



POLICY FRAMEWORK

REGULATION OF SEX ESTABLISHMENTS

**Schedule 3 Local Government
(Miscellaneous Provisions) Act 1982
(as amended by the Policing and
Crime Act 2009)**

20 January 2011

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1. Foreword by Councillor Malcolm Graham

In 1983, Gateshead Council adopted the Local Government (Miscellaneous Provisions) Act 1982, and it has been regulating sex shops and sex cinemas in the area ever since.

Over that time there have not been many such premises in the Borough, but those that have been open have largely operated in accordance with the terms and conditions laid out by the Council, to ensure that they carry out their business in such a way as to –

- be appropriately located and discrete (without unduly hindering business growth);
- ensure that only those persons who may lawfully run or work in such premises do so; and
- ensure that only those customers who may lawfully enter the premises and buy age restricted products do so.

The experience in Gateshead has been that both the trade and its patrons are, on the whole, responsible and sensitive to the needs of the communities in which licensed activities take place; and that the Act itself is a key tool in the Council's toolkit to tackling the problems that occur where such activities have a negative impact. Businesses that operate under these licences can make a valued contribution to the Borough's sustained growth as a healthy, equal, safe and prosperous place to live and work.

When the scope of the Local Government (Miscellaneous Provisions) Act 1982 was extended to include sexual entertainment venues as well as sex shops and sex cinemas, Gateshead Council undertook a consultation with interested parties and stakeholders, asking whether people thought the Council should adopt the changes, and if so, asking for views on this Policy. The response was again broadly supportive of the proposals.

This Council will give residents and responsible bodies an opportunity to have their views taken into account when the Council decides important matters that can have such a positive or indeed negative impact. This Council recognises that upholding the objectives set out above is fundamental to the carrying on of responsible licensed activities, and this Policy sets out how Gateshead Council intends to exercise its licensing and regulatory function.

In the next few years Gateshead Council, along with the rest of the public sector, will have to meet the challenge of achieving its aims and obligations with reduced resources. Ensuring the promotion of these objectives will remain paramount to this Council.

The Policy will in due course be reviewed and updated.

2. Strategic Context

2.1. The Council's overall vision for Gateshead, as described in the refreshed Vision 2030, Gateshead's Sustainable Community Strategy, is:

“Local people realising their full potential, enjoying the best quality of life in a healthy, equal, safe, prosperous and sustainable Gateshead”

2.2 The licensing of premises as sex establishments (sex shops, sex cinemas and sexual entertainment venues) plays an important role in realising this vision. In particular, it supports the Corporate Priority 1, *Delivering Vision 2030 focusing on Economy, Environment and Health* and Corporate Priority 2 *Engaging Communities*.

2.3 This Policy sets out the strategic guidelines for licensing these type of premises in Gateshead. The objectives of this Policy are to -

- Enable applicants, licensees and interested parties to understand the principles that will be applied by this Licensing Authority when regulating such premises;
- To establish the general principles that will be applied by this Licensing Authority in its regulatory activities; and
- To assist in applying the national legislation within the local context of the Borough as a whole and within the wards that make up the Borough.

2.4 The overriding objective of this Policy is to ensure that premises licensed by this Authority under this legislation do not contribute directly or indirectly to crime, disorder or harm to individuals or groups within the community; whilst seeking also not to be unduly restrictive of the rights of persons seeking to operate well-run premises in appropriate locations. It will be the intention of this Authority to consider each matter on its individual merits, and to act in a fair and proportionate way to achieve this objective.

2.5 This policy and the Licensing Authority's functions seek to achieve control of premises within the terms of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Policing and Crime Act 2009). Terms and conditions will focus on achieving the objectives stated above with reference to:

- matters within the control of individual licensees
- the specific premises and the places used
- the vicinity of those premises and places
- the direct impact of the activity taking place at the licensed premises on public who live, work and carry out normal activity in the area concerned

2.6 The Policy links closely with a number of key plans and strategies produced by the Council and its partners, including the Gateshead Community Safety Strategy.

3. Local context

- 3.1 Gateshead is a constantly changing borough that combines the most modern facilities with a fascinating heritage. Set in the conurbation of Tyneside, Gateshead stretches almost 13 miles along the south bank of the river Tyne and covers an area of 55 square miles, making it the largest in area of the five Tyne and Wear metropolitan authorities. Gateshead is ranked the 26th most deprived district in England out of 354 in terms of issues such as income, employment, health, housing, crime, the living environment and education according to the Index of Multiple Deprivation 2004. The Index was prepared using Lower Layer Super Output Areas. There are 126 Lower Layer Super Output Areas in Gateshead. Of these 34 are in the top 10% most deprived areas in the country. These fall within ten of Gateshead's wards.
- 3.2 Gateshead has seen a decline in the number of its residents over the last 20 years. The population has declined from 199,652 in 1991 to 191,151 in 2001. This represents a 4.3% decrease and ranks Gateshead as having the 4th largest population decline out of 376 local authorities in England and Wales. The population continued to decline as highlighted by the mid-2004 population estimate of 190,400 people (rounded to the nearest hundred). However, in the two years since 2004 there has been a small reverse of that trend with the population remaining at 190,400 in 2005, and increasing to 190,500 in 2006. 8% of residents are over 75 years old and there is also a small but increasing number of residents from black, and minority ethnic groups.
- 3.3 For a number of years Gateshead has had one licensed sex establishment, being a sex shop located in industrial premises near Blaydon. There are also a small number of unlicensed premises that sell sex articles. Gateshead does not have any licensed sex cinemas. In relation to the licensable activities that would take place in sex cinemas and sexual entertainment venues, where these activities take place in the Borough at present they are generally integral or ancillary to activities that are licensable under the Licensing Act 2003. Although Gateshead does not have a specific lap-dancing or striptease club there may be a number of premises that will currently provide entertainment that will require a sexual entertainment venue licence, for instance pubs and clubs where strippers, pole dancers, etc perform.

4. Legal Background

- 4.1 On 8 December 1982 Gateshead Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, in respect of the regulation of sex shops and sex cinemas. On 6 April 2010 section 27 of the Policing and Crime Act 2009 came into effect introducing a new category of sex establishment called "sexual entertainment venues" giving local authorities in England and Wales the power to regulate such venues under the same provisions of the 1982 Act as sex shops and sex cinemas.
- 4.2 The new legislation gives local authorities more powers to control the number and location of venues such as lap dancing clubs and similar in their area.
- 4.3 These powers are not mandatory and will only apply where they are adopted by local authorities.

- 4.4 Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted currently under the Licensing Act 2003 and will give local people a greater say over the regulation of these venues in their area.
- 4.5 There are a number of terms that are used in the Local Government (Miscellaneous Provisions) Act 1982 (“the Act”) which have a specific meaning as defined in the Act, or which are open to interpretation, and in which case this Policy seeks to set out the interpretation that will generally be applied by this Authority.
- 4.6 “Sex shops” are defined in the Act as any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or other things intended for use in connection with or for the purpose of stimulating or encouraging sexual activity.
- 4.7 “Sex cinemas” are defined in the Act as any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures which are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage sexual activity, acts of force or restraint which are associated with sexual activity or are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions.
- 4.8 “Sexual entertainment venues” are defined in the Act as any premises, vehicle, vessel or stall at which relevant entertainment is provided before a live audience (which can be only one person) for the financial gain of the organiser or the entertainer. It is important to note that the definition of ‘premises’ does not include a private dwelling to which the public is not admitted. “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. “Displays of nudity” are displays of a person’s pubic area, genitals or anus, and in the case of women, nipples also.
- 4.9 The term “significant degree” is used in respect of sex shops and sex cinemas, and is not defined in the Act. Although there has been some case law regarding the meaning of this term, there is no rule of thumb that can be applied when determining whether the sale of sex articles etc constitutes a significant degree of the business in question. It is clear from the relevant case law that the ratio between sexual and other aspects of the business will always be material, as will the absolute quantity of sales, movies shown, etc. It is this policy of this Authority that when determining whether licensable activities constitute a significant degree of a business etc, it will have regard to the character of the remainder of the business, the nature of the display and the nature of the articles, films, etc.
- 4.10 Whilst the term “significant degree” is not used in relation to sexual entertainment venues, the principle has in fact been established within the Act as premises that have relevant entertainment less frequently than once a month are excluded from the definition of “sexual entertainment venues”.

- 4.11 It should also be noted that only sex shops can sell or supply DVDs and other recordings that are certified “R18”, and it is an offence under the Video Recordings Act 1984 to do so without a licence.
- 4.12 It should also be noted that a licence under the Act is not required for the sale or supply etc of articles that are manufactured for use for the purposes of birth control.
- 4.13 This policy has been prepared with due regard to the provisions of the Crime and Disorder Act 1998 in respect of the reduction of crime and disorder including anti-social behaviour and other behaviour that can or is adversely affecting the relevant localities described below. Northumbria Police are a key consultee in the preparation of this policy, and it is the aim of this Authority to work closely with the police to achieve the objectives of the Act and those set out in this policy.
- 4.14 This policy should be read in conjunction with the Act itself and the Home Office guidance from time to time (the version dated March 2010 being current at the time of writing).
- 4.15 This policy does not in any way fetter the discretion of the decision makers appointed by this Authority, and each case will be taken on its individual merits. The main consideration when determining matters under this policy is whether to apply the policy as set out or whether there is good reason, having regard to all relevant matters and disregarding all irrelevant matters, to deviate from the policy if the individual facts warrant a different approach to be taken. Every decision will be approached with an open mind.

5. Integration with the Licensing Act 2003

- 5.1 Certain premises licensed under the Licensing Act 2003 will already be providing regulated entertainment that [would / will] require a sexual entertainment licence to also be obtained.
- 5.2 There are exemptions in the Act where the regulated entertainment is provided on fewer occasions, less frequently or for a shorter period of time than is required to trigger the requirement for a sexual entertainment licence. Operators may also request to the Authority to exercise its waiver, which is discussed further below.
- 5.3 Where premises are required to be licensed as sexual entertainment venues, it will not be necessary to also have a licence under the Licensing Act 2003 to permit the entertainment. However, if other activities licensable under the Licensing Act 2003 (such as the sale and supply of alcohol) take place at the premises, it will still be necessary to obtain a licence / club premises certificate / temporary event notice authorisation for those activities.
- 5.4 Premises will not be excluded from the scope of both regimes, so if sexual entertainment is provided on an infrequent basis (meaning that a sexual entertainment venue licence is not required) a premises licence / club premises certificate / temporary event notice authorisation would still be required.

6. General Principles of the Policy

6.1 When this Authority receives an application for a licence under the Act, it will consider whether to grant or refuse the application. Given the potentially sensitive nature of these applications, it is the policy of this Authority at this time that all such determinations shall be made by the Council's Regulatory Committee rather than through delegated powers.

6.2 Licences may be refused for the following reasons –

- The applicant is unsuitable to hold the licence they have applied for because they have been convicted of an offence, or for any other reason
- If the licence were granted (or in the case of an existing licence if it were to be 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, if they applied for a licence themselves, would be refused it
- The number of sex establishments in the relevant locality at the time that the application is determined by the Committee is equal to or exceeds the number which the Authority considers appropriate for that particular locality
- It would be inappropriate to grant or renew the licence sought having regard to the character of the relevant locality or the use to which any premises in the relevant locality are put (which may change during the currency of a licence); or to the character, condition, layout etc of the premises in question.

Locality

6.3 The number of sex establishments that this Authority considers appropriate in respect of the various localities in the Borough will depend on the individual circumstances at the time of each application, and on the factors set out in Appendix 1 of this policy.

6.4 Each locality shall be considered on an individual basis rather than considering the Borough as a whole or indeed each ward as a whole, where the ward is broken up into a number of areas that may be more or less suitable for premises to be located in. By way of guidance, Appendix 1 sets out the wards within the Borough. It may be however that due to the nature of the application being made, the locality relevant to that application is larger (or indeed smaller) than the ward in which the premises are located. It is also possible that an application may require consideration of the impact that granting it would have on the whole of the Borough. This will depend on the individual circumstances of each application.

6.5 Before determining an application, the Authority will first determine the appropriate locality, in order that it may then fully consider the character etc of that locality.

- 6.6 Whilst it may be appropriate to define the locality relevant to an application in precise terms, this may not be necessary in every instance, and it is open to this Authority to determine that the relevant locality is simply the area surrounding the specified premises without further definition.
- 6.7 It should be noted that whilst this Authority may determine that it is not appropriate to have sex establishments of a particular kind in a locality, it may nevertheless be that a sex establishment of another kind would be permitted. So for instance, although it may not be appropriate for there to be a sexual entertainment venue in a particular place, a sex shop may be permissible.
- 6.8 Where there are a number of applications for licences within a particular locality, this Authority will not decide how many licences to grant until it has heard all eligible applications.

7. Application process

- 7.1 Subject to certain exceptions set out in the Act, a person aged 18 years old or over, an unincorporated body or a business incorporated in the European Economic Area may apply for a licence.
- 7.2 In order for a complete application to be lodged it is the policy of this Authority that it should contain :
- The required fee
 - The completed and signed application form
 - A scale plan of the premises to which the application relates
 - Applicants are expected also to provide details of the activities they intend to take place and the arrangements that have or will be made to ensure that the objectives of the Act and this policy are upheld. The application should also set out the following information in sufficient detail and clarity to enable the Authority, consultees and potential objectors to understand -
 - What licensable activities are intended to be carried out
 - When licensable activities will be carried out – i.e. between what hours, on what days and at what times of year
 - What other activities are or are intended to be carried out at the premises
 - What steps will be taken to promote the objectives set out in this policy.
- 7.3 It is very important that applicants clearly set out the steps they intend to take to promote the objectives. This is the applicant's opportunity to show the authorities and their neighbours that they intend to run a responsible business.
- 7.4 Where premises wishing to provide sex-related entertainment are located near schools, places of worship, hospitals, youth clubs or other premises where significant numbers of children are likely to attend, it is likely that representations will be received. Applicants should be sensitive to the needs of interested parties, and should bear in mind that their licence may be reviewed, restricted or

indeed revoked if it is determined that the activities are harmful to the objectives set out in this policy.

7.5 This Authority will expect applicants to consider the following issues carefully :

- Whether the activities are to be held in places where the passing public may see or hear them, for instance due to visibility / audibility from outside the premises or from the activities taking place outside the premises
- Ensuring that children are not admitted to and cannot witness these activities
- Pre-employment checks and ongoing CRB checks
- Customer profiling (age, disability, etc)
- Effective and responsible management of the premises
- Siting of external advertising, signage and lighting including security lighting
- Provision and maintenance of CCTV and storage of CCTV footage for extended periods
- The location of premises and proximity to residential and other sensitive premises
- whether there are any gender equality issues arising, for instance whether the proposed activities may deter women from the area. It may be relevant to have regard to the location of any women's refuges, support centres, etc.
- whether the premises will have any impact on tourism or regeneration

7.6 In respect of sexual entertainment venues, applicants should also consider :

- Codes of conduct for performers and staff including supervisors and security
- Rules of conduct for customers
- Distance between performer and customer
- Disciplinary measures for performers, staff customers in the event of breaches of the above

7.7 This Authority considers the effective and responsible management of the premises, instruction, training and supervision of staff and the adoption of best practice to be amongst the most important control measures for the achievement of the objectives set out in this policy. For this reason, applicants will be expected to demonstrate how they intend to implement appropriate measures in this respect. If applicants are not able to do so the application will generally be refused.

7.8 Applicants are required to publish an advertisement of their application in a local newspaper not later than seven days after the date of their application. The local newspapers that circulate in the Borough are the Evening Chronicle and the Journal.

7.9 Applicants must also send a copy of the application to the Chief Officer of Northumbria Police within seven days of the date of application.

- 7.10 Applications for premises to be licensed (rather than a vehicle etc) must also be advertised for 21 days from the date of application by notice displayed on or near the premises in a place that can be conveniently read by the public. This will be inspected by the Authority's officers during this period.
- 7.11 It is the policy of this Authority that notice of such applications shall also be placed on the Council's website, and the application will be available for public inspection at the Council's offices the address of which is set out below.
- 7.12 Once a complete application has been received and the notice and advertising provisions have been complied with, a statutory period of 28 days will commence during which time parties may make objections to the Authority. It should be noted that the Act only provides for objections to be made and not representations in support of the application.
- 7.13 If the licence is then granted, 'standard conditions' will be attached unless they are disapplied or varied by the Committee. These are set out in Appendix 2 to this policy.

The plan

- 7.14 When an application for a licence is submitted to the Authority it must be accompanied by a plan showing the location and layout of the premises, and in the case of a vehicle, vessel, etc it must show the place where it is intended for the establishment to be located.
- 7.15 If a licensee intends to alter the premises in such a way as would have any effect on the plan submitted to the Authority the licensee is advised to contact the Authority before making any alterations, as it may be necessary for the licence to be reviewed.

8. Objections

- 8.1 In cases where objectors seek to establish that an application should be refused on the grounds that granting the particular application would mean that there was more than the appropriate number of premises for a particular locality, and that granting the licence is likely to result in harm being caused to the objectives set out in this policy, the onus is on the objector to:
- Identify the boundaries of the area from which it is alleged problems are arising or are likely to arise if the application is granted
 - Provide in as much detail as possible evidence as to the seriousness and causes of the relevant nuisance and/or crime and disorder in the area
 - Identify the objective(s) of the Act and this policy which it is believed will be undermined having regard to the nature of the licensed activity to be carried on at the premises.

9. Hearings

- 9.1 If objections to an application are received within the relevant time period as above this will trigger a hearing before the Regulatory Committee. Applicants

should note, however, that even if no objections are received, a hearing may still be called where it is considered appropriate to do so.

- 9.2 Where objections are received, before the Authority considers the application it will give notice in writing of the general terms of the objections to the applicant. Objectors should be aware that their objections may be forwarded to the applicant, redacted as appropriate, and objectors who do not wish this to be done should advise the Authority accordingly in their objection.
- 9.3 Where it is appropriate, parties are encouraged to mediate to attempt to resolve the issues, and if that can be done without the need for a hearing then the parties can request that the hearing is dispensed with.
- 9.4 Otherwise, the application will be determined by the Committee having regard to the Act, this policy, and the representations received in writing and made at the hearing.
- 9.5 A written note of the Committee's decision will be provided to the applicant and objectors, setting out the reasons for the Committee's decision.
- 9.6 The Authority shall have regard to the human rights of the applicant when determining an application, in particular under Article 10 (right to freedom of expression) and Article 1 Protocol 1 (protection of property) of the European Convention on Human Rights.

Conditions

- 9.7 'Standard conditions' will be attached to licences unless they are disapplied or varied by the Committee. These are set out in Appendix 2 to this policy.
- 9.8 If other conditions are required in particular circumstances, they will be tailored to reflect the individual style and characteristics of the premises and activities concerned.
- 9.9 Conditions will not be imposed where the Licensing Authority considers other regulatory regimes provide sufficient protection to the public eg food safety, health and safety at work and fire safety legislation.
- 9.10 It is the Licensing Authority's view that, when considering conditions, there should be openness, transparency and reasonableness. Consequently, officers will seek to discuss proposed conditions in advance with the applicant and/or representative with the aim of achieving a mutually agreeable level of protection to the public along with fulfilment of the objectives set out in this policy. All parties should however be aware that if a hearing is necessary, it is the Committee that will determine whether any conditions are to be imposed, and if so what those conditions will be.

10. Transfers

- 10.1 Where a licence holder wishes to transfer their licence to another person, they may apply to the Authority to do so, and will need to pay the appropriate fee.

- 10.2 In these circumstances, the transfer will be determined by the Regulatory Committee, and the Chief Officer of Police will be invited to make representations regarding the proposed transfer. The person seeking the licence to be transferred into their name will be expected to make to the Committee. The Committee will then either approve or refuse the transfer application.
- 10.3 If the application is refused then the licence will remain in the name of the person who held it prior to the transfer application. That person will then assume all such responsibilities unless and until the licence is transferred to someone else. If that person does not wish to regain those responsibilities they must contact the Authority immediately to surrender the licence.

11. Waiver

- 11.1 Licensing Authorities may exercise a waiver of the requirement for premises to be licensed where it is considered unreasonable or inappropriate to require the particular premises to be licensed.
- 11.2 It is the policy of this Authority to consider whether to waive the requirement to be licensed only upon the written request of an applicant, who will be expected to set out in detail the reasons why they believe that such waiver should be granted.
- 11.3 It may be appropriate to grant a waiver of the requirement to hold a licence in circumstances where there is some question as to whether a licence is in fact required, for instance where it is unclear if the 'significant degree' test set out in Paragraph 4.9 of the Policy.
- 11.4 It may also be appropriate, depending on the circumstances, to exercise discretion to grant a waiver where premises do not meet the frequency exemption set out at paragraph 2(A)(3)(b) of the Schedule by reason of having two events within a month, but that the premises would otherwise meet this exemption.
- 11.3 Economic factors will generally not be sufficient to justify a waiver being granted, as this Authority aims to set its fees for licences under the Act at a reasonable level to balance the financial impact on licensees with the costs of regulation and enforcement.
- 11.4 If a waiver is granted then the applicant will be informed in writing by the Authority.
- 11.5 A waiver may be terminated by the Authority on 28 days notice.

12. Complaints about premises

- 12.1 The Authority will investigate complaints about premises where appropriate, in relation to premises that are licensed and are breaching conditions or otherwise acting inappropriately, and in respect of unlicensed premises where it appears that the premises should be licensed. Complainants will, in the first instance, be

encouraged to raise the complaint directly with the licensee or business concerned. In the case of a valid complaint, the Authority will initially endeavour to seek a resolution through informal means.

12.2 All complaints must, in the first instance, be addressed to the Environmental Health, Licensing and Enforcement Manager, Regulatory Services, Civic Centre, Regent Street, Gateshead NE8 1HH.

12.3 Where they consider appropriate, the Authority may pass any complaint on for investigation by any other statutory agency under whose enforcement responsibility the complaint falls.

13. Enforcement

13.1 The Council delivers a wide range of enforcement services, aimed at safeguarding the environment and the community and at providing a 'level playing field' on which businesses can fairly trade. The administration and enforcement of the licensing regime is one of these services. The Council has adopted the Government's *Enforcement Concordat* and the *Regulator's Compliance Code* which are designed to ensure effective and efficient public protection services and is based around the principles of consistency, transparency and proportionality.

13.2 The enforcement policy proposes that a graduated response is taken where offences against licensing legislation are found or where licence conditions have been contravened. An isolated administrative offence may be dealt with for example by way of a written warning whilst more serious offences which have either been committed over a period of time or which jeopardise public safety may result in a referral for prosecution.

13.3 The Council will seek to work actively with the Police, Fire & Rescue Service, Trading Standards and any other relevant authority to enforce the licensing legislation. This may include carrying out test purchases, inspections of licensed premises, investigating complaints about licensed premises and investigating allegations of unlicensed premises. Such a partnership approach is intended to prevent duplication of effort, maximise the potential for controlling crime and disorder at premises and to ensure compliance when relevant conditions are appropriate. Gateshead Council has approved the Northumbria Police Joint Enforcement Protocol, which will encourage a consistent approach to enforcement throughout the Licensing Authorities within the Northumbria Police area.

13.4 Inspections will take place at the discretion of the Council and its partner agencies and will be concentrated on areas of need. A light touch inspection regime will be employed for well managed and maintained premises with a targeted and graduated inspection and enforcement regime for problem and high-risk premises.

13.5 Where possible and appropriate, the Authority and its partner agencies will give early warning to operators of any concerns.

13.6 The Authority will carry out its responsibilities for enforcement so as to promote the objectives set out in this policy.

14. Reviews

- 14.1 Where it appears appropriate to the Authority by reason of complaint, breach of condition or otherwise, a licence may be reviewed by the Regulatory Committee. A licensee may also request that their licence be reviewed, for instance in order to vary its terms.
- 14.2 Where an application to review a licence is received by the Authority, it should be accompanied by any relevant supporting information, documentation, etc. If the application is relevant, and is not frivolous, vexatious or repetitive, a hearing before the Regulatory Committee will be held. The Committee will consider all information presented to it, and decide what course of action is appropriate. The Committee may –
- Take no action
 - Impose conditions on the licence
 - Vary the terms of the licence
 - Revoke the licence or certificate.
- 14.3 A review can take place even if it would be disproportionate to revoke a licence, as some lesser measure can be taken, as above.

15. Appeals

- 15.1 Where an applicant is refused a licence they have a right of appeal to the Magistrates' Court within 21 days, unless the refusal is for reason that the number of sex establishments in the relevant locality is equal to or exceeds the number that the Authority considers appropriate or the grant of the licence would be inappropriate having regard to the character of the locality, the use to which premises in the vicinity are put, or the layout, character or condition of the premises in respect of which the application is made (in which case there is no right of appeal).
- 15.2 Objectors have no right of appeal under the Act.

16. Fees

- 16.1 The table at Appendix 3 sets out the fees applicable for each type of sex establishment. In determining these fees, this Authority has had regard to the European Services Directive : Guidance for Local Authorities, and LACORS Guidance on the Impact of the Services Directive on Councils Setting and Administering Local Licence Fees within the Service Sector

17. Decision Making

- 17.1 Unless there are compelling reasons to the contrary, the Authority will require the Regulatory Committee to meet in public – although Members will retire into private session to consider their decision. A public announcement of the decision will be made at the end of the hearing together with clear, cogent reasons for the decision having due regard to the Human Rights Act 1998, the policy and all other relevant legislation.

17.2 The Committee will determine each case before it on its individual merits. However, in determining the application the Committee, will consider:

- The case and evidence presented by all parties
- The promotion of the objectives set out in this policy
- Guidance issued by central Government

18. Consultation and Review

18.1 This Policy came into effect on 20 January 2011. The Council shall review this policy at least every three years and will, in doing so, take into account the views of:

- The chief officer of police
- Persons/bodies representative of businesses and residents in the borough
- Holders of current Licensing Act 2003 premises licences and club premises certificates in the borough
- The Holders of the current Sex Establishment licence in the borough
- Other interested parties – organisations and individuals with an interest in the regulation of sex establishments both locally and nationally

18.3 The Council, may however, review the policy at any time within those three years should it consider it appropriate to do so.

18.4 Consultees are encouraged to report to the Council annually on the operation of the licensing function.

18.5 Following consultation, any revisions to this Policy will be published.

19. Further information

19.1 Further information can be obtained from:

Licensing Section
Regulatory Services, Gateshead Council, Civic Centre, Regent Street
Gateshead, Tyne and Wear NE8 1HH

Tel: 0191 4333911
Fax: 0191 4774740
email: licensing@gateshead.gov.uk
Website: www.gateshead.gov.uk

Public Information

19.2 A register of sex establishment licences currently in force issued by this Authority will be available for inspection by appointment during normal office hours.

APPENDIX 1

Guideline Localities

The Borough of Gateshead is divided up in to the following wards –

- Birtley
- Blaydon
- Bridges
- Chopwell and Rowlands Gill
- Chowdene
- Crawcrook and Greenside
- Deckham
- Dunston and Teams
- Dunston Hill and Wickham East
- Felling
- High Fell
- Lamesley
- Lobley Hill and Bensham
- Low Fell
- Pelaw and Heworth
- Ryton, Stella and Crookhill
- Saltwell
- Wardley and Leam Lane
- Wickham North
- Wickham South and Sunnyside
- Windy Nook and Whitehills
- Winlaton and High Spennings

Within each ward there are areas that have different characters, which means that the appropriate number of sex establishments of different types may vary.

The Authority will consider representations regarding the characteristics of the relevant locality for a particular application or licence. The Authority shall have particular regard to the proximity and density of –

- residential accommodation
- parks, play areas and other areas where children attend
- other retail premises (depending on their nature) including any other sex establishments
- schools and colleges
- places of worship
- premises licensed under the Licensing Act 2003.

APPENDIX 2

Standard conditions

The Act enables the Council to impose standard and/or individual conditions regulating the following matters –

- (a) the hours of opening and closing of sex establishments;
- (b) displays or advertisements on or in such establishments;
- (c) the visibility of the interior of sex establishments to passersby; and
- (d) any change of a sex cinema to a sex shop or a sex shop to a sex cinema.

The following conditions are standard conditions, i.e. conditions that will be attached to a licence unless the applicant requests otherwise. They do not preclude further conditions being attached to have regard to the individual circumstances of each application.

Sex shops

1. “There shall be no billboard advertisements in the Borough of Gateshead in relation to the sex establishment”
2. “The signage and arrangement of displays to the front of the sex establishment shall be exactly to a form submitted in print and approved by Gateshead Council.”
3. “The licensed premises must be used only for the purposes of a sex establishment as specified in the licence and must not be used either wholly or in part for any other purpose during the duration of the licence.”
4. “The premises must not be open to the public outside the hours specified in the licence.”
5. “No display or advertisement visible from the outside of the premises may include a sex article or contain verbal descriptions of sex articles.”
6. “The licence holder must comply with all reasonable requests of authorised officer(s) and/or constable(s) for access to and inspection of the premises during the opening hours specified in the licence.”

7. "No part of the interior where sex articles are displayed may be visible to passers-by, or from other premises."
8. "No display, event or promotional activity in the premises may involve live human models without the prior written consent of Gateshead Council."
9. "A copy of the licence and all conditions must be displayed in the place indicated in the licence."
10. "All members of staff at the premises should be easily identifiable as a member of staff, and their name should be clearly displayed on their badge / clothing."
11. "A 'Challenge 21' policy shall be adopted, ensuring that all members of staff at the premises shall refuse entry to the premises to anyone who appears to be under the age of 21 unless that person provides credible photographic proof of age evidence. A refusals ledger shall be maintained, and made available to Local Authority enforcement officers on request."
12. "The licence holder shall carry out credible proof of age checks on all employees to ensure that they are at least 18 years old."
13. "A CCTV system shall be designed, installed and maintained in proper working order to the satisfaction of the Licensing Authority and in consultation with Northumbria Police. The system shall :
 - a. provide continuous recording facilities for each camera to a good standard of clarity. Such recordings shall be retained for a minimum period of 28 days and shall be supplied to an officer of the Licensing Authority or a Police Officer on request.
 - b. Ensure coverage of -
 - i. All entrances and exits to the licensed premises internally and externally
 - ii. The till area
 - iii. The exterior of the premises
 - c. Be in operation at all times when the premises are in use"

14. "Staff are to be given sufficient training agreed with the Licensing Authority respect of the obligations of themselves and the licence holder under the provisions of the Local Government (Miscellaneous Provisions) Act 1982, the licence and any relevant guidance or policies including Gateshead Council's Policy on the Regulation of Sex Establishments; and accurate training records are to be kept for all staff."
15. "DVDs shall not be sold or supplied unless the DVD –
 - (a) has been passed by the British Board of Film Classification
 - (b) is a reproduction authorised by the owner of the copyright, and
 - (c) bears certificates to those effects."

Sex cinemas

1. "There shall be no billboard advertisements in the Borough of Gateshead in relation to the sex establishment"
2. "The signage and arrangement of displays to the front of the sex establishment shall be exactly to a form submitted in print and approved by Gateshead Council."
3. "The licensed premises must be used only for the purposes of a sex establishment as specified in the licence and must not be used either wholly or in part for any other purpose during the duration of the licence."
4. "The premises must not be open to the public outside the hours specified in the licence."
5. "The licence holder must comply with all reasonable requests of authorised officer(s) and/or constable(s) for access to and inspection of the premises during the opening hours specified in the licence."
6. "No display, event or promotional activity in the premises may involve live human models without the prior written consent of Gateshead Council."

7. "A copy of the licence and all conditions must be displayed in the place indicated in the licence."
8. "All members of staff at the premises should be easily identifiable as a member of staff, and their name should be clearly displayed on their badge / clothing."
9. "A 'Challenge 21' policy shall be adopted, ensuring that all members of staff at the premises shall refuse entry to the premises to anyone who appears to be under the age of 21 unless that person provides credible photographic proof of age evidence. A refusals ledger shall be maintained, and made available to Local Authority enforcement officers on request."
10. "The licence holder shall carry out credible proof of age checks on all employees to ensure that they are at least 18 years old."
11. "A CCTV system shall be designed, installed and maintained in proper working order to the satisfaction of the Licensing Authority and in consultation with Northumbria Police. The system shall :
 - a. provide continuous recording facilities for each camera to a good standard of clarity. Such recordings shall be retained for a minimum period of 28 days and shall be supplied to an officer of the Licensing Authority or a Police Officer on request.
 - b. Ensure coverage of -
 - i. All entrances and exits to the licensed premises internally and externally
 - ii. The till area
 - iii. The exterior of the premises
 - c. Be in operation at all times when the premises are in use"
12. "Staff are to be given sufficient training agreed with the Licensing Authority respect of the obligations of themselves and the licence holder under the provisions of the Local Government (Miscellaneous Provisions) Act 1982, the licence and any relevant guidance or policies including Gateshead Council's Policy on the Regulation of Sex Establishments; and accurate training records are to be kept for all staff."

13. "Any individual employed to conduct a security activity at the premises must be licensed by the Security Industry Authority ('security activity' having the meaning set out in paragraph 2(1)(a) of Schedule 2 of the Private Security Industry Act 2001)."
14. "Any individual employed to conduct a security activity at the premises must be trained in respect of their obligations and the obligations of the licensee under the Act, the licence and any relevant guidance or policies."
15. "All charges shall be prominently and legibly displayed in such a place as to be easily read by persons before they enter the licensed premises."
16. "Seating plans shall not be altered from those approved by the Council, and shall be available at the premises for inspection upon request of authorised Council officers."
17. "Persons shall not be permitted to sit or stand in any places not approved by the Council."
18. "No person shall be permitted entry to a 12, 15, 18 or R18 film screening who is under the age of 12, 15 or 18 as applicable."
19. "No films may be shown at the premises unless they have been passed by the British Board of Film Classification."

Sexual Entertainment Venues

1. "The licensee must ensure that a suitable number of trained staff are employed to supervise the interior of the premises (floor supervisors) whilst performances are being given under this licence."
2. "Performers shall be aged not less than 18 years. The licensee must maintain adequate records of the names, addresses, and dates of both of performers including adequate identity checks."
3. "The licensee shall not permit the display outside of the premises of photographs or other images which indicate or suggest that striptease or similar entertainment takes place on the premises and which may be offensive."

4. "Performers shall only perform on the stage area, to seated customers or in such other areas of the licensed premises as may be agreed in writing with the council."
5. "The Licensee is to implement a policy, approved by the Licensing Authority at the time of the application, to ensure the safety of the performers when they leave the premises after a period of work."
6. "Performers must dress fully at the end of each performance."
7. "Performers must not accept any telephone number, email address, address, or contact information from any customer."
8. "Performers must never be alone in the company of a customer except in an area open to the public within the premises."
9. "The licensee is to ensure a sufficient number of security staff are employed inside the premises whilst sexual entertainment is provided to supervise the performers and customers."
10. "Performers must not perform a nude table dance unless in a supervised area or within five meters of a floor supervisor."
11. "Performers are never to be in the company of a customer except In an area open to the public within premises."
12. "The licensee must ensure that during the performance of a table dance:
 - a) the 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.
 - b) Customers must remain seated during the entire performance of the dance
 - c) For the purpose of restraint only, performers may only touch a customer above the customers chest with their hands only
 - d) Performers must not sit on or straddle the customer
 - e) Performers must not place their feet on the seats."
13. "The licensee must ensure that during performances to which this licence relates:
 - a) Performers may not perform any act that clearly simulates any sexual act.
 - b) Performers may not intentionally touch a customer at any time during the performance unless absolutely accidentally or due to a third party.
 - c) Performers may not use inappropriate, suggestive or sexually graphic language at any time
 - d) Performers must never intentionally touch the genitals or breasts of another dancer or to knowingly permit another dancer to touch their genitals or breasts.

- e) 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.
 - f) Performers only perform nude or semi-nude dancing (of any description) within areas specified by the Licensing Authority when the licence is granted.”
14. “The licensee must ensure that during performances to which this licence relates
- i) Customers may not dance at any time except in areas specifically designated by the council as being separate from areas for sexual entertainment.
 - ii) Customers must remain appropriately clothed at all times.”
15. “There shall be no billboard advertisements in the Borough of Gateshead in relation to the sex establishment”
16. “The signage and arrangement of displays to the front of the sex establishment shall be exactly to a form submitted in print and approved by Gateshead Council.”
17. “The licensed premises must be used only for the purposes of a sex establishment as specified in the licence and must not be used either wholly or in part for any other purpose during the duration of the licence.”
18. “The premises must not be open to the public outside the hours specified in the licence.”
19. “The licence holder must comply with all reasonable requests of authorised officer(s) and/or constable(s) for access to and inspection of the premises during the opening hours specified in the licence.”
20. “A copy of the licence and all conditions must be displayed in the place indicated in the licence.”
21. “All members of staff at the premises should be easily identifiable as a member of staff, and their name should be clearly displayed on their badge / clothing.”

22. “A ‘Challenge 21’ policy shall be adopted, ensuring that all members of staff at the premises shall refuse entry to the premises to anyone who appears to be under the age of 21 unless that person provides credible photographic proof of age evidence. A refusals ledger shall be maintained, and made available to Local Authority enforcement officers on request.”
23. “The licence holder shall carry out credible proof of age checks on all employees to ensure that they are at least 18 years old.”
24. “A CCTV system shall be designed, installed and maintained in proper working order to the satisfaction of the Licensing Authority and in consultation with Northumbria Police. The system shall :
- a. provide continuous recording facilities for each camera to a good standard of clarity. Such recordings shall be retained for a minimum period of 28 days and shall be supplied to an officer of the Licensing Authority or a Police Officer on request.
 - b. Ensure coverage of -
 - i. All entrances and exits to the licensed premises internally and externally
 - ii. The till area
 - iii. The exterior of the premises
 - c. Be in operation at all times when the premises are in use”
25. “Staff are to be given sufficient training agreed with the Licensing Authority respect of the obligations of themselves and the licence holder under the provisions of the Local Government (Miscellaneous Provisions) Act 1982, the licence and any relevant guidance or policies including Gateshead Council’s Policy on the Regulation of Sex Establishments; and accurate training records are to be kept for all staff.”
26. “Any individual employed to conduct a security activity at the premises must be licensed by the Security Industry Authority (‘security activity’ having the meaning set out in paragraph 2(1)(a) of Schedule 2 of the Private Security Industry Act 2001).”

27. “Any individual employed to conduct a security activity at the premises must be trained in respect of their obligations and the obligations of the licensee under the Act, the licence and any relevant guidance or policies.”
28. “All charges shall be prominently and legibly displayed in such a place as to be easily read by persons before they enter the licensed premises.”

APPENDIX 3

Fees

Type of Establishment	Annual Fee	Transfer Fee	Variation Fee
Sex Shop	£7350	£853	£853
Sex Cinema	£1905	£853	£853
Sexual Entertainment Venue	£1905	£853	£853