

CARLISLE CITY COUNCIL

Report to:- **THE CHAIRMAN AND MEMBERS OF THE REGULATORY PANEL**

Date of Meeting:- 8 February 2012

Agenda Item No:-

Public	Operational	Delegated Yes	
Accompanying Comments and Statements		Required	Included
Cumbria Fire Service		No	No
Cumbria Constabulary		No	No

Title:- **APPLICATION FOR SEXUAL ENTERTAINMENT VENUE LICENCE – CLUB ROUGE**

Report of:- **DIRECTOR OF GOVERNANCE**

Report reference:- **GD 9/12**

Summary

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

On 9 November 2010 the City Council adopted the legislation in relation to the administrative area of Carlisle. On 26 April 2011 the City Council determined that the First Appointed Day for accepting applications would be 1 June 2011.

We have received one application for a SEV which is submitted for determination by the Regulatory Panel.

Recommendation:-

That the Regulatory Panel considers the application, along with information from the applicant and determine whether to grant or refuse.

Contact Officer: J A Messenger, Licensing Manager, Governance Directorate

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 Chairman and Members of the Regulatory Panel on 8 February 2012

1. INTRODUCTION

- 1.1 Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called 'Sexual Entertainment Venue' (SEV), which amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, to allow local authorities to regulate lap dancing and similar entertainment.
- 1.2 On 9 November 2010 the City Council adopted the legislation in relation to the administrative area of Carlisle.
- 1.3 On 26 April 2011 the City Council determined that the First Appointed Day for accepting applications would be 1 June 2011.
- 1.4 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.
- 1.5 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.
- 1.6 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. Any sexual entertainment will be regulated by the conditions placed upon their new sexual entertainment venue licence.
- 1.7 The relevant dates applicable to this application are:

First Appointed Date	1 June 2011
Second Appointed Date	1 December 2011
Third Appointed Date	1 June 2012

2. LEGISLATION

- 2.1 The legislation covering sex establishments is Sched 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009 to include Sexual Entertainment Venues. Both pieces of legislation may be adopted by the local authority.

2.2 Sex Establishments cover three types of premises:

- Sex shops
- Sex cinemas
- Sexual Entertainment Venues

2.3 The City Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 7th February 1989. The amendment under section 27 of the Policing and Crime Act 2009 was adopted on 9th November 2010. On 26th April the City Council determined that section 27 would come into force on 1st June 2011. In accordance with the legislation this means that any existing sexual entertainment venue that makes application between the first and second appointed dates would have their application determined after the second appointed date to come into force after the third appointed date, namely 1st June 2012.

2.4 On 26 June 1989 the then Licensing Panel of the City Council agreed to licence a sex establishment (sex shop) at 6 London Road, Carlisle. At that time they considered that one such establishment in that locality was sufficient.

3. APPLICATION

3.1 On 14 September 2011 an application for a Sexual Entertainment Licence, namely a sexual entertainment venue, was received from an existing operator:

Applicant	Glenn Joseph Henry Anderson
Premises	Rouge Englishgate Plaza Botchergate Carlisle

3.2 These premises have been operating as an adult entertainment night club since 2009 and currently operate under a premises licence issued under the Licensing Act 2003.

3.3 The application was advertised on the premises and in a local newspaper in accordance with the legislation. Cumbria Constabulary was also consulted. No representations have been received.

4. COUNCIL SEX ESTABLISHMENT LICENSING POLICY

4.1 On 20 April 2011 the City Council adopted a sex establishment licensing policy which incorporates guidance and standard conditions. Relevant paragraphs from the policy that apply to this application are as follows:

Determination of applications

3.1 The Local Government (Miscellaneous Provisions) Act 1982, Schedule 3, Section 12 (1)(a-e), prohibits the Licensing Authority from granting a licence:

- to a person under the age of 18; or
- to a person who is for the time being disqualified from holding a licence following revocation of such a licence; or
- to a person, other than a body corporate, who is not resident in an EEA state or was not so resident throughout the period of 6 months immediately preceding the date when the application was made; or
- to a body corporate which is not incorporated in an EEA state;
- to a person who had, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

Please note there is no right of appeal against refusal on these grounds.

3.2 If none of the above applies to the applicant and no objections have been received and there are no other statutory grounds for refusal, including that the application does not exceed any permitted numbers, the application will be granted by way of delegated authority.

3.3 However if any objections have been received, or if there are concerns regarding the characteristics of the locality, the application will be referred to the Council's Regulatory Panel for a hearing of the application.

Suitability of the Applicant

3.4 The Council will also have regard to the suitability and fitness of an applicant to hold a licence. In determining suitability, the Council will normally take into account:

- previous knowledge and experience of the applicant;
- any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area;
- any report about the applicant and management of the premises received from objectors or the Police and any criminal convictions or cautions of the applicant;
- any other relevant reason.

3.5 The above factors are not an exhaustive list of considerations but are merely indicative of the types of factors which may be considered in dealing with an application.

3.6 The Local Government (Miscellaneous Provisions) Act 1982, Schedule 3, Section 12 (3)(a-d) states, the Licensing Authority may refuse an application for the grant or renewal of a licence 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 for any other reason;
- (b) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewed 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 made (determined) is equal to or exceeds the number which the authority consider is appropriate for that locality;
- (d) that the grant or renewal of the licence would be inappropriate, having regard –
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made. “

An application for the transfer of a licence can only be refused by virtue of (a) & (b) above.

3.7 Each application will be decided upon its own merits. The Licensing Authority will not apply a rigid rule to its decision making.

3.8 The Licensing Authority will give clear reasons for its decisions.

5 CONSIDERATIONS

- 5.1 The applicant complies with all of the requirements under para. 3.1 of the Council policy.
- 5.2 Para. 3.2 of the policy refers to the permitted number of sex establishments. See paragraph 2.4 of this report.
- 5.2 Para. 3.3 of the policy states that if there are any objections to the application or concerns regarding the characteristics of the locality, the application will be referred to the Regulatory panel for a hearing of the application. In this instance there have been no objections; however Members may wish to consider the character of the locality.
- 5.3 Para. 3.6 of the policy gives reasons where the licensing authority may refuse an application for the grant of a licence. Para. 3.6(c) gives one such reason that the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is made (determined) is equal to or exceeds the number which the authority consider is appropriate for that locality.
- 5.4 As outlined in paragraph 2.4 of this report, in 1989 the Licensing Panel considered that one establishment was sufficient for the locality, on that occasion a sex shop.

5.5 This application is for a sexual entertainment venue, the Panel needs to consider:

- (i) this application is for a different kind of sex establishment to that currently licensed as described in paragraph 2.4 of this report;
- (ii) the operating the hours of operations do not coincide;
- (iii) the Panel may consider that this application is in a different locality to the licence granted in paragraph 2.4 of this report **(Appendix A)**

5.6 Standard conditions applicable to a Sex Establishment Licence (Sexual Entertainment Venue) would be attached to this licence if granted **(Appendix B)**

3. RECOMMENDATION

That the Regulatory Panel considers the application, after hearing from the applicant and determine whether to grant or refuse.

4. OPTIONS

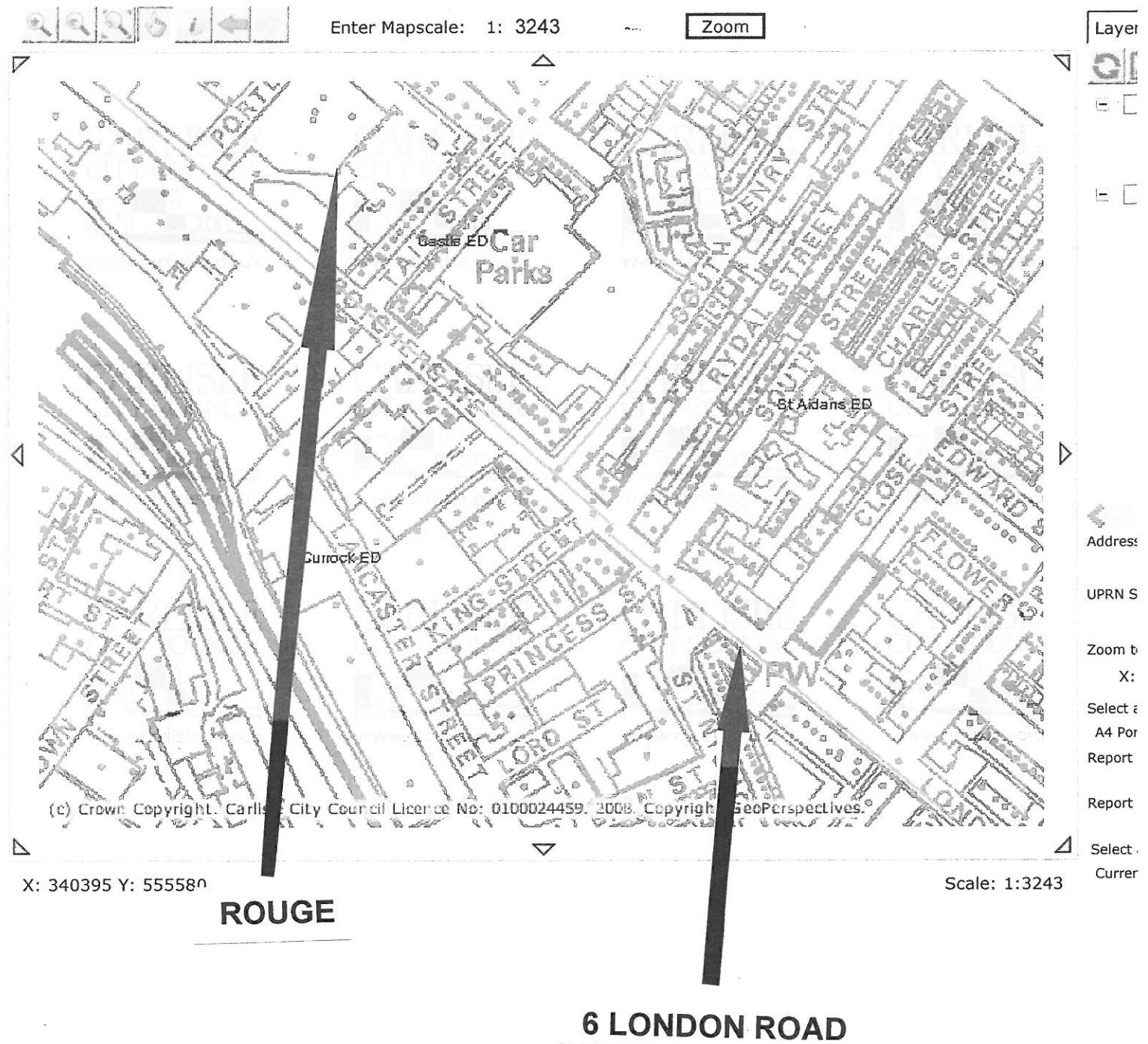
1. Refuse the application
2. Grant the application with or without additional conditions

Prepared by:
J A Messenger
Licensing Manager

APPENDIX 'A'

Carlisle On-line maps

If this site is not displaying as expected please click [here](#).



LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

SEX ESTABLISHMENT LICENCE
STANDARD CONDITIONS APPLICABLE TO A
SEXUAL ENTERTAINMENT VENUE

INTRODUCTION

1. In these Conditions “The Council” shall mean Carlisle City Council and all enquiries concerning this licence shall be directed to the Licensing Section, Carlisle City Council, Civic Centre, Carlisle CA3 8QG Tel: 01228 817523.
2. These conditions are imposed by the Council, pursuant to its powers under paragraph 13 (1) of Schedule 3 to the above Act, as terms, conditions and restrictions on a subject to which a licence is, in general, to be granted, renewed or transferred by the Council save, and insofar as, they do not conflict with the provisions of the Act itself.
3. These conditions are only applicable to a “Sexual Entertainment Venue” premises.
4. The Council reserves the right to amend, delete or add to these conditions as and when appropriate.
5. Licence Holders may find the website of the Lap Dancing Association useful alongside these conditions www.ldauk.org.uk.

Management of the Premises

5. The Licence Holder, or a responsible person over the age of 18 having been nominated by him, shall have personal responsibility for the Premises at all times when the Premises are open to the public.
6. Where the Licence Holder is a body corporate or an incorporated body, any change of director, company secretary or other person responsible for the management of the body shall be notified in writing to the Council within 14 days of such change and such written details as the licensing authority may require in respect of the change of personnel shall be furnished within 14 days of a request in writing from the Council.
7. A copy of the licence and any special conditions attached shall, at all times, be available on the premises for inspection by the police, the fire authority, and authorised officers of the Council.
8. Neither the Licence Holder nor any employee or other person shall seek to obtain custom for the licensed premises by means of personal solicitation, flyers, handouts or any other like thing, outside, or in the vicinity of the licensed premises.
11. The Licence Holder shall take all reasonable precautions for the safety of the public, employees and other persons working in the premises.
12. No person under the age of 18 years shall be admitted to the premises.

13. The Licensee shall adopt a procedure to check the age of customers entering the premises who appear to be younger than 25 in order to ensure that they are not under the age of 18.
14. All persons working in the premises, including Performers, shall be aged not less than 18 years. The Licensee must maintain adequate records of the names, addresses and dates of birth of performers including adequate identity checks.
15. The Licensee must submit a written "Code of Conduct" to the Licensing Authority as part of the application process; these rules will form part of the licence, and must be complied with. Furthermore they must ensure that all performers are fully conversant with and sign an agreement to adhere to such Code of Conduct.
16. In the event that an authorisation under the Licensing Act 2003 does not require the provision of a CCTV system, then the Licensee shall ensure a closed-circuit television system is installed internally and externally to the satisfaction of the Council. Appropriate notices must be displayed in accordance with the Data Protection Act 1998, advising that CCTV is in operation. In addition the Licensee must ensure that the requirement under that Act regarding registration with the Data Protection Commissioner is complied with.
17. CCTV recordings will be made available for viewing by authorised officers of the Licensing Authority or the Police. Copies of such recordings must be provided upon request.
18. CCTV must be capable of monitoring the whole of the premises, in particular any private booths or rooms to ensure the safety and security of performers and other persons within the premises. The CCTV system must be monitored by a dedicated member of staff or security personnel at all times that the premises are in operation.
19. The Licensee shall ensure that neither they nor any person promoting or providing entertainment on the Premises (nor any person acting on behalf of any such person) shall display advertisements promoting the entertainment or the Premises in any unlawful manner.
20. Where the Council have given notice in writing to the Licensee objecting to an advertisement on the grounds that, if displayed, it would offend against good taste or decency or be likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling, that advertisement shall not be displayed.
21. The Council may specify, in writing, the number of members of the public that shall be present on the Premises at any time whilst relevant entertainment takes place, on the grounds of public safety, public nuisance or crime and disorder. The Licensee shall ensure that the number specified is not exceeded at any time.
22. The Licence Holder shall provide upon request copies of any documents reasonably required by an authorised officer of the Council in relation to compliance with this licence.
23. The Licence Holder shall provide adequate non-public changing rooms for performers.

Opening of the Premises

24. Regulated entertainment, as authorised under the Licensing Act 2003, may only be provided during the hours permitted by an authorisation under that Act unless a specific condition on the Sex Establishment Licence permits otherwise.

Operation of the Premises

25. Approval from the Council is required for changes from:

- a sex shop (including a mail-order shop) to either a sex cinema or sexual entertainment venue
- sex cinema to either a sex shop or sexual entertainment venue
- a sexual entertainment venue to either a sex cinema or a sex shop.

This will require consideration of an appropriate application.

26. No sex articles or other items intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be used, displayed, sold, hired, exchanged, loaned or demonstrated in a sexual entertainment venue or a sex cinema.

External Appearance

27. A notice stating that no person under the age of 18 shall be admitted to the premises must be displayed on the outside of the premises.
28. The exterior design of the premises shall be such that the interior of the premises is not visible to passers-by.
29. The windows and openings of the premises shall be of a material or covered with a material, which will ensure the interior of the Premises is not visible to passers-by. At no time shall performers or persons working in the premises be visible from outside of the premises, with the exclusion of Door Supervisors.
30. The Licensee shall not permit the display outside of the premises of photographs or other images which indicate or suggest that relevant entertainment takes place on the Premises.
31. External advertising of relevant entertainment shall not include any of the following:
- a) any depiction of full nudity
 - b) any depiction of partial nudity (including the display of breasts, buttocks or genitalia)
 - c) any depiction of overtly sexual or violent images or any other images which may give rise to concerns in respect of public decency or protection of children or vulnerable persons from harm.
32. The windows, doors, fascia board, walls and all external parts of the premises including the roof shall not contain any form of writing, sign or display save for:
- (i) The licensed name of the premises (as explained in paragraph 52 hereof) may be displayed, unless the Council determines that the name is of a profane or sexual nature or gives other cause for concern.
 - (ii) The form of warning notice required to be displayed by virtue of the provisions of Section 1(6) of the Indecent Displays (Control) Act 1981.
 - (iii) A notice stating the opening hours of the establishment.
33. (a) No other words or signs, or any displays or advertisements, shall be displayed on the outside of the Premises or in the vicinity of the premises, except those mentioned in conditions 23 and 29 or otherwise approved by the Council in writing;
- (b) No external loudspeakers may be installed.

State, Condition and Layout of the Premises

34. Notwithstanding the Licence Holder's duties under the Health and Safety at Work etc Act 1974 and related legislation and his obligations under any lease or other

agreement for the use of the premises, he shall maintain the Premises in good repair and condition.

35. External doors shall be closed at all times other than when persons are entering or leaving the premises.
36. 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.
37. No access shall be permitted through the Premises to any other Premises adjoining or adjacent except in the case of emergency.
38. Alterations or additions, either internal or external, shall not be made to the Premises without prior written consent from the Council. A variation application will be required in order for consent to be considered.

Provision of Relevant Entertainment

39. Performers shall only perform in specified designated areas, to seated customers or in such other areas of the licensed Premises as may be agreed in writing with the Council.
40. The Licensee is to implement a policy to ensure the safety of the Performers when they leave the Premises after a period of work.
41. Performers must remain clothed in public areas and all other areas except while performing in areas specified by the Council as being where relevant entertainment may be provided.
42. At the conclusion of performances all articles of clothing removed during that performance must be put back on. This does not prevent performers going to their non-public changing area to change their attire.
43. Performers may not accept any telephone number, email address, address or contact information from any customer.
44. Performers may not give any telephone number, email address, address, contact information or business card to any customer or in any way solicit themselves.
45. Performers must not perform a nude table dance unless in a supervised area or within five metres of a floor supervisor.
46. Performers are never to be in the company of a customer except in an area open to the public within the Premises (this excludes the toilets as performers must not use the public toilets whilst open to the public).
47. The Licence Holder must ensure that during the performance of a table or lap dance:
 - (1) customers must be seated in an upright position against the back of the booth or seat with their hands by their sides before a dancer can start a table dance;
 - (2) customers must remain seated during the entire performance of the dance;
 - (3) for the purpose of restraint only, Performers may only touch a customer above the customer's chest (excluding the head) with their hands only;
 - (4) Performers must not sit on or straddle the customer;
 - (5) Performers must not place their feet on the seats.
48. The Licence Holder must ensure that during performances of relevant entertainment:
 - (1) Performers may not perform any act that clearly simulates any sexual act;

- (2) Performers must never intentionally touch the genitals, anus or breasts of another dancer or to knowingly permit another dancer to intentionally touch their genitals, anus or breasts;
 - (3) Performers may not intentionally touch a customer any time during the performance unless absolutely accidentally or due to a third party;
 - (4) Performers may not use inappropriate, suggestive or sexually graphic language at any time;
 - (6) Performers must not engage in communications that could be deemed as acts of prostitution or solicitation, even if the Performer has no intention of carrying out the act;
 - (7) Performers must only perform nude or semi-nude dancing (of any description) within areas specified by the Council.
49. The Licence Holder must ensure that during performances of relevant entertainment:
- (1) Customers may not dance at any time except in areas specifically designated by the Council as being separate from areas for sexual entertainment.
 - (2) Customers must remain appropriately clothed at all times.
50. At all times there must be no physical contact between customers and employees, or other persons working within the premises, in any part of the premises save for the following:-
- The payment of an entry fee by customers to authorised members of staff.
 - The payment of a fee for relevant entertainment.
 - The purchasing of drinks by customers from authorised members of staff.
 - The placing of bank notes by the customer in a garter worn by females or an armband worn by males.
 - SIA door staff in the execution of their duties.
51. At all other times during the performance the performer will keep a minimum distance of at least 3 feet away from the customer.
52. Relevant entertainment will only take place in specified designated areas within the premises, as identified on the plan attached to the licence.
53. Performers will stop immediately and move away from any customer who is offensive or attempts to touch them, and shall report such behaviour and any other inappropriate behaviour or breach of house rules to the management. If after receiving a warning a customer continues to behave inappropriately, the customer must be requested to leave the premises and should be escorted from the premises by appropriately authorised staff only (i.e. SIA registered door supervisors).

Licensed Name

54. (a) The Council at the time of granting the licence in respect of the premises shall appoint a name referred to as "The Licensed Name" by which it is intended that the premises shall be known and the licence holder shall ensure that the premises are known solely by that name and by no other, save as provided for by paragraph (b) below. Such name shall have been provided on the application form.
- (b) An application in respect of a change of licence name shall be made to the Council in writing not less than 28 days prior to the proposed change and the Council shall have an absolute and unfettered discretion to allow or refuse such change.