

**Report of the Assistant Director
Regulatory Services to the
meeting of the General Licensing
Regulatory Board on the 12th
January 2011.**

POLICE AND CRIME ACT 2009 - SEX ESTABLISHMENTS

1.0 Purpose of the Report

1.1 The purpose of this report is to seek the approval of the General Licensing Regulatory Board for the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009. This will allow the Council, through delegated powers to the General Licensing Regulatory Board, to regulate sex establishments in the Borough.

2.0 Recommendation

2.1 That the Board recommends to Full Council that it:

(a) Adopts Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009, to allow the Council to regulate sex establishments in the Borough with the adoption coming into effect on Monday 28th March 2011.

(b) Delegates to the General Licensing Regulatory Board the Schedule 3 functions in order to regulate sex establishments in the Borough.

(c) Authorises the Assistant Director of Regulatory Services to take the necessary procedural steps to bring the adoption into effect.

(d) Adopts the draft policy in respect of these types of premises including the relevant licence fees and recommended maximum numbers of premises allowed within each Ward.

3.0 Summary

3.1 *The new law*

Section 27 of the Policing and Crime Act 2009 introduces a new category of sex establishment called a 'sexual entertainment venue', which will allow local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ("Schedule 3"). The Council already has some powers relating to 'sex shops' and 'sex cinemas', although these will be extended if the new powers are adopted.

- 3.2 Section 27 will give local authorities powers to control the number and location of lap dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where they are adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the Licensing Act 2003 and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area.

3.3 *Sexual entertainment venues and relevant entertainment*

The newly amended Schedule 3 sets out the meaning of a 'sexual entertainment venue' and 'relevant entertainment' for the purposes of the new law.

- 3.4 A sexual entertainment venue is defined as "*any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.*"

- 3.5 The meaning of 'relevant entertainment' is "*any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)*". An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
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3.6 While each case has to be judged on its merits, it is expected that the definition of relevant entertainment would include the following forms of entertainment as they are commonly understood:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows

3.7 Ultimately, decisions to licence premises as sexual entertainment venues will depend on the content of the entertainment provided and not the name it is given.

3.8 *Premises not sexual entertainment venues*

Schedule 3 also 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)
- Premises which provide relevant entertainment on an infrequent basis.

These are defined as premises where-

- a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
- b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
- c) no such occasion has lasted longer than 24 hours.

3.9 *Delegated Authority*

Functions under Schedule 3 are the responsibility of the Full Council. Under Section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or sub-committee. In this case it would be appropriate to delegate these functions to those who sit on its

General Regulatory Licensing Board set up to discharge licensing functions under the 2003 Act.

- 3.10 In practice, when dealing with an application for a sex establishment licence, the members of the General Regulatory Licensing Board would not be acting as the licensing committee under the 2003 Act, this function is carried out by the Statutory Licensing Board and would instead be exercising their functions under Schedule 3.

4.0 Further Information

- 4.1 If the Council does not make a resolution to adopt the provisions introduced by Section 27 of the Policing and Crime Act 2009 within one year of it coming into force (April 2010), a full and robust consultation with local people about whether they should make such a resolution will be required.

5.0 Current Position in Barnsley

- 5.1 There is currently one premise located on Wellington Street in the centre of Barnsley that will fall within the classification of a sexual entertainment venue and it is within the Central Ward. This premises is currently licensed by the Council under the provisions of the Licensing Act 2003. No complaints have been received in respect of these premises since they opened to the public in late 2006.
- 5.2 There are two licensed sex shops in Barnsley; these are located at located at 3 and 462 Doncaster Road Barnsley, one is located within the Stairfoot Ward and the other within the Central Ward. In respect of both of these premises there has been only one complaint of a minor nature in the last five years relating to signage and this was resolved immediately by the operator who removed the sign.
- 5.3 There are no premises within the Borough that would fall within the definition of Sex Cinema.
- 5.4 In determining the numbers of premises that will be allowed within specific wards within the Borough, Officers have taken into account the number, type and location of premises already operating within specific Wards within the Borough.
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6.0 Locality and proposed limits on numbers and locations of Premises

6.1 Schedule 3 of the Act allows appropriate authorities to refuse an application on two grounds:

- At the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or
- That a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.

6.2 The decision regarding what constitutes the ‘relevant locality’ is a matter for the appropriate authority and as such, it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. To assist applicants, the Council has decided that each individual ward in the Borough should be dealt with as a ‘relevant locality’.

6.3 The appropriate number for each relevant locality (Ward), other than those contained in the table below, will be nil:

Ward	Sex shops	Sex Cinemas	Sexual Entertainment venues
Central	1	0	1
Stairfoot	1	0	0

7.0 Reduction of Crime and Disorder

7.1 The Council does not have any significant crime and disorder associated with these types of premises. However, any powers that the Council has to deal with

the proliferation of these types of premises and especially with the locations of these premises will be welcomed.

8.0 Financial Implications

- 8.1 Schedule 3 to the 1982 Act states that an application for the grant, renewal, variations or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authorities, but does not expand on what would be considered to be reasonable.
- 8.2 The current application fee set by the Council for this type of licence is £5,000 per annum and the overall current income in respect of this area of licensing is £10,000.
- 8.3 The effect of this legislation, case law including (R v Manchester City Council ex parte King (1991) 89 LGR 696, DC) and (Kelly v Liverpool City Council [2003] EWCA Civ 197), together with The European Services 18 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 is to prevent fees being set at a level that will result in a “profit” to the Council.
- 8.4 A review of the existing levels of work and a projection of future workloads in relation to the administration and enforcement of the legislation, including monitoring and enforcement of unlicensed premises, has highlighted that the current fee levels require adjusting to ensure that the Council does not make a profit. The proposed fees are set out below:

Application type	Sex shops	Sex Cinemas	Sexual Entertainment Venues
New application	£3950	£3950	£3950
Renewal Application	£3300	£3300	£3300
Variation of Licence	£640	£640	£640
Transfer of licence	£640	£640	£640

8.5 The local authority has set the total number of sex establishments for the Authority as three and it is anticipated that the annual income from licence fees in respect of this type of licensing remain in the region of £10,000.

9.0 Background Papers

9.1 Local Government (Miscellaneous Provisions) Act 1982

Policing and Crime Act 2009

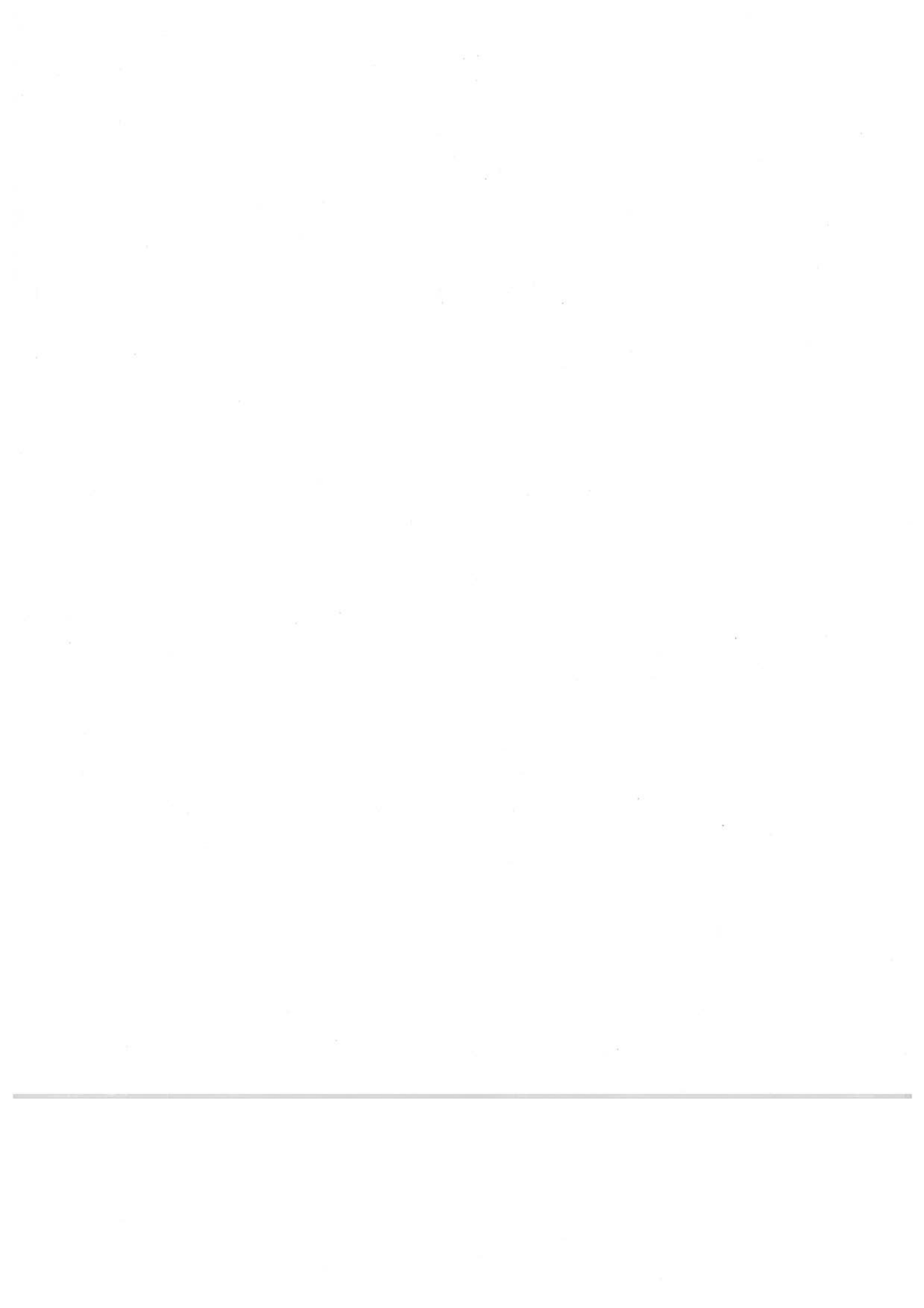
Sexual Entertainment Venues – Guidance for England and Wales, issued by the Home Office

Copies of all these documents are available from the Licensing Reception, Civic Office, Eldon Street, Barnsley

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Date: 2nd December 2010





BARNSLEY
Metropolitan Borough Council

DRAFT POLICY

**REGULATION OF
SEX ESTABLISHMENTS**

**Schedule 3 Local Government
(Miscellaneous Provisions) Act 1982
as amended by section 27 of the
Policing and Crime Act 2009**

**Draft 1
November 2010**

Contents

Contents	2
1. Strategic Context.....	3
3. Local context.....	4
4. Legal Background	5
5. Integration with the Licensing Act 2003.....	7
6. General Principles of the Policy	7
Locality	8
7. Application process	9
The plan	11
8. Objections	11
9. Hearings.....	11
Conditions	12
10. Transfers	12
11. Waiver	13
12. Complaints about premises	13
13. Enforcement.....	14
14. Reviews.....	14
15. Appeals	15
16. Fees	15
17. Decision Making	15
18. Consultation and Review.....	16
19. Further information	16
Public Information	16
APPENDIX 1	18
Guideline Localities	18
APPENDIX 2	19
Standard conditions	19
Fees	20
Proposed Fees	20

1. **Strategic Context**

- 1.1 The Council's overall vision for Barnsley, as described in the Community Plan and "Remaking Barnsley" initiatives, define it to be an innovative and vibrant 21st Century market town at the centre of a modern and dynamic economy and a great place to live.

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 Statement of Licensing Policy.

- 1.2 This Policy sets out the strategic guidelines for licensing this type of premises in Barnsley. 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 individual wards that make up the Borough.
- 1.3 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.
- 1.4 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 the public who live, work and carry out normal activity in the area concerned
- 1.5 This Policy links closely with a number of key plans and strategies produced by the Council and its partners.
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2. Local context

- 2.1 Priorities within the Community Plan to transform the Borough include, bringing about a step change in our approach and vision for regeneration, ensuring that we achieve a new and sustainable economic future and support the community in tackling anti-social behaviour and drug use.
- 2.2 The urban core of Barnsley is home to 82,000 people. Barnsley town centre is the focus for the Borough's main shopping, administrative, commercial and entertainment activities. It is long famous for its market and more recently has become noted for its expanding club scene and night life. To the west of the urban core is the lightly populated attractive hilly country centred on the market town of Penistone. To the south and east are the dispersed towns and villages, separated by open land of the former coalfield, which are the home to some 95,000 people. Remaking Barnsley is a long term strategy to revitalise Barnsley Town Centre and the wider economy. The Barnsley Urban Area will play a pivotal role and the Town Centre itself will be transformed into a modern urban living space offering shoppers and visitors exciting retail, recreational, entertainment and cultural experiences that will enable it compete successfully with neighbouring centres. Part of this transformation includes the proposal to encourage a 'café culture', where specially designated seating areas on pavements and other public areas are provided where refreshments, including alcoholic drinks, can be enjoyed. Regeneration in the Borough's rural areas will be based on diversification and sustainable development. Cultural and leisure facilities appropriate in type and scale will be encouraged in the smaller market towns.
- 2.3 Integral in making Barnsley a great place to live is to ensure that its communities are attractive, safe living environments with convenient access to good quality local services and amenities, including leisure, entertainment and cultural facilities. Neighbourhoods must be clean, safe and secure and their environments respected and cared for. They must also be friendly and caring places where people are welcome from all backgrounds and cultures and both young and old alike will feel part of the community.
- 2.4 For a number of years Barnsley has had two licensed sex establishments, both being sex shops located at 3 and 462 Doncaster Road Barnsley. There have also been a small number of unlicensed premises that have occasionally sold sex articles. Barnsley 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. Barnsley currently has one premise on Wellington Street that specialises in lap-dancing and/or striptease. In addition, there may be a number of premises that provide entertainment that may require a sexual entertainment venue licence, for instance pubs and clubs where strippers, pole dancers, etc perform. This will depend on the frequency of performances.

- 2.5 No complaints have been received by Regulatory Services over the last three years in respect of the two licensed sex shops or the sexual entertainment venue.

3. Legal Background

- 3.1 Barnsley Council has previously adopted 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 that cover sex shops and sex cinemas.
- 3.2 The new legislation gives local authorities more powers to control the number and location of venues such as lap dancing clubs and sex shops.
- 3.3 These powers are not mandatory and will only apply where they are adopted by local authorities.
- 3.4 Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than currently permitted under the Licensing Act 2003 and will give local people a greater say over the regulation of these venues in their area.
- 3.5 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, in which case this Policy seeks to set out the interpretation that will generally be applied by this Authority.
- 3.6 "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.
- 3.7 "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.
- 3.8 "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 one or more persons) 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.

- 3.9 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 the 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.
- 3.10 Whilst the term "significant degree" is not used in relation to sex encounter 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".
- 3.11 The Council will judge each case on its merits, we would expect that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows

The above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should only be treated as indicative. Ultimately, decisions to licence premises as sexual entertainment venues shall depend on the content of the entertainment provided and not the name it is given.

- 3.12 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.
- 3.13 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.
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- 3.14 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. South Yorkshire 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.

- 3.15 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).
- 3.16 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.

4. *Integration with the Licensing Act 2003*

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 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.

5. *General Principles of the Policy*

- 5.1 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 that all such determinations, including applications to transfer a licence, shall be made by the Council's General Licensing Regulatory Board rather than through delegated powers.
- 5.2 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

- 5.3 The number of sex establishments that this Authority considers appropriate in respect of the various localities in the Borough is set out in the table at Appendix 1 of this policy.
- 5.4 Each locality shall be considered on an individual basis rather than considering the Borough as a whole. Each Locality will be defined as a Ward. By way of guidance, the table at Appendix 1 sets out the number of sex establishments that this Authority considers appropriate in each locality 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 areas set out in this policy. 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.
- 5.5 Before determining an application, the Authority will first determine the appropriate locality, if the Ward boundary is not appropriate, in order that it may then fully consider the character etc of that locality.
- 5.6 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.
- 5.7 In determining the number of sex establishments that this Authority considers appropriate in each of the areas shown in Appendix 1, this Authority has had regard to the character of each area at the time of writing this policy. That character may of course change over time, and so the localities referred to and the numbers set out must remain flexible. Each application will be considered in its particular context and at the relevant time.

5.8 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.

5.9 In writing this policy the Council has also taken into account the operation of the three current premises within the Borough and has had strong regard to the very low numbers of complaints received, the locality of the premises and there overall acceptance by the general public.

5.10 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.

6. Application process

6.1 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.

6.2 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 been, 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.

6.3 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.

6.4 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.

6.5 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

6.6 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

6.7 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.

6.8 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 Barnsley Chronicle, Barnsley Star and Yorkshire Post.

6.9 Applicants must also send a copy of the application to the Chief Officer of South Yorkshire Police within seven days of the date of application.

6.10 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.

- 6.11 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.
- 6.12 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 does not allow representations in support of the application.
- 6.13 If the licence is then granted, 'standard conditions' will be attached unless they are dis-applied or varied by the Licensing Board. These are set out in Appendix 2 to this policy.

The Plan

- 6.14 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.
- 6.15 If a licensee intends to alter the premises in such a way as would have any affect 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.

7. Objections

- 7.1 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.

8. Hearings

- 8.1 If objections to an application are received within the relevant time period as above this will trigger a hearing before the General Regulatory Licensing Board.

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.

- 8.2 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.
- 8.3 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.
- 8.4 Otherwise, the application will be determined by the Board having regard to the Act, this policy, and the representations received in writing and made at the hearing.
- 8.5 A written note of the Board's decision will be provided to the applicant and objectors, setting out the reasons for the Committee's decision.
- 8.6 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

- 8.7 'Standard conditions' will be attached to licences unless they are dis-applied or varied by the Board. These are set out in Appendix 2 to this policy.
 - 8.8 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.
 - 8.9 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.
 - 8.10 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 Board that will determine whether any conditions are to be imposed, and if so what those conditions will be.
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9. Transfers

- 9.1 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.

- 9.2 In these circumstances, the transfer will be determined by the General Regulatory Licensing Board, 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 attend the Board. The Board will then either approve or refuse the transfer application.
- 9.3 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.

10. Waiver

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 If a waiver is granted then the applicant will be informed in writing by the Authority.
- 10.5 A waiver may be terminated by the Authority on 28 days notice.

11. Complaints about premises

- 11.1 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.
- 11.2 All complaints must, in the first instance, be addressed to the Assistant Director, Regulatory Services, Barnsley Metropolitan Borough Council, PO Box 502, Barnsley, S70 9FB.
- 11.3 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.

12. Enforcement

- 12.1 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 incorporated the Regulator's Compliance Code into its *Enforcement Policy* which is designed to ensure effective and efficient public protection services and is based around the principles of consistency, transparency and proportionality.
- 12.2 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.
- 12.3 The Council will seek to work actively with the Police, Fire & Rescue Service, Responsible Authorities 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.
- 12.4 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.
- 12.5 Where possible and appropriate, the Authority and its partner agencies will give early warning to operators of any concerns.
- 12.6 The Authority will carry out its responsibilities for enforcement so as to promote the objectives set out in this policy.

13. Reviews

- 13.1 Where it appears appropriate to the Authority by reason of complaint, breach of condition or otherwise, a licence may be reviewed by the General Regulatory Licensing Board. A licensee may also request that their licence be reviewed, for instance in order to vary its terms.
- 13.2 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 Licensing Board will be held. The Board 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.

13.3 A review can take place even if it would be disproportionate to revoke a licence, as some lesser measure can be taken, as above.

14. Appeals

14.1 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).

14.2 Objectors have no right of appeal under the Act.

15. Fees

15.1 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. Consideration has also been given to the timescales and costs associated with the administration and enforcement of these types of premises including those that may be exempt under the legislation due to the number of events that take place.

15.2 As with all forms of Licensing the Council must operate on at least a cost neutral basis and can not make a 'profit' from licensing income.

16. Decision Making

16.1 Unless there are compelling reasons to the contrary, the Authority will require the General Regulatory Licensing Board to meet in public – although Members may 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.

16.2 The Committee will determine each case before it on its individual merits. However, in determining the application the Board, 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

17. Consultation and Review

17.1 This Policy will come into effect on [date to be confirmed]. 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

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

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

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

18. Further information

18.1 Further information can be obtained from:

Licensing Section
Regulatory Services,
Civic Offices
Eldon Street
Barnsley

Tel: 01226 772468
Fax: 01226 775699
email: regulatoryservices@barnsley.gov.uk
Website: www.barnsley.gov.uk

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

APPENDIX 1

Guideline Localities

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

Ward	Sex shops	Sex Cinemas	Sexual Entertainment venues
Central	1	0	1
Cudworth	0	0	0
Darfield	0	0	0
Darfield East	0	0	0
Darfield West	0	0	0
Dearne North	0	0	0
Dearne South	0	0	0
Dodworth	0	0	0
Hoyland Milton	0	0	0
Kingstone	0	0	0
Monk Bretton	0	0	0
North East	0	0	0
Old Town	0	0	0
Penistone East	0	0	0
Penistone West	0	0	0
Rockingham	0	0	0
Royston	0	0	0
St Helens	0	0	0
Stairfoot	1	0	0
Wombwell	0	0	0
Worsbrough	0	0	0

APPENDIX 2

Standard conditions

Sex shops

Sex cinemas

Sexual entertainment venues

[To be inserted following consultation – views are sought on appropriate standard conditions]

APPENDIX 3

Fees

The current fees to licence a sex establishment in Barnsley are £5,000 per annum and there has been no change in these fees for at least the last four years.

Proposed Fees

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.

Consideration has also been given to the timescales and costs associated with the granting, administration and enforcement (including the costs associated with working outside normal office hours) of these types of premises including those that may be exempt under the legislation due to the number of events that take place.

The table below sets out the proposed fees in relation to each type of premises:

Application type	Sex shops	Sex Cinemas	Sexual Entertainment venues
New application	£3950	£3950	£3950
Renewal Application *	£3300	£3300	£3300
Variation of Licence	£640	£640	£640
Transfer of licence	£640	£640	£640

* for applications made before the expiry of the existing licence