**Carlisle City Council**

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| **Report to:-** | **REGULATORY PANEL** |  |  |
| **Date of Meeting:-** | 13th October 2010 | **Agenda Item No:-**  |  |
| **Public**  | Operational | **Delegated Yes** |

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| 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:-

1. To adopt the provisions in Schedule3 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. To refer the above to the City Council for adoption.
3. 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. 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.
	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.
	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.

* 1. 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. 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 fist 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 Schedule3 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