also be able to impose conditions on a temporary event notice in limited circumstances.
- Provision to enable premises users to give a limited number of Temporary Event Notices in a shorter timeframe than the existing 10 working days (defined as a 'late temporary event notice');
- An increase to the period for which licensable activities at a single event can be carried on under a Temporary Event Notice (from 96 hours to 168 hours);
- Power to local authorities to suspend a premises licence or club premises certificate for non-payment of an annual fee;

- An amendment to the requirement to review the licensing policy statement every three years to every five years;
- Powers for councils to charge premises that supply alcohol as part of the late night economy a levy to pay for extra policing. Licensing authorities would be able to impose the levy on such premises for a period of any duration between midnight and 6 am. Some premises may be given an exemption or discount. At least 70% of the funds generated by the levy would be paid to the Police. The levy would also fund bodies that operate measure to address the effect of alcohol related crime and disorder.

10.3 On 13th December 2010 the House of Commons debated the main principles of the Bill. The Commons determined that the Bill should be given its Second Reading and sent it to a Public Bill Committee (The Police Reform and Social Responsibility Bill Committee) for scrutiny.

11.0 Overview of Day One, Year One and Term One Issues

11.1 N/A

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

For further information:

Officer: Mrs K Khan
Tel No: (01270) 685847
Email: kate.khan@cheshireeast.gov.uk

Background Documents:

Appendix A – Extract from Explanatory Memorandum to the Police Reform and Social Responsibility Bill.

Full text of Bill available at:

<http://www.publications.parliament.uk/pa/cm201011/cmbills/116/11116.i-v.html>

**Part 2 – Licensing
Amendments of the Licensing Act 2003**

Clause 103: Licensing authorities as responsible authorities

125. The Licensing Act 2003 defines responsible authorities as including the police, fire authorities, local authorities exercising health and safety, local planning, environmental health and child protection functions, and any licensing authorities (other than the relevant licensing authority) in whose area a part of the premises is situated. The relevant licensing authority is the authority with responsibility for licensing functions relating to the premises in question and currently is not a "responsible authority". Responsible authorities can make representations based on the licensing objectives in relation to applications for the grant or variation of a premises licence or club premises certificate, to request the review of such authorisations or to make representations in relation to other discrete processes. Because relevant licensing authorities are not "responsible authorities" (within the current definition), they are unable to engage in those activities. Clause 103 introduces amendments to bring relevant licensing authorities within the definition of "responsible authority", which will enable relevant licensing authorities to engage in those activities. *Subsections (2) and (3)*, amends the provisions in Part 3 and 4 of the Licensing Act 2003 to make relevant licensing authorities "responsible authorities" in relation to premises licences and club premises certificates. *Subsection 4* makes provision for the application of these amendments.

Clause 104: Primary Care Trusts and Local Health Boards as responsible authorities

126. Clause 104 amends sections - 13(4) and 69(4) - of the Licensing Act 2003 by adding a Primary Care Trust (or its equivalent body in Wales, a Local Health Board) for any area in which a premises is situated (or for any area any part of which is the area specified by an early morning restriction order) as a responsible authority. These new bodies will be able to fulfil the same functions as existing responsible authorities.

127. This clause also amends section 5(3) of the Licensing Act 2003 by adding these bodies as bodies which a licensing authority must consult before determining or revising its statement of licensing policy.

128. *Subsection (5)* makes provision for the application of these amendments.

Clause 105: Premises licences: who may make relevant representations

129. Under the Licensing Act 2003 'interested parties' (persons who can make an application for review or a representation with regard to one of the licensing processes) in most cases must have a particular relationship to the vicinity of the premises in relation to which the application or other process relates (for example, by living in the vicinity or being involved in a business in the vicinity).

130. Clauses 105 to 108 remove this test of 'vicinity' from the Licensing Act 2003, and consequently remove the category of interested party. This will enable any person to make representations in relation to applications for the grant or variation (including a minor variation) of a premises licence or club premises certificate, the grant of a provisional statement and to make applications for the review of such authorisations, and to make representations in relation to other discrete processes. However, all representations will need to relate to the licensing objectives and must not be frivolous or vexatious.

131. Clause 105, at *subsections (2) to (10)*, amends a number of provisions in Part 3 of the Licensing Act 2003 to reflect the introduction of this measure in relation to premises licences. Section 13 of the Act is amended to remove the definition of an 'interested party', and a range of processes are modified. These are the processes governing applications for:

- a) the grant or variation of a licence
- b) the grant of a provisional statement,
- c) a minor variation of a licence, and
- d) an application for a licence by a community premises to remove the requirement to have a designated premises supervisor.

132. The requirement on an applicant to advertise an application, and on a licensing authority to send notices of applications, are modified as a consequence of the removal of the category of interested party from these processes. This amendment also provides that any representations from persons (other than responsible authorities) must not, in the opinion of the relevant licensing authority, be frivolous or vexatious.

133. *Subsection (3)* amends the requirements on the Secretary of State to make regulations governing who should advertise an application. Regulations will require an applicant and licensing authority to advertise the application: the former must advertise the application in a way which ensures that it comes to the attention of persons in the licensing authority's area who it may affect; the latter must advertise it in a way that ensures that it comes to the attention of all persons who it may affect.

134. *Subsection (11)* makes provision for the application of these amendments.

Clause 106: Premises licences: who may apply for a review

135. *Subsections (2) to (6)* amend a number of provisions in the Licensing Act 2003 governing applications for review or summary review of a premises licence, and a review of a licence following the making of a closure order, to reflect the introduction of this measure. *Subsections (2) and (6)* amend the requirements on a licensing authority to advertise an application for review or summary review, and a review following a closure order, so as to ensure that this is brought to the attention of any persons it may affect, and to advertise the period during which any such person may make representations about the application. These amendments also provide that representations from any persons (other than responsible authorities) must not, in the opinion of the licensing authority, be frivolous or vexatious.

136. *Subsection (7)* makes provision for the application of these amendments.

Clause 107: Club premises certificates: who may make relevant representations

137. *Subsections (2) to (8)* amend a number of provisions in the Licensing Act 2003 relating to applications for the grant, variation and minor variation of a club premises certificate in Part 4 of the Act. Section 69 of the Act is amended to remove the definition of "interested party". These amendments require a licensing authority to advertise applications for the grant or variation of a certificate so as to ensure that this is brought to the attention of any persons it may affect, and to advertise the period during which any such person may make representations about the application. These amendments also provide that representations from any persons (other than responsible authorities) must not, in the opinion of the licensing authority, be frivolous or vexatious.

138. *Subsection (3)* amends the requirements on the Secretary of State to make regulations governing who should advertise an application. Regulations will require the application and licensing authority to advertise the application: the former must advertise the application in a way which ensures that it comes to the attention of persons in the licensing authority's area who it may affect; the latter must advertise it in a way that ensures that it comes to the attention of all persons who it may affect.

139. *Subsection (9)* makes provision for the application of these amendments.

Clause 108: Club premises certificates: who may apply for a review

140. *Subsections (2) to (4)* amend a number of provisions in the Licensing Act 2003 governing applications for review of a club premises certificate to reflect the introduction of this measure. *Subsection (3)* amends the requirements on a licensing authority to advertise an application for review so as to ensure that this is brought to the attention of any persons it may affect, and to advertise the period during which any such person may make representations about the application. *Subsection (4)* provides that representations from any persons (other than responsible authorities) must not, in the opinion of the licensing authority, be frivolous or vexatious.

141. *Subsection (5)* makes provision for the application of these amendments on the amendments coming into force.

Clause 109: Reducing the burden: premises licences

142. The Licensing Act 2003 imposes a general duty on licensing authorities to exercise their licensing functions with a view to promoting the licensing objectives; the objectives are the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. A number of specific processes require licensing authorities to take steps which are "necessary" for the promotion of the objectives. This requirement is imposed on licensing authorities by a range of provisions in the Act; this primarily arises when licensing authorities are considering whether to grant or refuse an authorisation in relation to which relevant representations or objections have been made.

143. Clauses 109 to 111 amend those provisions by instead requiring licensing authorities to take steps which are "appropriate" for the promotion of the objectives. This has the effect of reducing the threshold which licensing authorities must meet to achieve the promotion of the objectives, but ensures that their decisions continue to be solely for the purpose of promoting the objectives. These clauses introduce this amendment into provisions according to whether these relate to premises licences (Part 3 of the Act), club premises certificates (Part 4) or various discrete processes, for example in relation to temporary event notices or applications for personal licences.

144. *Subsections (2) to (14)* amend a number of provisions in the Licensing Act 2003 that relate to premises licences to reflect the introduction of this measure. The basis on which a licensing authority makes decisions in a range of processes relating to premises licences is correspondingly modified. These are the processes governing applications for:

- a) the grant or variation of a licence following relevant representations,
- b) the imposition of conditions on licences which authorise the performance of plays at a premises to promote public safety,
- c) the removal of the requirement to have a designated premises supervisor in relation to a community premises following a police objection,
- d) the grant of a provisional statement following relevant representations,
- e) the variation of a licence to specify an individual as a designated premises supervisor following a police objection,
- f) the minor variation of a licence following representations,
- g) the transfer of a licence following a police objection,

h) review of a licence and

i) summary review of a licence (in relation to whether interim steps should be taken and what steps to take following the review determination). This amendment also relates to a licensing authority's decision to cancel an interim authority notice following police objections.

145. *Subsections (15) and (16)* make provision for the application of these amendments.

Clause 110: Reducing the burden: club premises certificates

146. *Subsections (2) to (5)* amend a number of provisions in Part 4 of the Licensing Act 2003 relating to club premises certificates to reflect the introduction of this measure. The basis on which a licensing authority makes decisions in a range of processes relating to club premises certificates is correspondingly modified. These are the processes governing applications for:

a) the grant or variation of a certificate following relevant representations,

b) the imposition of conditions on certificates which authorise the performance of plays at a club premises to promote public safety, and

c) review of a certificate.

147. *Subsection (6)* makes provision for the application of these amendments.

Clause 111: Reducing the burden: other situations

148. *Subsections (2) to (7)* amend provisions in relation to a range of discrete processes in the Licensing Act 2003 to reflect the introduction of this measure. The basis on which a licensing authority makes decisions in those processes is correspondingly modified. These are the processes governing a licensing authority's decision to:

a) send a premises user a counter notice following police objections on a temporary event notice,

b) reject an application for a personal licence following police objections,

c) reject an application for renewal of a personal licence following police objections, and

d) revoke a personal licence following police objections in relation to new convictions coming to light.

149. These also amend the basis on which a licensing authority makes decisions in relation to the steps it must take at a review following a closure order and the making of an early morning restriction.

150. *Subsections (8) to (11)* make provision for the application of these amendments.

Clause 112: Temporary event notices: who may make an objection

151. The Licensing Act 2003 currently includes a scheme which enables an individual to carry on a licensable activity, on a temporary basis, by virtue of a temporary event notice. To hold a temporary event the event holder ('premises user') must send a temporary event notice to the licensing authority and the Chief Officer of Police at least 10 working days before the event. The Chief Officer, if satisfied that the temporary event would undermine the crime prevention objective, must send an objection notice to the licensing authority and premises user no later than 48 hours after receipt of the temporary event notice.

152. Police objections trigger a requirement on the licensing authority to hold a hearing and may result in a counter notice being sent to the premises user if the licensing authority thinks that the temporary event would undermine the crime prevention objective. The licensing authority must also give the premises user a counter notice if one of the prescribed limits is exceeded. If a counter notice is issued, the temporary event notice will no longer authorise any licensable activities taking place under it.

153. Clause 112 extends the right to object to a temporary event notice to the environmental health authority, and allows the police and the environmental health authority for the area in which the premises are situated (defined as 'relevant persons'), to object to a temporary event on the grounds of all four licensing objectives. It also allows licensing authorities to issue a counter notice under section 105 of the Act on the basis of all four of the licensing objectives.

154. *Subsections (2) to (13)* amend sections 104 to 107 of the Licensing Act 2003. These amendments introduce the new category of 'relevant person', and revise and adapt the processes governing objections from relevant persons; these relate to the holding of a hearing or modification of a temporary event notice following receipt of objections from one or both relevant persons, the notices which the relevant licensing authority must send to the premises user and relevant persons, the timetable governing when these steps must be taken, and extend existing rights of appeal to the magistrates' court to those involved in the process. These amendments do not represent a departure from the existing processes in Part 5 of the Act, but adapt these to facilitate the involvement of the environmental health officer and the ability of relevant persons to object on the basis of all the licensing objectives.

155. *Subsection (14)* makes provision for the application of these amendments.

Clause 113: Temporary event notices: conditions

156. This clause enables a licensing authority to impose conditions on a temporary event notice if it considers that this promotes the licensing objectives. A licensing authority can only impose such conditions if an objection has been made by at least one relevant person (and the licensing authority considers that permitting the event to proceed would promote the licensing objectives), and at least a part of the premises in relation to which the temporary event notice is given is already subject to a premises licence or club premises certificate. Any such conditions must be consistent with the activity authorised by the temporary event notice and existing conditions attaching to the subsisting licence or certificate.

157. *Subsections (2) to (5)* amend sections 98, 109 and 110 of the Licensing Act 2003 and insert section 106A into the Act. This has the effect that a permitted temporary activity must be carried on in accordance with both the existing conditions imposed under section 100 of the Act and any conditions imposed on a temporary event notice by a licensing authority under the new section 106A. A licensing authority, if it decides to impose one or more conditions on the temporary event notice under the new section 106A, must give the premises user a notice of the decision and a separate statement (the 'statement of conditions') that sets out the conditions imposed on the temporary event notice and give a copy of the notice and statement to each relevant person. This clause makes a number of amendments to the existing process to facilitate the introduction of a licensing authority's power to impose conditions.

158. *Subsection (6)* makes provision for the application of these amendments.

Clause 114: Temporary event notices: late notices

159. Clause 114 enables a premises user to give a limited number of temporary event notices in a shorter timeframe than that which applies to the existing temporary event notice process. This is defined as a "late temporary event notice". A temporary event notice which is given in accordance with the existing timeframe is defined as a "standard temporary event notice". An objection from at least one relevant person to a "late temporary event notice" will result in a

counter notice being issued. This will make the late temporary event notice ineffective (without a right to a hearing and onward appeal, as applies to the existing process) and the event to which it relates cannot lawfully take place.

160. *Subsections (2) to (12)* insert new sections 100A and 104A which amend a number of provisions in Part 5 of the Licensing Act 2003 to introduce a separate process stream for standard and late temporary event notices.

161. The existing processes are adapted to facilitate the introduction of the availability of a late temporary event notice. A standard temporary event notice is a temporary event notice which is given to the relevant licensing authority and (if it is made in writing) to each relevant person, no later than 10 days before the temporary event to which it relates. A late temporary event notice is a temporary event notice which is given to the relevant licensing authority electronically no later than five working days, but no earlier than nine working days before the temporary event begins; or, if it is made in writing, is given to the licensing authority and each relevant person no later than five working days before the temporary event begins and to at least one of those persons no earlier than nine working days before the event begins. There is a limit on how many late temporary event notices can be given in any calendar year: this is 10 for personal licence holders and two for non-personal licence holders.

162. *Subsection (13)* makes provision for the application of these amendments.

Clause 115: Relaxation of time limits applying to temporary event notices

163. Clause 115 amends sections 100 and 107 of the Licensing Act 2003 to increase the period for which licensable activities at any single event can be carried on in accordance with a temporary event notice from 96 to 168 hours, and the number of days in any calendar year on which a single premises can be used to carry on licensable activities from 15 to 21 days.

164. *Subsection (4)* makes provision for the application of these amendments on the amendments coming into force.

Clause 116: Temporary event notices: acknowledgement of notice

165. Clause 116 amends section 102 of the Licensing Act 2003 to remove the requirement on a licensing authority to acknowledge receipt of a temporary event notice by sending one notice to the premises user, and replaces this with a requirement to give written acknowledgement.

166. *Subsection (2)* makes provision for the application of these amendments.

Clause 117: Temporary event notice: time for objection by police

167. Clause 117 amends section 104(3) of the Licensing Act 2003 to extend the period in which a relevant person can object to a temporary event notice from two to three working days. *Subsection (2)* makes provision for the application of this amendment to temporary event notices given on or after the commencement of this clause.

Clause 118: Persistently selling alcohol to children

168. Section 147A of the Licensing Act 2003 makes it an offence for a premises licence holder, or person who has given a temporary event notice, to sell alcohol on two or more occasions in a three month period to a child. On conviction, a person is liable to a fine not exceeding £10,000. This amendment increases the maximum fine to £20,000.

169. Section 169A of the Act enables the police and trading standards officers to issue a closure notice to a person in relation to whom there is evidence that he has committed an

offence under section 147A of the Act and for which there is a reasonable prospect of conviction. The closure notice discharges the person from any further criminal liability but prevents him from selling alcohol for the period specified in the notice. This amendment increases that period from a maximum of 48 hours to a period of between 48 hours and 336 hours.

170. *Subsections (4) and (5)* make provision for the application of these amendments.

Clause 119: Early morning alcohol restriction orders

171. Section 172A of the Licensing Act 2003 enables a licensing authority to make an early morning restriction order to prohibit the supply of alcohol from premises (including supplies authorised by a temporary event notice) between 3am and 6am in the whole or part of its area. The order can apply every day or on specified days, and for a limited or unlimited period. A decision to make an order must be made by the full council of a licensing authority. A licensing authority can only make an order if it considers that this will promote one or more of the licensing objectives, and the making of the order is subject to a licensing authority observing prescribed procedures. The procedures include a requirement that a licensing authority must advertise its decision to make an order, a right of affected persons to make representations and a requirement on a licensing authority to hold a hearing to consider such representations.

172. *Subsection (2)* excepts the decision of a licensing authority to make an early morning restriction order from those licensing functions which can be exercised by licensing committees. This has the consequence that a licensing authority's decision to make such an order must be made by its full council. *Subsections (3) and (4)* repeal section 55 of the Crime and Security Act 2010 (which inserted sections 172A to 172E into the Licensing Act 2003) and introduce these provisions in an amended form. This has the effect of enabling a licensing authority to make an order of any duration between 12 midnight and 6am. An order can be made, amongst other things, at different times on different days. A licensing authority's ability to exercise this power remains subject to the existing processes prescribed in sections 172A to 172E of the Licensing Act 2003 .

Clause 120: Suspension of licence or certificate for failing to pay annual fee

173. Sections 55 and 92 of the Licensing Act 2003 contain powers to make regulations to prescribe the annual fees payable by the holders of premises licences and club premises certificates. The annual fee is payable on the anniversary of the grant of the licence or certificate. A fee which is not paid on the due date can be recovered as a debt due to a licensing authority. No other sanction for non payment of annual fee is available to a licensing authority. This clause introduces amendments to the Licensing Act 2003, by inserting sections 55A and 92A, to enable a licensing authority to suspend a licence or certificate for non payment of an annual fee. The exercise of this power is subject to conditions.

174. A licensing authority will be able to suspend a licence or certificate if the annual fee is not paid when it is due. A licence or certificate holder will avoid this consequence if, at the time that the annual fee became due, the non payment was a result of an administrative error (by any person) or the holder disputed liability to pay the fee (whether as to liability to pay a fee at all, or its amount) and the grace period of 21 days had not expired. In the event of a dispute about liability to pay a fee, the holder of a licence or certificate must notify the licensing authority in writing of this dispute on or before the due date for the fee. If a licensing authority suspends a licence or certificate, it must notify the holder in writing and specify the date on which the suspension takes effect; this date must be at least two working days after the day the authority gives the notice. A suspension ceases to have effect on the day on which the authority receives payment of the fee from the licence or certificate holder. The authority is required to give the holder written acknowledgment of receipt as soon as practicable following receipt, and in any event no later than the period prescribed in paragraph (6).

175. *Subsection (6)* makes provision for the application of these amendments on the amendments coming into force.

Clause 121: Licensing policy statements

176. Section 5 of the Licensing Act 2003 requires a licensing authority to determine its licensing policy in respect of each three year period and publish a statement of that policy in the form of a 'licensing statement' before the beginning of each such period. The licensing authority must also keep its policy under review during each three year period and revise it as appropriate.

177. This clause enables a licensing authority to determine its licensing policy and publish a licensing statement in respect of every five year period (this cycle commences on 7 January 2011), unless it replaces its entire policy at any time during each five year period, in which case the new five year period begins from the date on which the policy is replaced. A licensing authority continues to be required to keep its policy under review during each five year period.

Clause 122: Personal licences: relevant offences

178. This clause amends Schedule 4 of the Licensing Act 2003. This contains the offences ("relevant offences"). An applicant for the grant or renewal of a personal licence must disclose an unspent conviction for a relevant offence or a foreign offence. A licensing authority notifies the police of the existence of such a conviction, and the police can object to the grant or renewal of the application if they are satisfied that the grant or renewal of the application would undermine the crime prevention objective. This objection requires the licensing authority to hold a hearing to determine the matter. There is also provision for revocation of a personal licence if a personal licence holder is convicted of a relevant offence.

179. The relevant offences include sex offences, offences involving violence and dishonesty, road traffic offences and drugs offences. This clause amends the list of relevant offences to include an offence of attempt to commit a relevant offence or conspiracy to commit a relevant offence, an offence of failing to co-operate with a preliminary test under section 6(6) of the Road Traffic Act 1988 and conspiracy to defraud.

180. *Subsection (5)* makes provision for the application of these amendments.

Clause 123: Review of effect of amendments on licensing scheme

181. This clause requires the Secretary of State to review the regulatory impact on the licensing regime under the 2003 Act of the amendments being introduced in this Bill. The review must be carried out as soon as practicable after the expiry of a five year period from the last date on which these amendments come into force. The duty to review only applies in relation to amendments which are or may introduce a regulatory burden; these provisions are listed in *subsection 1(a)*.

Late night levy

Clauses 124 to 138: Late night levy

182. These clauses enable a licensing authority to introduce a levy payable by the holders of a premises licence or club premises certificate in relation to each premises in its area which is authorised to supply alcohol during a set period (the "late night supply period") between midnight and 6am. *Clause 124* contains provision enabling licensing authorities to decide to introduce a levy. Definitions of premises to which, or the times at which, it would apply are contained in *clause 125*. The funds generated by the levy will, subject to a deduction for the expenses of administering the scheme, be payable to the police and crime commissioner or be used in accordance with regulations under *clause 130*. *Clause 130* also provides that at least 70% of these funds must be paid to the police and crime commissioner. The

Government intends that the regulations will permit the funds to be paid to other organs of local government which operate or administer measures to address the effect of alcohol-related crime and disorder in the night-time economy.

183. The holders of licences and certificates which permit the late night supply of alcohol benefit from the existence of a late night economy. But alcohol-related crime and disorder in that night time economy give rise to costs for the police, local authorities and other bodies. The Government's intention in introducing the provisions is to enable licensing authorities to require those who benefit from the late night economy by being permitted to supply alcohol between midnight and 6 am to contribute to police costs and the costs of other measures that the Government intends to permit in regulations under *clause 130* to address the effect of alcohol-related crime and disorder in the night-time economy. Licensing authorities are required under *clause 124* to consider, before deciding to introduce a levy in their area, whether this measure is an appropriate means of raising revenue in relation to these costs.

184. The liability of holders of licences or certificates to pay a levy (unless they are exempt and subject to whether they fall within a reduction category: see *clause 134*) will be determined in accordance with their payment year. *Clause 125* enables regulations to prescribe how a licensing authority will determine the payment year for a licence or certificate holder by reference to, for example, the period in respect of which the holder pays an annual fee under the Licensing Act 2003. The holder's liability will be determined by reference to when that year begins and regulations under *clause 128* may provide for a holder's liability to pay the levy to be adjusted should its authorisation to supply alcohol cease or commence during that payment year. A licensing authority will be required to determine the basis on which a payment year will be set at the time that it decides to introduce a levy.

185. *Clause 127* contains power to make regulations which will prescribe the amount of the levy, or the basis on which it will be determined, which must be uniform across England and Wales.

186. These provisions will enable licensing authorities to:

- introduce the levy requirement in their area, where it will apply indefinitely until they decide to revoke it under *clause 132*
- set the late night supply period within the midnight to 6am window (although this must be the same on each day) (see *clause 125*),
- afford exemptions or discounts in cases prescribed by regulations under *clause 134* ; the Government intends that the regulations will permit exemptions and discounts for categories of premises based on the extent to which licensing authorities assess the activities carried on at those premises to contribute to alcohol-related crime and disorder,
- to determine the proportion of the funds generated by the levy that will be paid to the police under *clause 130* (which must be at least 70%),
- to revoke the levy in their areas, or vary any of these matters. All these decisions must be made for whole years.

187. These provisions also contain powers to make regulations about collection and administration of the levy (see *clause 128*), to determine how the net sum available to be paid to the police and others is calculated (see *clause 129*), and to vary the minimum proportion of the funds generated by the levy that is paid to the police (see *clause 130*).

188. Under *clause 133* regulations must require that prior to introducing the levy in its area, a licensing authority must allow any person with a potential liability to pay a levy to apply to vary the relevant licence or certificate with the effect that the person ceases to be liable, without incurring the fee which ordinarily must accompany such applications.

189. Under *clause 128 (6)* a licensing authority may suspend a premises licence or club premises certificate for non-payment of the levy, on the same basis that a licence or

certificate can be suspended for non payment of an annual fee by virtue of the provision in *clause 120*.

190. Under *clause 133* regulations must require a licensing authority to consult the police, holders of relevant authorisations and other persons who may be prescribed by regulations before making a decision to introduce the levy in its area or to revoke it or vary certain matters. The levy would not be introduced so as to apply retrospectively to any premises affected by it.

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CHESHIRE EAST COUNCIL

LICENSING COMMITTEE

Date of meeting: 10th January 2010
Report of: Legal Team Leader (Regulatory)
Title: Amendments to Licensing Delegations

1.0 Report Summary

- 1.1 The report provides background information in relation to the licensing delegations and requests that the Licensing Committee makes recommendations to the Constitution Committee in relation to certain proposed amendments.

2.0 Recommendations

- 2.1 The Licensing Committee is requested to recommend to the Constitution Committee that Council be requested to amend the Constitution as follows:
- 2.1.1 to amend references to the Licensing Sub-Committee within paragraph 25.3 of the Officer Management Arrangements within Part III of the Constitution to “the General Licensing Sub-Committee;” and
- 2.1.2 to amend references to the Licensing Sub-Committee within paragraph 25.4 of the Officer Management Arrangements within Part III of the Constitution to “the Licensing Act Sub-Committee.”
- 2.1.3 to amend references to the Licensing Sub-Committee within sub-paragraphs (i) to (iii), (v) and (vi) in relation to the General Licensing Functions at pages 160 and 161 of the Constitution to “the General Licensing Sub-Committee;” and
- 2.1.4 to amend references to the Licensing Sub-Committee within sub-paragraphs (ii) to (xi) in relation to licensing functions under the Licensing Act 2003 and Gambling Act 2005 at page 161 of the Constitution to “the Licensing Act Sub-Committee.”

3.0 Reasons for Recommendations

- 3.1 The current delegations need to be amended to clarify those functions which stand referred to the General Licensing Sub-Committee and those which stand referred to the Licensing Act Sub-Committee.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

5.1 All

**6.0 Policy Implications including - Climate change
- Health**

6.1 None.

7.0 Financial Implications 2010/11 and beyond (Authorised by the Borough Treasurer)

7.1 None.

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 Section 9 of the Licensing Act 2003 provides that a Licensing Committee established under the 2003 Act may establish one or more sub-committees consisting of three members of the committee.

8.2 Section 101(1) of the Local Government Act 1972 provides that, subject to any express provision contained in the 1972 Act or any act passed after it, a local authority may arrange for the discharge of any of their functions by a committee, a sub-committee or an officer of the authority.

8.3 The implications in terms of the Constitution are set out within the report.

9.0 Risk Management

9.1 There is a risk of legal challenge to decisions taken by the licensing authority if the individual/body taking such decisions does not have the correct delegation to do so. The decision requested seeks to ensure clarity in the scheme of delegation as it relates to decision-making by Sub-Committees.

10.0 Background and Options

10.1 As Members are aware, the Council's Constitution makes provision for the delegation of certain licensing functions to the Head of Safer and Stronger Communities. These delegations are subject to exceptions which, if applicable, require functions to be referred to a meeting of the Licensing Sub-Committee. An extract from the Constitution setting out the existing delegations is attached as Appendix A.

10.2 As Members are also aware two Sub-Committees have been established, the General Licensing Sub-Committee and the Licensing Act Sub-Committee. The decisions requested within 2.0 above seek to ensure that the scheme of delegation is clear as to the functions which stand referred to each of the Sub-Committees.

11.0 Overview of Day One, Year One and Term One Issues

- 11.1 It is advantageous to make these changes as soon as possible to ensure clarity.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

For further information:

Officer: Mrs K Khan, Legal Services
Tel No: (01270) 685847
Email: kate.khan@cheshireeast.gov.uk

Background Documents:

Appendix A – Extract from the Council's Constitution.

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- 25.2.6** Power to issue street trading consents
 - 25.2.7** Power to licence performances of hypnotism
 - 25.2.8** Licensing functions under the Licensing Act 2003 and the Gambling Act 2005 (subject to the exceptions below)
 - 25.2.9** Sanctioning the use of buildings for the storage of celluloid
 - 25.2.10** Licensing employment of children
- 25.3** In the following circumstances, the power delegated to the Head of Safer and Stronger Communities in respect of general licensing functions shall stand referred to body set out below:-
- 25.3.1** The determination of applications for hackney carriage or private hire vehicles where the vehicle does not meet the Authority's vehicle conditions or does not pass the vehicle inspection be referred to the Licensing Sub-Committee.
 - 25.3.2** The determination of applications for operators licences where the Council's requirements are not met be referred to the Licensing Sub-Committee.
 - 25.3.3** The determination of applications for hackney carriage or private hire drivers licences where the applicant does not meet the Council's requirements be referred to the Licensing Sub-Committee.
 - 25.3.4** The determination of applications for the renewal or transfer of licences for sex shops and sex cinemas where there are objections which are not be withdrawn and cannot be dealt with under the authority delegated to Officers be referred to the Licensing Committee.
 - 25.3.5** The determination of requests for waiver of the Authority's street collection regulations (with the exception of the regulation in relation to processions) shall be referred to the Licensing Sub-Committee.
 - 25.3.6** The determination of applications for street trading consents where representations have been received and not withdrawn be referred to the Licensing Sub-Committee.
 - 25.3.7** The decision to designate streets (section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982) shall be reserved to the Licensing Committee.
 - 25.3.8** The power to set fees in relation to hackney carriages and private hire vehicles, operators and drivers, sex

establishments and street trading shall be reserved to the Licensing Committee.

- 25.4** In the following circumstances, the power delegated to the Head of Safer and Stronger Communities in respect of Licensing Functions (Licensing Act 2003 and Gambling Act 2005) shall stand referred to body set out below.
- 25.4.1** Any licensing function under the Licensing Act 2003 and the Gambling Act 2005 reserved to full Council (i.e. the determination of the three year statement of principles and the decision not to licence casinos under the 2005 Act).
- 25.4.2** With the exception of applications for minor variations under sections 41A-C or 86A-C of the Licensing Act 2003, the determination of an application under the Licensing Act 2003 or the Gambling Act 2005 where relevant representations have been received and are not withdrawn shall be referred to the Licensing Sub-Committee.
- 25.4.3** The determination of review applications (under sections 52, 88 and 167 of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee.
- 25.4.4** The determination of review applications (under section 201 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.
- 25.4.5** The determination of interim steps pending summary review (under sections 53A(2) and 53B of the Licensing Act 2003) and determination of reviews (under section 53C of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee.
- 25.4.6** The decision to object when the local authority is a consultee and not the relevant authority considering an application under the Licensing Act 2003 shall be referred to the Licensing Sub-Committee.
- 25.4.7** The consideration of representations in relation to the proposed rejection of a club gaming permit or club machine permit (schedule 12 of the Gambling Act 2005) is reserved to the Licensing Sub-Committee.
- 25.4.8** The decision to cancel a club gaming/club machine permit (schedule 12 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.

LICENSING FUNCTIONS – DELEGATION TO OFFICERS

HEAD OF SAFER AND STRONGER COMMUNITIES

Subject to the exceptions listed below, the Head of Safer and Stronger Communities is authorised to discharge the following Council (non-executive) functions.

Licensing Functions

(a)	Power to licence hackney carriages and private hire vehicles	Hackney carriages: Town Police Clauses Act 1847; section 47, 57, 60 & 79 Local Government (Miscellaneous Provision) Act 1976 Private Hire Vehicles: sections 48, 57, 60 & 79 Local Government (Miscellaneous Provision) Act 1976
(b)	Power to suspend hackney carriage and private hire vehicle licences	Hackney carriages: Town Police Clauses Act 1847; section 58 & 60 Local Government (Miscellaneous Provision) Act 1976 Private Hire Vehicles: sections 58 & 60 Local Government (Miscellaneous Provision) Act 1976
(c)	Power to suspend hackney carriage and private hire vehicle licences pending inspection	Section 68 Local Government (Miscellaneous Provision) Act 1976
(d)	Power to licence operators licences	Sections 55 – 58 & 79 Local Government (Miscellaneous Provision) Act 1976
(e)	Power to suspend operators licences	Section 62 Local Government (Miscellaneous Provision) Act 1976
(f)	Power to licence hackney carriage and private hire drivers	Hackney carriages: Town Police Clauses Act 1847; section 53, 54, 57, 59, 61 & 79 Local Government (Miscellaneous Provision) Act 1976 Private Hire: sections 51, 53, 54, 61 & 79 Local Government (Miscellaneous Provision) Act 1976
(g)	Power to suspend hackney carriage and private hire drivers licences	Section 61 Local Government (Miscellaneous Provision) Act 1976
(h)	<i>Power to renew or transfer licences for sex shops and sex cinemas</i> [Where (i) there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and (ii) no objections have been received, or those that have been received should in the officer's	Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.

	opinion be set aside on the ground that the Council could not lawfully take them into account]	
(i)	<i>Power to licence street collections</i>	Section 5 Police, Factories etc (Miscellaneous Provisions) Act 1916
(j)	<i>Power to licence House to House collections</i>	Section 2 House to House Collections Act 1939
(k)	<i>Power to issue street trading consents</i>	Section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982
(l)	<i>Power to licence performances of hypnotism</i>	Hypnotism Act 1952
(m)	<i>Licensing functions under the Licensing Act 2003 and the Gambling Act 2005 (subject to the exceptions below)</i>	Licensing Act 2003 and Gambling Act 2005
(n)	<i>Sanctioning the use of buildings for the storage of celluloid</i>	Section 1 of the Celluloid and Cinematograph Film Act 1922
(o)	<i>Licensing employment of children</i>	Part II of the Children and Young Persons Act 1933, byelaws made under that Part, and Part II of the Children and Young Persons Act 1963

Exceptions

Licensing Functions ('General')

(i) The determination of applications for hackney carriage or private hire vehicles where the vehicle does not meet the Council's vehicle conditions or does not pass the vehicle inspection be referred to the Licensing Sub-Committee*.

(ii) The determination of applications for operators licences where the Council's requirements are not met be referred to the Licensing Sub-Committee*.

(iii) The determination of applications for hackney carriage or private hire drivers licences where the applicant does not meet the Council's requirements be referred to the Licensing Sub-Committee*

(iv) The determination of applications for the renewal or transfer of licences for sex shops and sex cinemas where there are objections which are not be withdrawn and cannot be dealt with under the authority delegated to officers be referred to the Licensing Committee.

(v) The determination of requests for waiver of the Council's street collection regulations (with the exception of the regulation in relation to processions) shall be referred to the Licensing Sub-Committee.*

(vi) The determination of applications for street trading consents where representations have been received and not withdrawn be referred to the Licensing Sub-Committee.*

(vii) The decision to designate streets (section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982) shall be reserved to the Licensing Committee.

(viii) The power to set fees in relation to hackney carriages and private hire vehicles, operators and drivers, sex establishments and street trading shall be reserved to the Licensing Committee.

Licensing Functions (Licensing Act 2003 and Gambling Act 2005)

(i) Any licensing function under the Licensing Act 2003 and the Gambling Act 2005 reserved to full Council (i.e. the determination of the three year statement of principles and the decision not to licence casinos under the 2005 Act);

(ii) With the exception of applications for minor variations under sections 41A-C or 86A-C of the Licensing Act 2003, the determination of an application under the Licensing Act 2003 or the Gambling Act 2005 where relevant representations have been received and are not withdrawn shall be referred to the Licensing Sub-Committee.*

(iii) The determination of review applications (under sections 52, 88 and 167 of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee.*

(iv) The determination of review applications (under section 201 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.*

(v) The decision to object when the local authority is a consultee and not the relevant authority considering an application under the Licensing Act 2003 shall be referred to the Licensing Sub-Committee.*

(vi) The consideration of representations in relation to the proposed rejection of a club gaming permit or club machine permit (schedule 12 of the Gambling Act 2005) is reserved to the Licensing Sub-Committee*

(vii) The decision to cancel a club gaming/club machine permit (schedule 12 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.*

(viii) The decision to give a counter notice to a temporary use notice (section 224 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.*

(ix) The decision to make an order disapplying section 279 or 282(1) of the 2005 Act in relation to specified premises where representations have been made by the licensee shall be referred to the Licensing Sub-Committee.*

(x) The decision to revoke a personal licence where convictions come to light after grant or renewal (under section 124 of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee.*

(xi) The determination of interim steps pending summary review (under sections 53A(2) and 53B of the Licensing Act 2003) and determination of reviews (under section 53C of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee.*

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