

Bath & North East Somerset Council

MEETING:	Council
MEETING DATE:	19 July 2012
TITLE:	Adoption of new powers under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982
WARD:	ALL
AN OPEN PUBLIC ITEM	
List of attachments to this report: Annex A: Consultation Document Annex B: Proposed Policy for Sexual Entertainment Venues Annex C: Responses from Consultees	

1 THE ISSUE

This report invites Council to consider the written submissions and points raised by those involved in the consultation, the content of the Sexual Entertainment Venue policy and to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982;

2 RECOMMENDATION

Council is asked to agree that:

2.1 The Council adopts Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

2.2 Adopts the Sexual Entertainment Venue policy, provided in Annex B

2.3 Authority is delegated to the Licensing Committee to determine applications for new licences.

3 FINANCIAL IMPLICATIONS

- 3.1 There will be additional resource implications in the administration and enforcement of this new provision. In accordance with Schedule 3 para.19, the Council can charge a reasonable fee for the application process which must be proportionate to the cost of that provision so as to comply with the Provision of Services Regulations 2009.
- 3.2 Such fees will be determined by the Divisional Director for Environmental Services in conjunction with the Cabinet Member for Service Delivery and will be on a cost neutral basis, and will contain costs within existing budget limits.
- 3.3 In coming to a decision on setting the fees, officers will take into account all officer time and will also include all proportionate overheads, including corporate and democratic costs.

4 CORPORATE PRIORITIES

- Creating neighbourhoods where people are proud to live
- Building a stronger economy

5 THE REPORT

- 5.1 Since the implementation of the Licensing Act 2003 there has been an increase nationally in the number of lap dancing clubs and similar venues, which has caused increasing concern for some local communities. Currently the activity that takes place in lap dancing clubs is regulated under the Licensing Act and as such any representations that are made in respect of applications can only be considered if they are based on one or more of the four licensing objectives under the Licensing Act 2003 namely, prevention of crime and disorder, prevention of public nuisance, public safety and the protection of children from harm.
- 5.2 As a consequence the Licensing Authority is unable to consider other concerns raised by local residents and businesses outside of the scope of the licensing objectives. Therefore matters such as whether the location of the proposed venue is appropriate cannot easily be taken into account. Furthermore regulations under the Licensing Act place restrictions on which parties can make representations on applications and the council's discretion to respond to such concerns as are validly made is also very constrained.
- 5.3 The Government has responded to lobbying for greater regulatory control to be introduced specific to lap dancing clubs and similar premises by introducing legislation through the Policing and Crime Act 2009 which will have the effect of enabling regulation of these premises as 'sexual entertainment venues' under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. The legislation is adoptive – i.e. it only applies in an area if its local authority resolves that it should.
- 5.4 The Policing and Crime Act 2009 has added "sexual entertainment venues" as a new category of sex establishment. A "sexual entertainment venue" is defined as any premises at which "relevant entertainment" is provided before a live audience for the financial gain of the organiser or the entertainer.

- 5.5 The meaning of 'relevant entertainment' is any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means). An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 5.6 Whether or not the controls, where in force, apply in a given situation is clearly dependent upon the particular facts in each case. Performances of lap dancing, pole dancing, table dancing and striptease would typically be covered, as would other varieties of adult entertainment or services that meet the statutory criteria.
- 5.7 The revision not only sets out what is a sexual entertainment venue but also what is not. The following are not sexual entertainment venues:
- sex shops and sex cinemas (which are separately defined in, and regulated under, Schedule 3 to the 1982 Act);
 - premises which provide relevant entertainment on an infrequent basis. These are defined as premises where:-
 - a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
 - b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - c) no such occasion has lasted longer than 24 hours; or
 - d) premises or types of performances or displays exempted by an order of the Secretary of State.
- 5.8 Schedule 3 allows authorities to refuse applications on grounds related to an assessment of the "relevant locality". A licence can be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.

Schedule 3 does not define "relevant locality" further than to say that:

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

The decision regarding what constitutes the 'relevant locality' is a matter for the authority.

- 5.9 The Council has already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas.
- 5.10 A further resolution is necessary if the provisions introduced by Section 27 of the 2009 Act are to have effect in Bath and North East Somerset.

5.11 As the Council had not resolved to adopt the amended provisions prior to 6 May 2011, it was required to consult local people about whether such a resolution should be made. The documents provided in Annexes A and B formed part of this consultation.

5.12 In addition to the consultation on whether or not to adopt the new provisions the opportunity was also taken to consult on a proposed policy for the control of sexual entertainment venues. There is no requirement on a local authority to have a policy but it is recommended that if an authority considers that the legislation should be adopted, it should adopt a policy to:

- Set out its approach, for the benefit of operators
- Guide and re-assure the public and other public bodies
- Ensure transparency
- Ensure consistency
- Guide its committees

5.13 A copy of the proposed policy is provided at Annex B.

6 RISK MANAGEMENT

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

7 EQUALITIES

7.1 An Equalities Impact Assessment has been completed. No adverse or other significant issues were found.

7.2 The Policing and Crime Act included an equality impact assessment of the proposed legislation and found that no intended or disproportionate impact is likely.

8 CONSULTATION

8.1 Consultation has been carried out with all Ward Councillors; Cabinet Member for Service Delivery; all Parish Council and Town Councils; the Licensing Committee; Other B&NES Services; Local Residents; Community Interest Groups; Section 151 Finance Officer; Chief Executive; Monitoring Officer

8.2 Consultation was carried out via e-mail and post and by taking a report to the Licensing Committee. A copy of the consultation document is provided in Annex A.

9 ISSUES TO CONSIDER IN REACHING THE DECISION

9.1 Social Inclusion; Young People; Human Rights; Public Safety; Equalities and Human Rights.

10 ADVICE SOUGHT

10.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

Contact person	Andrew Jones, Environmental Monitoring and Licensing Manager. Tel: 01225 477557
Background papers	Home Office Guidance for England & Wales – Sexual Entertainment Venues.
Please contact the report author if you need to access this report in an alternative format	

CONSULTATION DOCUMENT

Dear

Bath & North East Somerset Council is consulting on whether to adopt new powers provided by the Policing and Crime Act 2009 to give local people greater say over the number and location of lap dancing clubs and similar venues in their area.

If the new provisions are adopted, the Council will publish a policy setting out how it will exercise its powers.

A draft policy has been prepared in order to facilitate discussion and a copy is available on the following webpage:

<http://www.bathnes.gov.uk/business/LicencesStreetTrading/Pages/SexualEntertainmentVenues.aspx>

Alternatively, please contact us if you would like a hard copy of the draft policy.

We are seeking your views on

- whether Bath & North East Somerset should adopt the new powers and, if so,
- what our policy on Licensing Sexual Entertainment Venues should contain.

If you wish to comment on these proposals, please contact us either in writing or by email. If you are commenting on the draft policy, please state which paragraph you are referring to.

The deadline for responses is **31 October 2011**.

Andrew Jones

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BATH & NORTH EAST SOMERSET COUNCIL

Sexual Entertainment Venues Policy 2011

Introduction

1. The Local Government (Miscellaneous Provisions) Act 1982 introduced a regime for the control of sex establishments. These powers were adopted within Bath & North East Somerset, enabling the Council to control and regulate establishments such as sex shops and sex cinemas.
2. The Policing and Crime Act 2009 amended Schedule 3 to the 1982 Act by introducing a new category of sex establishment: sexual entertainment venues. This allows local authorities to regulate lap dancing clubs and similar venues in the same way as sex shops and sex cinemas. These provisions were adopted by Bath & North East Somerset Council on [date of adoption].
3. Under the new regime, any person wishing to operate a sexual entertainment venue must obtain a licence from the Council.
4. The Act sets out grounds on which the Council must refuse a licence, for example if an individual applicant is under the age of 18 years. It also provides discretionary grounds on which the Council may refuse a licence if it is deemed appropriate to do so.
5. The overarching objectives of this policy are to:
 - (a) Promote the visions and values of Bath & North East Somerset Council
 - (b) Protect the rights, health and safety of the general public, businesses, employees, minority and vulnerable groups
 - (c) Ensure consistent and transparent decision making
6. This policy will promote these objectives by providing guidance to:
 - (a) The Council when determining applications made in connection with sexual entertainment venues
 - (b) Operators making applications
 - (c) Persons making objections in respect of an application
7. The legislation may be viewed here:

<http://www.legislation.gov.uk/ukpga/1982/30>
Local Government (Miscellaneous Provisions) Act 1982 Chapter 30

<http://www.legislation.gov.uk/ukpga/2009/26/section/27>
Policing and Crime Act 2009 Part 2 Section 27 - Regulation of lap dancing and other sexual entertainment venues etc.

Scope of the Policy

8. This policy applies to sexual entertainment venues as defined in the Act. Reference should be made to the legislation itself for the full definition and details of exemptions. In summary a sexual entertainment venue is:
9. A premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer, unless an exemption applies.
 - (a) 'Premises' includes traditional premises as well as vehicles, vessels and stalls but not private dwellings to which the public are not admitted
 - (b) 'Relevant entertainment' means a live performance or display of nudity of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of sexually stimulating any member of the audience whether by verbal or other means
 - (c) 'Provided' means provided or permitted to be provided by or on behalf of the organiser
 - (d) 'Live audience' includes an audience of one person
 - (e) 'Financial gain' can be direct or indirect
10. Under Schedule 3, the following premises are not to be considered as sexual entertainment venues:
 - (a) Sex shops and/or sex cinemas
 - (b) Premises that provide entertainment, that lasts no more than 24 hours, on no more than 11 occasions within a 12 month period. There must be at least one month between each provision of entertainment
11. Licensing of sex cinemas and sex shops is outside the scope of this policy, which is directed at the new aspect of the regime under which sexual entertainment venues are regulated.
12. This policy is intended to be strictly applied however the Council will determine each application on its own merits after taking into account all relevant factors.

Decision making responsibility

13. Functions under Schedule 3 are the responsibility of the full Council. Under Section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or sub-committee.
14. The Council has delegated the function of determining sexual entertainment venue applications to the Licensing Committee or one of its sub-committees.

Relationship with Licensing Act 2003

15. Live or recorded music which is integral to the provision of relevant entertainment is specifically excluded from the definition of regulated entertainment under the Licensing Act 2003. Therefore, a sexual

entertainment venue will not require a premises licence or club premises certificate for these purposes. A premises licence or club premises certificate will however be required should the venue wish to sell or supply alcohol, provide late night refreshment or regulated entertainment.

16. When attaching conditions to a sexual entertainment venue licence for which a premises licence or club premises certificate is already in force, the Council will seek to avoid:
 - (a) The duplication of existing conditions or legislation
 - (b) The imposition of obligations which contradict existing conditions or legislation

Applications

17. Applications must be made in writing and must contain the particulars specified in Schedule 3 to the 1982 Act (see hyperlink above) and any such additional information the Council may require. Applicants are advised to use the Council's application form to ensure that all required details are provided in the first instance.
18. An application must be accompanied by:
 - (a) A scaled plan showing the layout of the premises, including –
 - (b) The whole building, including non licensed areas
 - (c) Any external or internal walls which comprise the premises, or in which the premises are comprised
 - (d) The parts of the premises to which the public have access
 - (e) The parts of the premises in which relevant entertainment will take place
 - (f) All means of entry and exit
 - (g) If different from the above, the location of the escape routes from the premises
 - (h) Fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) that may impact on the ability of customers to use exits or escape routes without impediment
 - (i) In a case where premises include a stage or raised area, the location and height of each stage or area relative to the floor
 - (j) The application fee as prescribed by the Council
19. Notice of the application must be set out in the format specified by the Council in [Annex X] and:
 - (a) published in a local newspaper within seven days after the date of the application, and

- (b) prominently displayed at or near the premises and in a place where it can conveniently be read by the public for 21 days beginning the day of the application
20. In the case of a premises covering an area of more than 50 metres square, a further notice in the same form must be displayed every 50 metres along any part of the external perimeter that abuts the highway.

Waivers

21. Applications can be made to waive the requirement for a sex establishment licence.
22. The Council does not consider it would be appropriate to permit waivers from the requirements to hold a sexual entertainment venue licence, particularly as the legislation allows relevant entertainment on an infrequent basis as outlined in paragraph 10(b) above.

Objections

23. Any person may make an objection to the grant, renewal or transfer of a licence. Objections must be made in writing no later than 28 days beginning the day after the application was made. Objectors are advised to use the Council's approved form. There is no specific criteria as to the content of an objection however less weight will be given to objections that are considered to be vexatious, malicious or frivolous.
24. The Council will not reveal the name or address of any objector without first obtaining his/her permission to do so.
25. If one or more objections are received against an application, the Council will give notice of the objection(s) to the applicant. The matter will then proceed to a hearing to be determined by the Licensing Committee or Licensing Sub-Committee.

Determining an application

26. All new applications for a licence will be determined at a hearing of the Council's Licensing Committee, or appropriate Licensing Sub-Committee.
27. If no objections are received to the renewal of a licence then officers will be authorised to grant the licence.
28. Where objections have been received against the renewal of a licence, the matter will be determined at a hearing of the Council's Licensing Committee or appropriate Licensing Sub-Committee.
29. The Council will permit objectors to address the Committee or Sub-Committee in respect of the matters raised in their written objection (but no other matter).
30. The Committee will determine the matter and give reasons for their decision.

31. In the event that the Committee refuses an application, the applicant may appeal the decision in the magistrates' court, unless the application was refused on the grounds set out in paragraph 35(c) or (d), in which case the applicant can only challenge the refusal by way of judicial review.
32. Any other interested party can challenge a decision of the Committee by way of judicial review.

Conditions

33. Every Sexual Entertainment Venue Licence granted, renewed or transferred by the Council shall be presumed to have been so granted, renewed or transferred subject to the Council's standard conditions (attached) unless they have been expressly excluded or varied by the Council.

Mandatory grounds for refusal

34. A licence will not be granted to:
 - (a) A person under the age of 18
 - (b) A person who is for the time being disqualified by virtue of revocation in the previous year
 - (c) An individual applicant who has not been resident in the UK for the previous six months
 - (d) A body corporate which is not incorporated in an EEA state
 - (e) A person who has, within a period of 12 months immediately preceding the date of application, been refused the grant or renewal of a licence for the premises in respect of which the application is made unless the refusal was reversed on appeal
35. Where any of these grounds apply, the Council must refuse the application.

Discretionary grounds for refusal

36. A licence may be refused on one or more of the following grounds:
 - (a) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or 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, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority

consider is appropriate for that locality (nil may be an appropriate number for these purposes)

- (d) That the grant or renewal of the licence would be inappropriate, having regard to –
 - (i) The character of the relevant locality
 - (ii) The use to which any premises in the vicinity are put
 - (iii) The layout, character or condition of the premises in respect of which the application is made
37. Where the Council finds that any of these grounds apply, it may refuse the application.

Factors for consideration – discretionary grounds (a) and (b)

38. In considering the suitability of those persons referred to in (a) and (b), the Council will take into account all relevant factors including:
- (a) Relevant experience
 - (b) Relevant criminal convictions
 - (c) Relevant observations or findings by public authorities, including licensing authorities, in connection with the conduct of the person or their ability to manage and control premises
 - (d) Relevant findings by courts and tribunals in connection with the treatment of protected groups (within the meaning of the Equalities Act 2010)
 - (e) Information germane to the person's ability to, among other things:
 - (i) Ensure the safety and wellbeing of performers
 - (ii) Ensure the proper protection of the public
 - (iii) Ensure the suitability of employees, performers and others using the venue
 - (iv) Prevent performance by or for those who may thereby be harmed, including minors
 - (v) Understand and adhere to conditions imposed on any licence granted and ensure they are observed by others on the premises
 - (vi) Engage constructively with the Council and other relevant regulators

Factors for consideration – discretionary ground (c)

39. The Council has the power to determine an appropriate maximum number of sex establishments, including sexual entertainment venues, in the relevant locality at the time the application is determined.
40. The Council will not seek to predetermine the localities that comprise Bath & North East Somerset or predetermine the appropriate number for each such locality. Instead, the issue will be considered on a case by case basis and the relevant locality will be determined as a matter of fact in each particular application.
41. Having established the relevant locality, in considering the issue in ground (c) the Council will take into account all relevant factors including:
 - (a) The character of the locality, e.g. residential, leisure
 - (b) Other uses in the locality, e.g. places of worship, educational establishments
 - (c) Impact on regeneration
 - (d) Impact on tourism
 - (e) Impact on retail attraction
 - (f) Risk of public nuisance
 - (g) Whether the locality is subject of stress caused by a cumulative impact of premises authorised to provide licensable activities under the Licensing Act 2003
 - (h) Existing levels of recorded crime
 - (i) Impact on crime and disorder
 - (j) Levels of anti-social behaviour
 - (k) Existence of social problems in the locality and impact on any initiatives to tackle them
42. A dedicated appendix will be maintained with this policy to record all decisions made to control the number of sex establishments under this provision.

Factors for consideration – discretionary ground (d)

43. Having regard to the character of the locality (see ground (c) above) the Council will consider whether the particular application is appropriate. The Council will take into account all relevant factors including:
 - (a) The size and appearance of the premises
 - (b) Their proximity to places where the public congregate for purposes other than use of the premises, such as bus stops and taxi ranks

- (c) The nature and style of the relevant entertainment that is proposed
- (d) The nature of the clientele it is likely to attract and their number
- (e) The manner in which the relevant entertainment is likely to be managed
- (f) The risk of public nuisance
- (g) The proposed hours of operation
- (h) The proposed hours for provision of relevant entertainment

Factors specific to discretionary ground (d)(ii)

44. Whether premises in the vicinity are put to any of the following uses:

- (a) Residential, in particular homes occupied by families
- (b) Leisure
- (c) Educational establishments
- (d) Places of worship
- (e) Family friendly facilities
- (f) Other sex-oriented/adult premises
- (g) Youth clubs
- (h) Women's refuges
- (i) Community centres
- (j) Parks and other open spaces
- (k) Public transport

Factors specific to discretionary ground (d)(iii)

45. In considering these factors the Council will take into account information concerning:

- (a) Whether the premises are fit for the purpose proposed
- (b) Their planning status
- (c) The general appearance to others using the locality
- (d) Whether premises are self contained
- (e) Means of access and egress, whether shared with other building users (if any)

- (f) Accessibility
- (g) 'Hidden' areas and other places where effective monitoring may be hampered
- (h) Standard of decoration and 'fit-out'
- (i) Visibility/audibility from the street
- (j) Facilities for smokers
- (k) Facilities for performers (e.g. changing and bathroom facilities, smoking areas etc) and whether they are adequately separated from those provided for customers

Transitional provisions

46. There are three appointed days under the transitional provisions. These are called the first appointed day, the second appointed day and the third appointed day.
- (a) The first appointed day in Bath & North East Somerset is [date]
 - (b) The second appointed day is [date – six months after first appointed day]
 - (c) The third appointed day is [date – six months after second appointed day]
47. There are some 'grandfather rights' that apply to the following:
- (a) Those with a licence for relevant entertainment under the Licensing Act 2003 who are using the premises as a sexual entertainment venue under that licence
 - (b) Those with a licence for relevant entertainment under the Licensing Act 2003 who are undertaking preparatory work to use the premises as a sexual entertainment venue under that licence
48. Both category of operator may continue to use their premises as a sexual entertainment venue until at least the third appointed day, or, if they have made an application before third appointed day, until the determination of that application or the conclusion of any appeal against a refusal of it. In other words, these two groups can continue to trade for at least one year following the first appointed day even if no licence or waiver has been granted to them.
49. There are three rounds of applications in the transitional order.
- (a) Round 1 – [first appointed day] until [second appointed day]
 - (i) All Round 1 applications must be considered before any of them can be determined. In practice, therefore, the first time the Council is permitted to determine applications will be [six months plus one day from the first appointed day]

- (ii) Applications will be considered on their individual merit and not on a first come first served basis
 - (iii) When they are determined, any licences granted to applicants with “grandfather rights” will not take effect until the third appointed day. Any others that are granted will take effect straightaway
- (b) Round 2 – [second appointed day] until [third appointed day]
- (i) It is important to note that none of these applications may be determined until all of the Round 1 applications have been determined. As with the Round 1 applications, licences granted to applicants with “grandfather rights” whose applications are granted before the third appointed day will not take effect until the third appointed day; any others that are granted will take effect straightaway
- (c) Round 3 – [third appointed day] onwards
- (i) Any applications made after the third appointed day may not be determined until such time as all of the Round 1 applications (if any) have been dealt with.

Sexual Entertainment Venues

Standard Conditions

In these conditions:

- (a) "Customer" means any person visiting the premises other than employees or performers, whether or not they have paid for or intend to pay for services provided.
- (b) "Employee" means any person working at the venue whether under a contract of employment or some other contract.
- (c) "Nudity" means when breasts and/or genitals and/or anus are fully or partially uncovered.
- (d) "Other contact of a sexual nature" means contact which must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating the customer.
- (e) "Relevant offence" means:
 - (i) An offence under Local Government (Miscellaneous Provisions) Act 1982 Schedule 3
 - (ii) A sexual offence, being an offence listed in Part 2 of Schedule 15 to the Criminal Justice Act 2003, other than the offence mentioned in paragraph 95 (an offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts))

General Conditions

1. Only relevant entertainment is authorised under this licence.
2. No person under the age of 18 shall be admitted to the premises and a notice to this effect shall be displayed on the outside of the premises.
3. The premises shall operate a Challenge 21 Policy and persons appearing to be under the age of 21 shall be required to provide proof of age.
4. A copy of the licence and attached conditions shall be prominently displayed in the premises.
5. The availability of relevant entertainment shall not be marketed or advertised in any of the following ways:
 - (a) By means of personal solicitation in the locality of the licensed premises
 - (b) By means of leafleting in the locality

Management of the Premises

6. The Council shall be notified within seven days of any changes in respect of:
 - (a) The name of the person who will be primarily responsible for the management of the premises when relevant entertainment is taking place (the manager)

- (b) The name of any persons who will be responsible for the day to day management of the premises when relevant entertainment is taking place in the absence of the manager (deputy manager(s))
7. At least one of the individuals specified on the licence (i.e. a licensee, manager or deputy manager) shall be present on the premises at all times whilst the relevant entertainment is taking place.
 8. No person shall be employed or shall perform at the premises who has unspent convictions for any relevant offence.
 9. The Council shall be provided with a code of conduct for performers and a code of conduct for members of the audience.
 10. The Performers' Code of Conduct shall be brought to the attention of all performers and reasonable measures shall be taken to ensure that it is complied with.
 11. Performers shall be required to sign a register confirming that they have read and understand the Performers' Code of Conduct. The register shall be retained on the premises and made available for inspection by any police officer or authorised officer of the Council.
 12. The Customers' Code of Conduct shall be brought to the attention of all members of the audience and reasonable measures shall be taken to ensure that it is complied with.
 13. The licence holder must maintain an log of any person(s) refused entry to the premises and any person(s) ejected from the premises together with the reasons for the refusal/ejection. This log must be kept on the premises at all times and made available for inspection by any police officer or authorised officer of the Council.

The premises

14. Relevant entertainment may only take place on those parts of the premises as are identified on the plan annexed to the licence.
15. Relevant entertainment shall not occur in private rooms, cubicles or other enclosed areas. For these purposes a room, cubicle or other area is private unless it is completely open on one side so that activities within may be supervised from the exterior.
16. There shall be no display outside of the licensed premises of images which indicate or suggest that relevant entertainment is provided upon the premises, with the exception of any registered trade mark, trading name or trading symbol that has been notified to and agreed by the Council.
17. No relevant entertainment provided shall be visible from the street or from any other external area to which the public have access.
18. 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.
19. The licence holder shall ensure that no staff or other persons engaged on their behalf remain in any area of the premises which can be viewed from outside the premises, or from any other area outside the premises, for the purpose of encouraging potential customers into the premises.

20. Colour CCTV will be installed and maintained in good working order on the premises. The positioning of such cameras will be agreed with the licensing authority and the police.
21. CCTV recorded material should be kept secure for a period of 31 days and disclosed to any police officer or authorised officer of the Council upon request.
22. Except in accordance with the requirements for CCTV as described in conditions 20 and 21, no photographs, films or video recordings shall be taken of the performances. Nor shall electronic transmissions of a performance be shown outside of the premises (except for the purpose of remote management of the premises and in those circumstances, the licensee shall ensure that only those involved in management shall view any photograph, film or recording).
23. Notices shall be displayed informing customers of the presence of CCTV.

The provision of relevant entertainment

24. During any performance of relevant entertainment there must be no physical contact between the performer and any member of the viewing public, except for the placing of money/tokens into an item of clothing worn by a performer or into the performer's hand before or at the end of the performance. A brief handshake before or at the end of a performance is permitted.
25. There shall be no penetration of a performer's genitals or anus by any means.
26. Performers shall not engage in masturbation and/or oral sex.
27. At no time except during the performance may there be a display of nudity.
28. No performer or employee may at any time (and whether or not performing):
 - (a) Sit or lie on the lap or any other part of any customer
 - (b) Kiss, stroke, fondle, caress or embrace any customer
 - (c) Engage in any other contact of a sexual nature with any customer

Protection of those engaged in the provision of relevant entertainment

29. Literature and contact details of organisations that provide advice and counselling on matters relating to:
 - (a) Sexual problems
 - (b) Family planning
 - (c) Sexually transmitted diseases
 - (d) Rape and sexual assaultshall be made available to performers free of charge.
30. No telephone number, residential address, email address or other information that may facilitate further contact between performers and customers is passed from customer to performer, or vice versa.

31. No relevant entertainment shall be provided by any performer unless sufficient checks have been made of documents evidencing the performer's age, identity and right to work in the United Kingdom.
32. Copies of all documents referred to in condition 31 shall be retained for not less than 12 months after the last provision of relevant entertainment by the said performer and shall be produced to any police officer or authorised officer of the Council.
33. A 'signing-in' register shall be kept at the premises that records the date, start time and finish time of all person(s) involved in the relevant entertainment at the premises. This shall be retained for a period of 12 months and made available for immediate inspection by any police officer or authorised officer of the Council.
34. An appropriate room shall be available as a change and rest area for performers. Access to this room shall be restricted to performers and employees only whilst the performers are on the premises.
35. Performers shall not be permitted to share bathroom facilities and/or any smoking area with members of the audience and suitable separate provision must be made.

Sexual Entertainment Venues Policy – Consultation Responses 2011

Consultee	Consultation Response	Officer Comments
<p>1. Lin Roper – The Ayrlington Hotel</p>	<p>I am not in favour of lap dancing clubs and similar venues in this city. Bath is a World Heritage City with tourism being its main industry. Many visitors would be deterred from coming here should such places be advertised together with the cultural sites.</p> <p>Additionally, there are a number of excellent independent schools which accept boarders plus the universities and these establishments could be of major concern to parents considering sending their children to our city. Bristol is a short distance from Bath and would be a more suitable location for such clubs.</p>	<p>There are no plans to encourage adult entertainment venues into the area; the policy simply strengthens the Council's power to regulate them. The policy is designed to enable local residents to make representations against an application on a wider range of grounds than is currently available. No further action necessary.</p>
<p>2. Ralph Oswick – Natural Theatre Company</p>	<p>I have read the proposals and they seem very thorough and sensible.</p> <p>I wondered about establishments that present so-called Burlesque shows which blur the line between blatantly sexual content and mildly titillating irony...or so they claim. But if licences are to be granted on a case by case basis then it would be up to the proprietors to put their case.</p>	<p>Applications will be determined in a case by case basis with reference to the legislation and guidance, particularly the definition of 'sexual entertainment' which is deemed to be entertainment "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". No further action necessary.</p>

<p>3. Jane Read – Greenvale Drive</p>	<p>I am strongly against all Sexual Entertainment Venues, and wanted to voice my concerns, having heard that Bath Council may agree to a license. I am a resident of Bath and feel this would be completely wrong for the city.</p>	<p>There are no plans to encourage adult entertainment venues into the area; the policy simply strengthens the Council's power to regulate them. The policy is designed to enable local residents to make representations against an application on a wider range of grounds than is currently available. No further action necessary.</p>
<p>4. Julian Tee - Chief Executive, Compass Hotels (owners of the Abbey Hotel on North Parade)</p>	<p>I wish to support the Council's proposal to adopt the new powers set out in the Sexual Entertainment Venues Policy 2011.</p> <p>Whilst I find it disappointing to believe that a world heritage site such as Bath should have its city sullied by such establishments, there is doubtless an business and economic case to be made in favour of sexual entertainment venues.</p> <p>However, as long standing owners and operators of the Abbey Hotel, already financially suffering from the impact of late night street noise from passers-by singing, swearing and causing a general verbal nuisance throughout the year, I would stress the importance of the following points as set out in your document.</p> <p>Paragraph 14: Although it is proposed that the determination of licensing of venues can be delegated to the licensing committee or one of its sub committees, I would hope that an appropriately senior person within the Authority will have the ultimate say in such determinations and thus the decision making process will be properly followed and policed to ensure consistency of process and application of standards. I would prefer to see that determination of applications for such</p>	<p>It is proposed that the Licensing Committee delegates authority to the Licensing Sub Committee to determine applications. This is the procedure as agreed by the Licensing Committee. There is a process for those aggrieved by the decision of the Sub Committee to have those decisions reviewed.</p>

	<p>establishments should not be delegated below the actual licensing committee so as to recognize the importance of such determinations given the nature of these establishments and the impact their activities can have on vulnerable groups within the community.</p> <p>Paragraph 35(d)(ii): Late night access and egress from establishments in the city already causes disturbance and distress for hotel operators and residents. We have suffered financial loss for years as late night revelers pass the hotel shouting, singing, swearing and causing a general verbal nuisance. Therefore, specifically related to places of overnight accommodation where the customer has a right to enjoy peaceful accommodations, I would stress that, at the point of application, the citing of any such venues and the operating times of these venues should be closely scrutinized to avoid further congregation of peoples late at night and further swelling of numbers leaving all licensed premises. Ideally, any such venue will be located on the outskirts of the city, away from residential areas.</p> <p>40 (d) and (f) These two points link closely with my comments made in respect of 35 (d) (ii). In addition, the city is renowned for and relies heavily on tourism from all over the world. When considering applications for such establishments, the Authority should consider alternative use of premises and whether they could be put to better use in the development of the city for purposes which support tourism or other ventures. (ie) Do such establishments add value to the city and to the world heritage status of the city?</p> <p>Finally, I see no specific mention of the need for door staff</p>	<p>Alcohol sales would still require a premises licence and the licence holder would be subject to the same application process and licence conditions as any other licensed premises. Where a premises is situated in the Cumulative Impact Area, the applicant would have to rebut the presumption that a licence should not be granted.</p> <p>Use of the premises is also governed by the planning regime but paras 40 allows applications to be determined having regard to issues such as impact on tourism, potential for public nuisance etc.</p>
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	(men and women) to oversee admissions and conduct within such premises. This may be covered by the Licensing Act 2003 and any revisions made thereto. I believe there should be a requirement to provide door staff, of a suitable number to the size and scope of the any establishment, and so ensure conduct is fitting on entry, inside and on exiting the premises.	Recommendation – Amend the standard conditions to include a requirement that there are 2 SIA registered door-staff on the premises at all times it is open to the public.
5. Caroline Kay - Bath Preservation Trust	<p>We would like to see more explicit reference in the policy (not just the ‘planning status’) made to the need for applicants for licenses to comply in addition with all relevant planning policies, and apply for any consents (planning, listed building, conservation area) required in relation to the premises, such consents being in place before the granting of a license. We would also like to see reference to this made in the ‘standard conditions’ section relating to the premises, and would like to see paragraph 16 expanded to state that ‘any display must comply with local planning and conservation area policies in force’.</p> <p>In the ‘discretionary grounds’, we would like to see reference to tourism, particularly heritage tourism and the amenity value of the conservation area.</p>	<p>The policy sets out the framework that the Council will use when determining licence applications for SEVs; although planning issues maybe a factor for consideration by the Licensing Sub Committee, the SEV licensing regime cannot be used to duplicate other regulatory regimes.</p> <p>Recommendation – Change the heading to paragraph 15 to ‘Relationship with other statutory regimes’.</p> <p>The discretionary grounds are set out in the amended schedule so we cannot add to them. Heritage tourism would however be considered within ground d (i) and (ii).</p>
6. Tim Conroy - St Philip & St James Church Office	Regarding paragraph 19, there needs to be letters sent to houses and premises local to the proposed venue - maybe all those within 50 metres. I don't think it is sufficient to just put a notice in the newspaper (which only a small proportion of the public read) and notices on lampposts (again not noticed by many). It's very important that the local community are suitably informed.	<p>The relevant provisions in relation to advertising are contained in paragraph 10 of schedule 3 to the Local Government (Miscellaneous Provisions) Act which the Council must and will comply with. In so doing the Council will ensure this process is consistent with all of its other licensing functions.</p> <p>It is reasonable to expect that in compliance with the will of</p>

	<p>A general point is that from my experience of visiting Blackpool which has many such venues, these places downgrade the local environment and would taint the uplifting atmosphere that Bath inspires through its architecture. Unlike sports facilities, shops, and museums these venues do not provide anything positive to the people of the city but rather exploit people who are vulnerable. They should be licensed with extreme caution.</p>	<p>Parliament through newspaper notices and notices at, on or near the proposed premises, such applications will be brought to the attention of the community.</p> <p>No further action necessary.</p>
<p>7. Rev Stephen M'Caw – Team Rector, Keynsham Parish</p>	<p>We would welcome the enhanced ability of the Council to regulate lap dancing venues, strip clubs and such like as a consequence of adopting the new policy.</p> <p>The enhanced ability for example in paragraph 40</p> <p><i>"Having established the relevant locality, in considering the issue in ground the Council will take into account all relevant factors including:</i></p> <p><i>(a) The character of the locality, e.g. residential, leisure</i></p> <p><i>(b) Other uses in the locality, e.g. places of worship, educational establishments."</i></p>	<p>No further action necessary.</p>

<p>8. Robin Kerr – Secretary, Federation of Bath Residents’ Associations</p>	<p>FoBRA recently discussed this proposal in Committee. The general opinion (confined to the city, of course) was that there was no tradition of this kind of entertainment in Bath, unlike gambling, so, while most would prefer that it did not start, members felt that the powers should be taken up so that a tight regime existed.</p> <p>A preference that these clubs not be established in residential areas was stated, observing that they could be conspicuous, unlike casinos, and this would be likely to clash with Bath’s historic townscape. Rigid adherence to relevant planning conditions should be a prerequisite, therefore. Lastly, FoBRA thought it desirable that the process of licensing and its enforcement should be made self-financing.</p>	<p>The residential nature of an area can be taken into consideration when determining applications (discretionary grounds (c) and (d)), particularly where a large proportion of residences are occupied by families with children.</p> <p>The policy sets out the framework that the Council will use when determining licence applications for SEVs; although planning issues maybe a factor for consideration by the Licensing Sub Committee, the SEV licensing regime cannot be used to duplicate other regulatory regimes.</p> <p>The application fee for a Sexual Entertainment Venue licence will be set at such a level as to cover the costs of the licensing and monitoring of such venues.</p>
<p>9. Martin Purchase – Liquor Licensing Officer, Avon and Somerset Police</p>	<p>The consultation re this policy is the requirement prior to the adoption of this area of the legislation. It is both necessary and desirable that BANES has such a policy and has adopted the legislation. It provides a whole raft of measures/conditions and grounds for objection that are, difficult without this approach.</p> <p>I did some lobbying to persuade the council to adopt this legislation as it provides safe-guards, and without it the method of regulating and objecting is very blurred. The objection process is much the same as with liquor, ie make representations and have a hearing. I enquired of Bristol, they have the policy (which is almost word for word the same as BANES) it appears on their website.</p>	<p>No further action necessary.</p>

	<p>The police have not used it as far as I can ascertain, but this could be due to the fact that Bristol has had this type of venue for some time, and was fairly well regulated and suitable conditions placed on them prior to this legislation. The problems they have encountered seem to have revolved around the use of illegal immigrant girls in the main.</p>	
<p>10. Inspector Steven Mildren, Avon and Somerset Police</p>	<p>It would be a good idea for the LA to adopt these powers. It will give them, and us, greater ability to put control measures in place as the need arises. There are currently no such premises in Bath, and I am not aware of any plans in the near future for such premises.</p> <p>Interestingly, back last year two ladies came to Bath with an intention to set up a business whereby they would arrange sexual entertainment in a number of different venues.</p> <p>This would not be covered by the legislation, and in fact any of our licensed premises can have this sort of entertainment up to 12 times a year without having to comply with the legislation if it were in force. They were given some appropriate advice and decided that Bath was not the place for them to try to promote this type of business.</p>	<p>No further action necessary.</p> <p>No more than 11 occasions within a 12 month period.</p>
<p>11. Dominique Russell – Town Clerk, Radstock Town Council</p>	<p>The Council met last night and considered your consultation letter on Sexual Entertainment Venues. The Council supports Bath and North East Somerset Council in adopting the new powers.</p>	<p>No further action necessary.</p>

<p>12. Mrs I Leet, Honorary Secretary, Bath Central United Reform Church</p>	<p>Further to your letter regarding the above issue [sexual entertainment venues]. I have put this to our Elders' meeting and they agree that the Council should adopt the new powers provided by the Policing and Crime Act 2009. I have also read the policy and this seems to be a very comprehensive and a sensitive approach.</p>	<p>No further action necessary.</p>
<p>13. Mr Ian Perkins chairman of TARA – The Abbey Residents' Association</p>	<p>TARA is broadly supportive of the principles articulated in the draft strategy. There is broad agreement that these sorts of premises should not be sited close to residential properties and that decisions should be made on a case by case basis rather than on the basis of zoning.</p> <p>TARA thought it important to look at the wider impact of such establishments and the mix of entertainment provided in a particular area. For example the centre of Bath attracts lots of hen nights currently but few stag nights. Looking at the web sites of companies who sell hen and stag night packages the reason for this seems to be the lack of sexual entertainment venues in Bath. So the provision of such venues in close proximity to Bath's vertical drinking venues would have the potential to create a very considerable negative impact on the environment of the city centre.</p>	<p>The residential nature of an area can be taken into consideration when determining applications and each application would be determined on a case by case basis. No further action necessary.</p>

<p>14. Mr G Hudd, on behalf of the Trustees of Beechen Cliff Methodist Church</p>	<p>In principle I consider BANES should adopt the new powers provided by the Policing & Crime Act 2009. I am content to leave to BANES Council the contents of its policy in this regard, expecting that they will include prior consultation with local people.</p>	<p>No further action necessary.</p>
<p>15. Licensing Committee</p>	<p>The Committee recommended that that Full Council adopt Schedule 3 and the proposed policy with the revised provision that all new applications are brought before the Licensing (Taxis, Street Trading and Miscellaneous) Sub-Committee for determination.</p>	<p>Amend paragraph 26 of the policy to reflect the change that all new applications will be brought before the Licensing (Taxis, Street Trading and Miscellaneous) Sub-Committee for determination. The proposed new paragraph 26 will read:-</p> <p>26. All new applications for a licence will be determined at a hearing of the Council's Licensing Committee, or appropriate Licensing Sub-Committee.</p>