

CARLISLE CITY COUNCIL

Report to:- **CARLISLE CITY COUNCIL**

Date of Meeting:- 9 November 2010

Agenda Item No:-

Public

Title:- **LICENSING OF SEXUAL ENTERTAINMENT VENUES**

Report of:- Assistant Director (Governance)

Report reference:- GD 56/10

Summary:-

Section 27 of The Policing and Crime Act 2009 introduced a new category of sex establishment called 'Sexual Entertainment Venue', which amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, to allow local authorities to regulate lap dancing and similar entertainment.

This provision came into force on 6 April 2010 and local authorities may now resolve to adopt the new legislation so that it has effect in their area. Carlisle City Council has already adopted Schedule 3 of the 1982 Act for the licensing of sex shops and sex cinemas, a further resolution is necessary before the provisions of Section 27 will have effect.

On 13 October 2010 the Regulatory Panel considered a report on the subject and made recommendations for approval by the City Council. The following documents are attached:
Appendix 1 – Copy of the report to the Regulatory Panel 13 October 2010;
Appendix 2 – Minutes of the Regulatory Panel meeting 13 October 2010.

Recommendation:-

The City Council is asked to:

1. Adopt the provisions in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 Policing and Crime Act 2009 in relation to the administrative area of Carlisle.
2. Make the appropriate amendment to the Scheme of Delegation within the Constitution.

Contact Officer:- Jim Messenger, Licensing Manager **Ext:** 7025

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:- Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009

CARLISLE CITY COUNCIL

Report to:- **REGULATORY PANEL**

Date of Meeting:- **13th October 2010**

Agenda Item No:-

Public		Operational		Delegated Yes	
Accompanying Comments and Statements				Required	Included
Title:-		LICENSING OF SEXUAL ENTERTAINMENT VENUES			
Report of:-		ASSISTANT DIRECTOR - GOVERNANCE			
Report reference:-		GD 47/10			

Summary:-

Section 27 of The Policing and Crime Act 2009 introduced a new category of sex establishment called 'Sexual Entertainment Venue', which amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, to allow local authorities to regulate lap dancing and similar entertainment.

This provision came into force on 6 April 2010 and local authorities may now resolve to adopt the new legislation so that it has effect in their area. Carlisle City Council has already adopted Schedule 3 of the 1982 Act for the licensing of sex shops and sex cinemas, a further resolution is necessary before the provisions of Section 27 will have effect.

Recommendation:-

3. To adopt the provisions in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 Policing and Crime Act 2009 in relation to the administrative area of Carlisle.
4. To refer the above to the City Council for adoption.
5. To recommend that the City Council makes the appropriate amendment to the Scheme of Delegation within the Constitution.

J A Messenger
Licensing Manager

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:- Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009.

To the Members of the Regulatory Panel 13th October 2010

1 Background

- 1.1 Local authorities currently regulate sex establishments under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 which the City Council adopted on 7 February 1989.
- 1.2 The Licensing Act 2003 brought in a new regime of regulated entertainment which did not take account of 'adult entertainment' and this has created problems in some areas of the country.
- 1.3 In Carlisle we only have one establishment where 'adult entertainment' is held on a regular basis. There are others where it takes place infrequently. All have liaised closely with the licensing office prior to offering this entertainment.

2 Policing and Crime Act 2009

- 2.1 Section 27 of The Policing and Crime Act 2009 introduced a new category of sex establishment called 'Sexual Entertainment Venue', which will allow local authorities to regulate lap dancing and similar entertainment under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 2.2 Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than currently permitted under the Licensing Act 2003.
- 2.3 The procedure for local authorities to adopt Schedule 3 as amended by section 27 is set out in section 2 of the 1982 Act. The local authority must pass a resolution specifying that the amendments made by section 27 to Schedule 3 shall apply to their area and the day on which it shall come into force in the area. The specified day must be more than one month after the day on which the resolution was passed.
- 2.4 The local authority shall also publish notice that they have passed the resolution for two consecutive weeks in a local newspaper that is circulated in their area. The first publication shall not be later than 28 days before the day specified in the resolution for the provisions to come into force in the local authority's area and the notice should state the general effect of Schedule 3.
- 2.5 There will be a transitional period for 12 months beginning with the date that the local authority resolves that Schedule 3 as amended by the 2009 Act will come into force in their area. This is to allow any existing venues to obtain the appropriate licence.
- 2.6 If the Council decides not to make such a resolution as mentioned above by 6th April 2011, it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution. The purpose of this duty is to ensure that local authorities consider the views of local people where, for whatever reason, they have not adopted the legislation.

- 2.7 A sexual entertainment venue is defined in Schedule 3 of 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.” ‘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).
- 2.8 While each case will be judged on its own merits, it is expected that premises providing the following would be included:
- lap dancing
 - pole dancing
 - table dancing
 - strip shows
 - peep shows
 - live sex shows
- 2.9 Paragraph 2A(3) of Schedule 3 sets out those premises that are not sexual entertainment venues. These are: sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act); and premises which provide sexual entertainment on an infrequent basis (no more than 11 occasions within a 12 month period). Also, although the definition of relevant entertainment makes reference to a ‘live display of nudity’, the mere fact that there is a display of nudity does not mean that a ‘Sexual Entertainment Venue’ licence will necessarily be required. For example, if the display forms part of a drama performance in a theatre, in most cases it cannot reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience. In addition, spontaneous displays of nudity which are not provided for the financial gain of the organiser or entertainer, such as a spontaneous display of nudity by a customer or guest, do not fall within the definition of a sexual entertainment venue.

3 Transitional Period

- 3.1 Existing operators who hold a premises licence or club premises certificate under the Licensing Act 2003 will not be given preferential treatment or be automatically granted licences under the new provisions. However, they may continue to operate over a 12 month transitional period starting from when the new provisions are adopted. This will give existing operators a period of grace to adapt to the new legislation.
- 3.2 During the first 6 months of the transitional period existing and new operators can apply for a licence. At the end of this period the licensing authority must consider all applications together and cannot grant any until all have been considered. The number of licences granted may be limited by Council policy therefore it would be unfair to consider on a first come first served basis. After the first six months licences may still be applied for and each application will be considered on its merits in accordance with Council policy.

- 3.3 Any conditions on an existing premises licence under the Licensing Act 2003 which relates exclusively to sexual entertainment will be deemed to have been deleted from the premises licence at the end of the 12 month transitional period. Basically the conditions appearing on the licence will have no force. The Government suggests that operators may want to apply for a 'minor variation' to remove these redundant conditions to avoid confusion. Any sexual entertainment will be regulated by the conditions placed upon their new sexual entertainment venue licence.

4 Legal Considerations

- 4.1 The City Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 7 February 1989.
- 4.2 As a consequence of section 27 of the Policing and Crime Act 2009, if the City Council decides to license these entertainment premises, it must pass a resolution to adopt the variation.
- 4.3 The Constitution of the Council of the City of Carlisle delegates responsibility for licensing functions (with the exception of the Licensing Act 2003 and the Gambling Act 2005) to the Regulatory Panel, including the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. To avoid uncertainty, it should be noted that the amendment brought about by section 27 of the Policing and Crime Act 2009, is also included in this delegation.

5 Recommendation

- 5.1 To adopt the provisions in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 Policing and Crime Act 2009 in relation to the administrative area of Carlisle.
- 5.2 To refer the above to the City Council for adoption.
- 5.3 To recommend that the City Council makes the appropriate amendment to the Scheme of Delegation within the Constitution.

Prepared by
J A Messenger
Licensing Manager

REGULATORY PANEL

WEDNESDAY 13 OCTOBER 2010 AT 2.00PM

PRESENT:: Councillor Morton (Chairman), Councillor Bell, Graham, Layden (from 2.40pm), Mrs Parsons, Mrs Rutherford, Scarborough, Tootle, Mrs Vasey and Wilson.

RP.32/10 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors Mrs Robson.

RP.33/10 DECLARATIONS OF INTEREST

Councillor Wilson declared a personal and prejudicial interest in accordance with the Council's Code of Conduct in respect of agenda item A.1 – Hackney Carriage Driver – Speeding Conviction. The interest related to the fact that Mr Burgess had contacted him.

RP.34/10 MINUTES OF PREVIOUS MEETINGS

RESOLVED – 1) That the minutes of the meeting held on 14 July 2010 be agreed as a correct record of the meetings and signed by the Chairman;

2) That the minutes of the meeting held on 5 August 2010 be noted.

RP.35/10 HACKNEY CARRIAGE DRIVER – SPEEDING CONVICTION

Councillor Wilson, having declared a personal interest, left the meeting and took no part in discussion on the matter. Councillor Layden arrived during the consideration of the item and took no part in discussion of the matter.

The Licensing Officer submitted Report GD.52/10 regarding a Hackney Carriage Driver, Mr Burgess, who had informed the Council of a speeding conviction.

Mr Burgess was in attendance at the meeting.

The Assistant Solicitor outlined the procedure the Panel would follow. Mr Burgess confirmed that he had received and read the Licensing Officer's report. The Assistant Solicitor advised Mr Burgess that he had a right to be represented but he indicated that he did not wish to be so represented.

The Licensing Officer reported that Mr Burgess had been granted a Hackney Carriage driver's licence by the Regulatory Panel on 20 January 2010. His application had been referred to the Panel because of a large number of

convictions, both criminal and motoring, that he had received. The majority of the more serious offences took place prior to 2004

The Licensing Officer outlined Mr Burgess' previous convictions and informed the Panel that since his licence had been granted Mr Burgess had received numerous complaints about the manner of his driving. Mr Burgess had informed the Council that on 23 September 2010 he had received a fixed penalty notice and 3pts for speeding. He was in his taxi, with fare paying passengers, and he had been travelling at 92mph in a 70mph limit on the M74. Mr Burgess will have 9 points on his licence. Mr Burgess had claimed that he was on an airport run and was late for the flight.

The Licensing Officer reminded the Panel of the relevant Legislation and outlined the options open to the Panel.

Mr Burgess then addressed the Panel. Mr Burgess explained the circumstances of each of the four complaints; the incident outside of B&M in English Street occurred because a lorry driver aggressively asked Mr Burgess to move from the loading bay and took Mr Burgess' registration before Mr Burgess left with a fare. The incident at Hart Street occurred when Mr Burgess, at the request of the passenger, drove down the back lane of Hart Street and helped the passenger with her shopping. Mr Burgess was unable to leave the lane due to a parked car; he knocked on the owner's door to ask him to move the car. The owner took Mr Burgess' registration down and complained to the Council he had used the lane as a 'rat race'.

The incident on Kingstown Road occurred when Mr Burgess pulled out of the junction at Morrisons and the car behind him began flashing his lights. The gentleman from the other car shouted through Mr Burgess' open window when they reached the top of Stanwix Bank. Mr Burgess felt he had not done anything wrong.

With regard the incident involving another taxi Mr Burgess had brought a statement with him from the passenger that he was carrying at the time. He stated that he had collected a female passenger from The Crown at Stanwix and a taxi driver passed him at great speed, when they got to Georgian Way the passenger shouted out of the window to the other taxi driver that he should not be a driver driving like that and the other driver shouted that he was going to report Mr Burgess.

The Chairman read out the statement from the passenger which confirmed she had shouted at the driver due to his speed.

In response to Members questions Mr Burgess stated that he worked for City Taxis and was unaware of any complaints to them. Mr Burgess then explained that he had received the speeding conviction when he collected a gentleman from Gretna at 4.35pm and the gentleman told him he had to be at Glasgow airport by 6.00pm, Mr Burgess had felt under pressure and put his foot down. The gentleman was the only other person in the car.

Mr Burgess explained that he was due to be married and couldn't afford to lose his badge as it was his only income, he promised that he would not 'step out of line again' and that he was very sorry and it would not happen again.

In response to a question from the Assistant Solicitor Mr Burgess stated that he did not think he had a problem with his temper and he had remained calm during the incidents, he was not aggressive.

The respective parties then withdrew from the meeting whilst the Panel gave detailed consideration to the matter.

RESOLVED – 1) That, having given very serious consideration to the matter, the Panel agreed to revoke Mr Burgess' Hackney Carriage driver's licence as he was not a fit and proper person to hold a Hackney Carriage drivers licence as the Panel felt that Mr Burgess did not drive with due care and attention.

2) That it be noted that Mr Burgess was informed that he had a right of appeal and that right would be confirmed in writing.

RP.36/10 HACKNEY CARRIAGE DRIVER – THEFT CONVICTION

The Licensing Officer submitted Report GD.48/10 regarding a Hackney Carriage Driver, Mr Corrie, who had received a conviction for theft.

Mr Corrie was in attendance at the meeting.

The Assistant Solicitor outlined the procedure the Panel would follow. Mr Corrie confirmed that he had received and read the Licensing Officer's report. The Assistant Solicitor advised Mr Corrie that he had a right to be represented but he indicated that he did not wish to be so represented.

The Licensing Officer reported that Mr Corrie had held a Hackney Carriage drivers licence since 1997. Mr Corrie had four previous convictions.

The Licensing Officer reported that on 24 August 2010 Mr Corrie had been convicted of theft at Carlisle Magistrates Court. He had pleaded guilty to the offence and had been sentenced to a Conditional Order of Discharge for 12 months and ordered to pay £349.95 compensation and £50 costs.

The circumstances of the offence which led to the conviction were that on 25 July 2010 Mr Corrie had been working as a Hackney Carriage driver when he collected a female passenger from the Court Square rank and conveyed her to Blencowe Street. After leaving the taxi the female realised that she had left her mobile phone inside the vehicle. At a later date Mr Corrie was arrested by Police and as a result of an investigation was charged with the theft of the mobile phone.

The Licensing Officer explained that Mr Corrie's Hackney Carriage Drivers licence renewal application was received by the Licensing Officer on 26

August 2010 and it was noted that the Statutory Declaration had been completed, in the presence of a solicitor, by Mr Corrie on 23 August 2010, the day before he had been due in Court. The latest conviction could not have been declared on the Statutory Declaration at that time.

Mr Corrie had stated that he had not reported the conviction to the Licensing Office because he was deeply embarrassed. He stated that he did plead guilty to theft but there had been mitigating circumstances as to how he had been charged with that offence.

The Licensing Officer reminded the Panel of the relevant Legislation and outlined the options open to the Panel.

Mr Corrie then addressed the Panel. He stated that he had been convicted of theft by finding and accepted the fact that he had deprived the owner of their property but it was going to be returned. The phone had been left in his car and he had placed it in the front and carried on with his shift. During spare times in his shift Mr Corrie usually called his wife. Mr Corrie had used the passenger's phone because he had no credit on his own phone, this action would prove to be regrettable. Later the next day Mr Corrie had prepared some of his children for a three day trip to the Lake District (one daughter had stayed at home) and had forgotten about the phone until it rang. He answered the phone and had been verbally abused so hung up and put it away. He had planned to hand the phone to the Police when he returned to Carlisle but when he went home the owner of the phone had called his home number several times and had been very nasty to his eleven year old daughter. Mr Corrie believed that his daughter had not been lying about the calls as she had been upset and tearful, this behaviour had angered Mr Corrie and he had decided to let the owner wait for the phone until she was civil about it.

Some days passed and the plaintiff's father called Mr Corrie and as a result Mr Corrie smashed up the phone and put it in the bin. The Police then visited Mr Corrie at home and told him there would be no problem if he returned the phone; but because he had smashed it the Police had no alternative but to prosecute Mr Corrie. Mr Corrie had been fined at Court but the owner of the phone continued to harass him and Mr Corrie had to go to the Police. The owner of the phone admitted to harassment and Mr Corrie had to change his home phone number.

He stated that he would help anyone; he was a family man and trying to set a good standard to his children. He added that he helped the public including stopping a thief and he ensured that he carried the public correctly and in 13 years there had never been a complaint from members of the public about him. He regretted using the phone and was sorry for the upset it had caused; he asked that the Panel did not judge him on one bad mistake.

In response to Members questions Mr Corrie stated that he drove for a company and for himself and if he found anything in his car he would normally have handed it in at the end of his shift.

A Member asked Mr Corrie why his Statutory Declaration, that a solicitor witnessed, only had one of his convictions on it. Mr Corrie explained that he always only put the latest conviction on as it was the most serious and the others had happened when he was younger. He agreed that it had been a false declaration. He agreed that the use of the phone had been dishonest and he had learned from a bad mistake. He added that he was a full time driver. He explained that he had used the phone three times and it had remained in the car when he was in the Lakes. The owner had obtained his home number from her service provider.

The respective parties then withdrew from the meeting whilst the Panel gave detailed consideration to the matter.

RESOLVED – That, having given very serious consideration to the matter, the Panel agreed to suspend Mr Corrie's Hackney Carriage drivers licence for a period of one month.

2) That it be noted that Mr Corrie was informed that he had a right of appeal and that right would be confirmed in writing.

RP.37/10 LICENSING OF SEXUAL ENTERTAINMENT VENUES

The Licensing Manager presented report GD.47/10 regarding new legislation on the licensing of Sexual Entertainment Venues.

The Licensing Manager reminded the Panel that Local Authorities regulate sex establishments under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 which the City Council adopted on 7 February 1989. The Licensing Act 2003 brought in a new regime of regulated entertainment which had not taken account of 'adult entertainment' and this had created problems in some areas of the country. Carlisle had one establishment where 'adult entertainment' was held on a regular basis and there were others where it took place infrequently. All had liaised closely with the licensing office prior to offering the entertainment.

Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called 'Sexual Entertainment Venue', which amended Section 3 of the Local Government (Miscellaneous Provisions) Act 1982 to allow local authorities to regulate lap dancing and similar entertainment. Where adopted, the provisions would allow local authorities to refuse an application on potentially wider grounds than permitted under the Licensing Act 2003. .

The procedure for local authorities to adopt Schedule 3 as amended by section 27 was set out in section 2 of the 1982 Act. The local authority must pass a resolution specifying that the amendments made by section 27 to Schedule 3 shall apply to their area and the day on which it shall come into

force in the area. The specified day must be more than one month after the day on which the resolution was passed.

The local authority shall also publish notice that they have passed the resolution for two consecutive weeks in a local newspaper that was circulated in their area. The first publication shall not be later than 28 days before the day specified in the resolution for the provisions to come into force in the local authority's area and the notice should state the general effect of Schedule 3.

There would be a transitional period for 12 months beginning with the date that the local authority resolves that Schedule 3 as amended by the 2009 Act will come into force in their area. This was to allow any existing venues to obtain the appropriate licence.

If the Council decided not to make such a resolution as mentioned above by 6th April 2011, it must, as soon as reasonably practicable, consult local people about whether they should make such a resolution. The purpose of this duty was to ensure that local authorities consider the views of local people where, for whatever reason, they have not adopted the legislation.

The Licensing Manager highlighted the definition of sexual entertainment venues according to the Act and explained how the Transitional Period would operate. He also informed the Panel of the legal considerations.

RESOLVED – 1) That the Regulatory Panel recommends that the City Council adopts the provisions in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 Policing and Crime Act 2009 in relation to the administrative area of Carlisle commencing on 1 January 2011.

2) That the City Council be recommended to make the appropriate amendment to the Scheme of Delegation within the Constitution.

RP.38/10 REVIEW OF CHARGES 2011/2012 - LICENSING

The Licensing Manager presented report GD.50/10 regarding the proposed fees and charges for areas falling within the responsibility of the Licensing Section of the Governance Directorate.

The Licensing Manager reported that the Corporate Charging Policy, which was part of the Strategic Financial Framework and, had been approved by the Executive on 2 September 2010 and Full Council on 14 September 2010, sets out the City Council's policy for reviewing charges.

He added that it was recognised that licence fees (that can be determined by local authorities) could only be set at a level which recovered the cost of administration, inspection and enforcement of the licensing authorities, which arose out of carrying out their licensing functions under the various legislation.

For the financial year 2011/12, this would mean that the corporate target for income generation is 3.8%, however it was still Council policy to maximise charges wherever possible and this should be the case when setting charges. For licensing income this would equate to a target increase of £8,500 on 2010/11 budgets.

The Licensing Manager added that recognition should be made of the risk that licensing income levels could be subject to market forces outwith the Council's overall control, which included new responsibilities and the repeal of other legislation. In previous years shortfalls in income projections for certain services were encountered. This reinforced the message that any practice of simple annual increments in charges in line with the rate of inflation was inappropriate, as was a copycat approach that compared prices with other authorities without taking into account other local factors, demand and the achievement of Council priorities. The full range of factors identified in the guidance must be taken into account when setting charges with the overall aim of achieving target income levels.

In addition the policy recognised that each Directorate was different and required Directors to develop specific principles for their particular service of client groups, but within the parameters of the three main principles.

The Licensing Manager outlined the summary of income generated and the proposed increases to vehicle and Miscellaneous licences.

RESOLVED – That the charges as set out in Appendices A and B of Report GD.50/10 be agreed with effect from 1 February 2011. The increase would be subject to any required advertising for Hackney Carriages and no objections being received.

RP.39/10 PUBLIC AND PRESS

RESOLVED – That in accordance with Section 100A(4) of the Local Government Act 1972 the Public and Press were excluded from the meeting during consideration of the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in the paragraph number (as indicated in brackets against the minutes) of Part 1 of Schedule 12A of the 1972 Local Government Act.

RP.40/10 APPLICATION FOR A LICENCE TO DRIVE A HACKNEY CARRIAGE

(Public and Press excluded by virtue of Paragraph 7)

The Licensing Officer presented Report GD.46/10 regarding an application for a licence to drive a Hackney Carriage.

RE, the applicant, was in attendance at the meeting.

The Assistant Solicitor outlined the procedure the Panel would follow. RE confirmed that he had received and read the Licensing Officer's report. The Assistant Solicitor advised RE that he had a right to be represented but he indicated that he did not wish to be so represented.

The Licensing Officer provided details of the applicant's licensing history application and application. If the licence was granted by the Panel it would be subject to the applicant successfully passing his medical examination, criminal records check and IDS check in accordance with Council policy.

RE addressed the Panel. He informed the Panel of his personal circumstances and the reasons for his application.

The Licensing Officer reminded the Panel of the relevant Legislation and outlined the options open to the Panel.

The respective parties then withdrew from the meeting whilst the Panel gave detailed consideration to the matter.

RESOLVED – That, having given very serious consideration to the matter, the Panel agreed to refuse RE's application as there had not been a sufficient period of time between the revocation of his licence and the new application.

(The meeting ended at 3.30pm)