

COUNCIL

13 JANUARY 2011

SEX ESTABLISHMENTS AND SEXUAL ENTERTAINMENT VENUES

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Summary

The purpose of this report is to ask Council to consider the draft Policy Statement proposed following changes to the Local Government (Miscellaneous Provisions) Act 1982 introduced by the Policing and Crime Act 2009 in respect of Sex Establishments and Sexual Entertainment Venues.

1. Budget and Policy Framework

1.1 The powers the Council has to regulate sex establishments and Sexual Entertainment Venues are contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. In order to be able to use these powers a local authority has to adopt them through a prescribed process, which is ultimately a matter for Full Council.

2. Background

2.1 The Council at its meeting on 27 November 2002 set a limit on the number of sex establishments licenses allowable to be a maximum of two within the Medway area. This is affected by the EU Services Directive (2006/123/EC) and is reviewed in the legal implications later in the report.

2.2 The types of premises currently falling within the criteria for licensing are sex shops and sex cinemas. Medway currently licenses 1 sex shop, in High Street, Chatham. There are no sex cinemas. These premises have not given rise to complaint or required enforcement action.

2.3 Section 27 of the Policing and Crime Act 2009 has extended the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 by introducing a new category of sex establishment called "sexual entertainment venues". The purpose of this amendment is to give Local Authorities greater control over venues, currently licensed under the Licensing Act 2003, that provide

some form of sexual entertainment. In order to implement these amendments a local authority must adopt the legislation. Adoption of the provisions is not however mandatory. These provisions came into effect on 6 April 2010.

- 2.4 A sexual entertainment venue is defined as “any premises at which relevant entertainment is provided before a live audience for financial gain of the organiser or the entertainer”.
- 2.5 The meaning of “relevant entertainment” is any live performance or live display of nudity, which is of such a nature that it must reasonably be assumed to be provided solely, or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means). An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 2.6 It is expected that this would include the following forms of entertainment:
 - Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows.
- 2.7 If these provisions are adopted, there is an exemption for premises that provide sexual entertainment infrequently. These are defined as premises where there are no more than 11 events of sexual entertainment in any period of 12 months, that the individual events last no more than 24 hours and there is at least a month between each event. These premises will continue to be regulated under the Licensing Act 2003.
- 2.8 If a Council does not make a resolution to adopt Schedule 3 of the 1982 Act, within one year of the Policing and Crime Act 2009 (one year = April 2011) coming into force, it must as soon as reasonably practicable consult local people about whether it should make such a resolution.
- 2.9 There is no statutory requirement for a local authority to have a sex establishment policy against which to evaluate applications for sexual entertainment venues, but the Home Office considers it to be best practice. Good practice dictates that this policy would need to be publicly consulted upon.
- 2.10 The policy (Appendix 1) will need to cover such matters as:
 - Administrative matters such as application procedures, hearing procedures
 - The suitability of the applicant to hold a licence
 - The locality and number of sex establishments likely to be allowed
 - The character of the relevant locality
 - Human rights assessment
 - Equalities assessment.

- 2.11 The Council may delegate the hearing and determination of applications for sexual entertainment venues to a committee, or an officer.
- 2.12 The decision of the Licensing and Safety Committee on the 30 June 2010 was for officers to prepare a draft policy statement, consult and report back.
- 2.13 The Licensing and Safety Committee considered the outcome of consultation on 18 November 2010. It was noted that the draft Statement of Policy in respect of Sex Establishments and Sexual Entertainment Venues had been correctly advertised as part of a 6-week consultation a local newspaper, on the Council's website and at local offices.
- 2.14 Two responses had been received, one of which agreed with the statement and the other had no further comments to make.
- 2.15 Members of the Committee were concerned that the legislation did not allow individuals to object to such applications under moral grounds and asked officers to confirm the effects that this legislation would have on the Council's current policy of restricting the number of sex shops in Medway to 2 establishments only.
- 2.16 Due to a change in legislation and the European Services Directive a restriction policy would be inappropriate, however there is still power for authorities to restrict the number of Sexual Entertainment Venues as each individual application must be viewed on its own merit. (This is set out in more detail in the legal implications later in this report).
- 2.17 The Committee made the following recommendations to Council:
 - (a) To recommend to Full Council that it adopts the Statement of Policy in respect of Sex Establishments under Section 27 of the Policing and Crime Act 2009, which amends Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 in relation to sexual entertainment venues with a published policy being approved by January 2011 and the first appointed day being set as 1 April 2011.
 - (b) To recommend to Full Council that officers are delegated to grant any applications whereby no representations have been received and the officer is able to agree suitable conditions with the applicant.
 - (c) That a Sub-Committee of the Licensing and Safety Committee is established to decide on applications where there has been relevant representations received in relation to an application or where conditions have been proposed by officers but not accepted by the applicant.
- 2.18 The proposed amendments to the Licensing and Safety Committee's Terms of Reference are set out in Appendix 2 – this will enable the Committee to deal with any applications being considered under the Policing and Crime Act 2009.

- 2.19 The proposed addition to the employee delegation scheme is set out in Appendix 3 – this deals with recommendation (b) from the Licensing and Safety Committee.
- 2.20 The Licensing and Safety Committee will consider the options regarding the Sub-Committee at its next meeting. It is a matter for the Licensing and Safety Committee to determine the terms of reference of its Sub-Committees.

3. The Current Situation

- 3.1 Venues that provide lap dancing, pole dancing and the like do not, currently, require a separate licence. Previously this would have been included as music and dancing on a Premises Licence granted under the Licensing Act 2003.
- 3.2 Any representations against a Premises Licence can only be based on the four licensing objectives namely:
- The prevention of crime and disorder
 - The prevention of public nuisance
 - The protection of public safety
 - The protection of children from harm.
- 3.3 As a consequence licensing authorities cannot consider any objections from local people and businesses that may be based on matters outside the scope of the four objectives, such as whether a lap dancing club would be appropriate given the character and locality of the area in which it is proposed to be located.

4. Effects of the new legislation

- 4.1 The amendments to Schedule 3 of the 1982 Act will, in particular
- Allow local people to oppose an application for a sexual entertainment venue if they have legitimate concerns that it would be inappropriate given the character of an area, for example, if the area was primarily a residential area. Interestingly however, an objection cannot be made on strictly moral or religious grounds.
 - Require licences to be renewed at least annually (as opposed to Premises Licences granted under the Licensing Act 2003 which run for the life of the business) at which point local people will have the opportunity to raise representations to the local authority.
 - Allow a local authority to impose a wider range of conditions than they are currently able to under the Licensing Act 2003. Different conditions can apply for sexual entertainment venues to those already in place for sex shops and sex cinemas.

5. Transitional Arrangements

- 5.1 If the provisions are adopted the transitional period starts on the date the amendments the Schedule 3 of the 1982 Act come into force in the relevant local authority area i.e. 'the 1st appointed day'. The 1st appointed day has to be not less than one month after the resolution being adopted. The resolution will need to be properly advertised to comply with the Schedule to the Act. The transitional period will last for 12 months and end on 'the 3rd appointed day'.
- 5.2 Existing operators who hold a premises licence or club premises certificate under the Licensing Act 2003 will not be given preferential treatment or be automatically granted licences under the provisions of Schedule 3 of the 1982 Act. They will be able to continue to operate over the 12-month transitional period.
- 5.3 During the first six months of the transitional period existing and new operators can apply for a sexual entertainment venue licence. At the end of this 6-month period (i.e. the 2nd appointed day') the licensing authority must consider all applications together and cannot grant any licences until all the applications have been considered. Once considered the licensing authority can grant as many licences as it sees fit.
- 5.4 After the first six months licences can still be applied for and each application must be considered individually on its own merits.
- 5.5 Applications for sexual entertainment venue licences will be made to the Council with a copy being sent to the Police. Notice of the application must be given in the local press and displayed on the premises. If granted, conditions may be imposed related to amongst other things, regulating opening times, the display of advertisements and the visibility of the interior of the premises to passers by.
- 5.6 New applications decided on or after the 2nd appointed day become effective immediately.
- 5.7 Applications for premises already operating as sexual entertainment venues, but under the Licensing Act 2003, may be decided on or after the 2nd appointed day, but do not go live under the new legislation until the 3rd appointed day.
- 5.8 Any condition on an existing Premises Licence granted under the Licensing Act 2003, which relates exclusively to sexual entertainment will be deemed to have been deleted from the Premises Licence at the end of the 12-month transitional period (the 3rd appointed day).

6. Risk Management

- 6.1 The provisions contained in Schedule 3 of the 1982 Act are adoptive and there are prescribed procedures to be followed for adoption to be successful:
- The Council must pass a resolution, adopting Schedule 3, specifying the day the provisions are to come into effect (this day can be no earlier than one month after the resolution).

- The Council must then publish a notice in a local newspaper in two consecutive weeks stating that they have passed such a resolution and its general effect. (The first notice must appear no later than 28 days before the date the provisions come into force).

Failure to follow the correct procedures could result in challenge against any subsequent decisions on enforcement action.

- 6.2 Putting in place a Sex Establishments and Sexual Entertainment Venues licensing policy will aid transparency and consistency of approach. However careful consideration will need to be given to its content, particularly any numerical limits set, to ensure that they can be legitimately justified and judicial review avoided.
- 6.3 If the Council does not adopt the new licensing powers for Sex Establishments and Sexual Entertainment Venues at an early stage, then local residents and businesses could criticise the Council for being content to rely upon potentially less stringent controls afforded by the Licensing Act 2003.

7. Consultation

- 7.1 As instructed by members at the meeting of the Licensing & Safety Committee on 30 June 2010 a draft Policy Statement has been prepared and advertised as part of a 6-week consultation in the local paper, on the Council website and at the local offices. Details of the consultation have also been sent to responsible authorities, members and members of the trade.
- 7.2 Two responses have been received, one of which agreed with the statement and the other had no further comments to make.
- 7.3 A Diversity Impact Assessment (DIA) has been undertaken. The screening (attached at Appendix 4) concluded that a full DIA was not necessary, however, a couple of actions have been identified for future reviews.

8. Financial and legal implications

- 8.1 Section 17 Crime & Disorder Act 1998 – The introduction of a new licensing regime under Schedule 3 of the 1982 Act gives the Council new powers to tackle issues of concern to communities around crime and anti social behaviour associated with sex establishments.
- 8.2 The licensing team will continue to engage in effective partnership working with agencies such as the police and other relevant authorities to deliver effective enforcement in respect of crime and anti social behaviour.

Limit on the number of sex establishments licenses

- 8.3 The EU Services Directive requires that no local legislation or policy should apply so as to create a barrier to service provision. As such, the existing council policy of 27 November 2002 restricting numbers of

premises creates such a barrier and would not stand up to judicial scrutiny and needs to be reconsidered.

- 8.4 Members should note that under the Localism Bill, published on 13 December 2010, central government would (if the Bill is enacted in its current form) have the power to recover any fine resulting from non or incorrect implementation of EU legislation from the body responsible for the infringement. This would include local authorities. Any such fines would be substantial.
- 8.5 The Council policy of 27 November 2002 restricted the number of Sex Establishments within the area of Medway to two. Under the Policing and Crime Act 2009, Sexual Entertainment Venues now fall within this category. It is not currently known exactly how many premises offer this form of entertainment, however the number will almost certainly exceed two.
- 8.6 It is considered that a refusal to grant any further licences without justification merely because of numbers would be considered to be unreasonable as defined by law, especially if premises have previously operated without complaint.
- 8.7 It is recommended that the current policy be removed. However, Members would still be able to consider the appropriateness of future applications taking into account factors such as proximity to premises with vulnerable people and the character of the relevant locality.

Fees

- 8.8 There are no statutory fees for sex establishments or sexual entertainment venues. There can be different fees set for each type of licence, but they must be set at a level aiming only to recoup the council's costs and be capable of being justified as such.
- 8.9 Subject to Council approval of the Policy Statement, officers will prepare a statement of fees and charges that reflect the expected cost of the service for approval by Council as part of the budget setting process. This will be consistent with the Council's approach to other licensing fees and charges that the Council is able to set.
- 8.10 It is anticipated that premises applying for a sexual entertainment venue licence will also be licensed under the Licensing Act 2003 (for alcohol etc). The same Licensing Officers will be used for enforcement visits under both sets of legislation. Thus combined inspections may be carried out and costs minimised.

9. Options

- 9.1 The Licensing and Safety Committee considered the various options available in respect of Sex Establishments and Sexual Entertainment Venues at its meeting on 30 June 2010 and these are set out in Appendix 5 for Members' information.

10. Recommendations

- 10.1 That Council adopts Section 27 of the Policing and Crime Act 2009 with the first appointed day being set as 1 April 2011.
- 10.2 That Council adopts the Statement of Policy in respect of Sex Establishments and Sexual Entertainment Venues, as set out in Appendix 1 to the report.
- 10.3 That Council approves the amendments to the Licensing and Safety Committee's Terms of Reference, as set out in Appendix 2 to the report.
- 10.4 That Council approves an addition to the Employee Scheme of Delegation (part 4 of chapter 3 of the Constitution), as set out in Appendix 3 to the report, so that the Assistant Director, Housing and Corporate Services is delegated authority to grant any applications whereby no representations have been received and the Assistant Director is able to agree suitable conditions with the applicant (to take effect from 1 April 2011).
- 10.5 That Council notes that the Licensing and Safety Committee will consider the options for a Sub-Committee to decide on applications where there have been relevant representations received in relation to an application or where conditions have been proposed by officers but not accepted by the applicant.
- 10.6 That Council revokes its decision of 27 November 2002 which set a limit on the number of sex establishments licenses allowable to be a maximum of two within the Medway area, for the reasons set out in paragraphs 8.3-8.7 of this report.

Background papers

- 1 Committee papers for the Licensing and Safety Committee held on 30 June 2010
- 2 Consultation papers.

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Statement of Policy in respect of Sex Establishments and Sexual Entertainment Venues

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

Licensing Unit
Gun Wharf
Dock Road
Chatham
Kent ME4 4TR

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DEFINITIONS

Licensing Authority: -

Medway Council
Officers
Members
Committee / Panel / Hearing

Agenda Papers: -

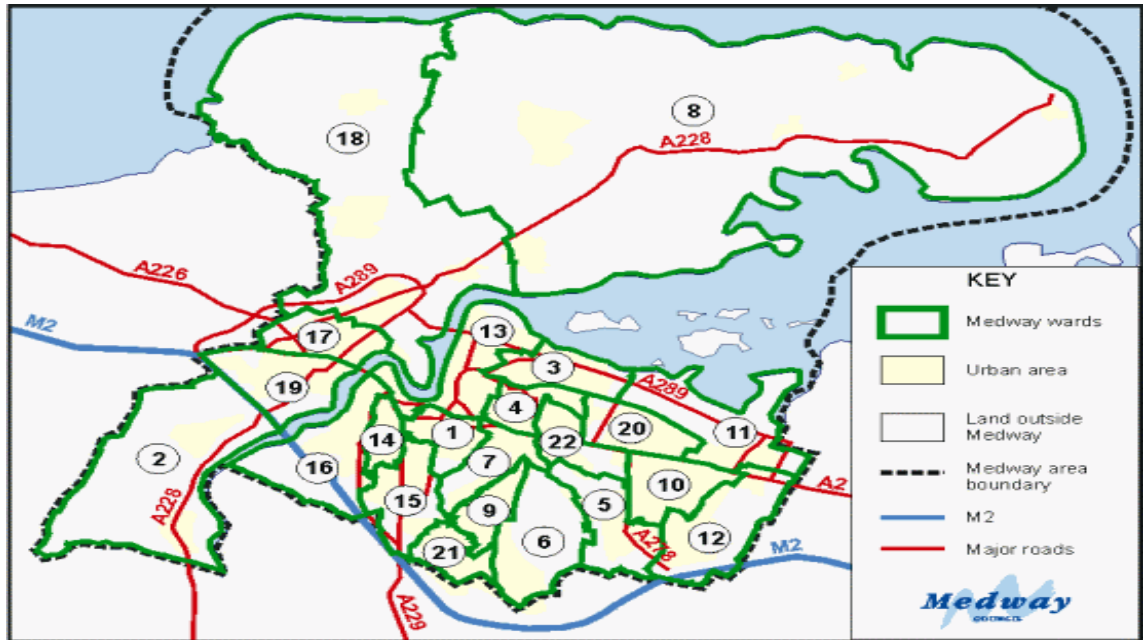
Documents circulated to member and interested parties prior to the Committee / Panel / Hearing taking place

Responsible Authorities: -

Police
Fire Authority
Medway Council Development Control (Planning & Building Control)
Medway Safeguarding Children Board
UK Border Agency
Medway Council Environmental Health (Environmental Protection & Food and Safety)

1. Introduction

1.1 Medway Council is a Unitary Authority in North Kent, providing all local government services for a quarter of a million people in Medway, including the towns of Rochester, Strood, Chatham, Gillingham and Rainham and rural areas such as the Hoo Peninsula. In terms of areas it covers 80 square miles and is shown on the map below.



- | | | |
|---------------------------|---------------------------------|--------------------|
| 1. Chatham Central | 9. Princes Park | 16. Rochester West |
| 2. Cuxton and Halling | 10. Rainham Central | 17. Strood North |
| 3. Gillingham North | 11. Rainham North | 18. Strood Rural |
| 4. Gillingham South | 12. Rainham South | 19. Strood South |
| 5. Hempstead and Wigmore | 13. River | 20. Twydall |
| 6. Lordswood and Capstone | 14. Rochester East | 21. Walderslade |
| 7. Luton and Wayfield | 15. Rochester South and Horsted | 22. Watling |
| 8. Peninsula | | |

2. Overview

2.1 This policy forms the basis of Medway Council's regulation of Sex Establishments and in particular Sexual Entertainment Venues (SEV) as a result of its decision to adopt the amended Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982.

2.2 Medway Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on the 19 July 2000 with an effective date of 1 September 2000 and the amendment under Section 27 of the Policing and Crime Act 2009 on the (date to be inserted)

2.3 By adopting Schedule 3, Medway Council (the Licensing Authority) is able to regulate Licensing in relation to the following: -

- sexual entertainment venues

- sex shops
- sex cinemas

- 2.4 The Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27, Policing and Crime Act 2009) provides that a local authority may, by resolution, adopt Schedule 3 to that Act.
- 2.5 Schedule 7 to the Policing and Crime Act 2009 amends the Licensing Act 2003 to ensure that premises for which a sexual entertainment venue licence is required or held (or for which the requirement has been waived under paragraph 7 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 do not also require a premises licence, club premises certificate or temporary event notice in order to provide relevant entertainment (*see section 7 on page 6*). This is because such entertainment is expressly excluded from the definition of regulated entertainment found in the Licensing Act 2003. However, if the premises also carries on other licensable activities (e.g. the sale of alcohol or the provision of regulated entertainment then this is not a provision of relevant entertainment), they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the Licensing Act 2003 for those other activities, subject to any exceptions contained in that Act.
- 2.6 In practice this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment not covered by the definition of relevant entertainment.
- 2.7 Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from the definition of regulated entertainment in the Licensing Act 2003. Therefore, a sexual entertainment venue will not require a premises licence or club premises certificate just because it plays recorded music for a performer to dance nor will providing entertainment facilities for the purposes of the provisions of relevant entertainment be regulated entertainment under the Licensing Act 2003.
- 2.8 The Licensing Authority has also taken into consideration the provisions of Section 17 Crime and Disorder Act 1998, which requires Responsible Authorities to consider crime and disorder (including antisocial behaviour and other behaviour adversely affecting the local environment) and the misuse of drugs, alcohol and other substances in the exercise of all their duties, activities and decision-making. This means that in all policies, strategies and service delivery there is a need to consider the likely impact on crime and disorder.

3. Policy

- 3.1 The objective is to have a policy that sets out clear and concise guidance, procedures and principles for the benefit of the Licensing Authority, the community, applicants and other relevant organisations.
- 3.2 This will enable anyone with an interest in such establishments to understand the constraints, which the Licensing Authority must operate within when regulating Sex

Establishments, the boundaries within which these premises must conduct themselves and the extent to which the community may comment in relation to applications.

- 3.3 Notwithstanding this policy, each application will be assessed on its individual merit and granted or refused purely on these merits. Whilst this policy will set out the broad scope of expectations, it should not be seen as restricting or predetermining the outcome or any application or representation in respect of the licensing of any premises.
- 3.4 The policy will be regularly reviewed and monitored to ensure that it is effective, up to date and continues to achieve what it sets out to do. This will be achieved by monitoring the outcome of hearings, appeals through Magistrates Court, developments in legislation, having regard to stated cases, local needs and economic impacts.
- 3.5 The adoption or any amendment of the policy will be communicated to the community by way of press release and on the Council's website. Persons having an active involvement in any consultation on the policy will be notified directly.

4. Functions

- 4.1 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 of the appropriate authority.
- 4.2 The Licensing Authority may delegate its functions to those who sit on a committee that has been set up to discharge licensing functions under the Licensing Act 2003. However, when dealing with an application in relation to sex shops, sex cinemas and sexual entertainment venues, the members of the committee would only be exercising their functions under Schedule 3.

5 Consultations

- 5.1 The Policing and Crime Act 2009 is not prescriptive about how licensing authorities should consult with local people. The Licensing Authority has extensive experience of engaging with local people and will utilise that knowledge to ensure that any consultation exercise carried out under this duty will be fair and meaningful. The Licensing Authority will seek to make any relevant information available to local people in order to inform them of the legislation, criteria and outcomes of the consultation.
- 5.2 For the purpose of this consultation process 'local people' are defined as anyone who lives or works in the Licensing Authority's administrative area.
- 5.3 The Licensing Authority will seek to consult with
 - those premises that currently hold relevant entertainment, sell sex articles or show films of sexual activity.
 - persons or companies who may consider holding activities in the future.
 - a number of enforcement agencies such as the Police and Fire Authority.
 - local people and businesses in Medway who are near to existing premises.

6 Venues that require licensing (sex establishments)

6.1 For the purpose of this policy the following definitions will apply: -

6.2 Sex Shop

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 (e.g. anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity) or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

6.3 Sex Cinema

Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced 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 but does not include a dwelling to which the public is not admitted.

6.4 Sex Entertainment Venue

Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

7 Relevant Entertainment

7.1 Any live performance or any 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 the audience (whether by verbal or other means).

7.2 Home Office guidance states relevant entertainment would therefore 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

7.3 However, this list is not exhaustive and the Licensing Authority will judge each case on its merits. Decisions will be based on the content of the entertainment provided and not the name given to it.

8 Exemptions from being a sexual entertainment venue

8.1 The following are not sexual entertainment venues for the purpose of this policy: -

(a) sex cinemas and sex shops

- (b) premises at which the provision of relevant entertainment is such that, at the time in question and including any relevant entertainment which is being so provided at that time
- (i) there have not been more than eleven occasions on which relevant entertainment has been provided which fall (wholly or partly) with the period of 12 months ending with that time
 - (ii) no such occasions has lasted for more than 24 hours and
 - (iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasions falls within the 12 month period mentioned in subparagraph (i)).

8.2 Premises, which fall under this exemption created for infrequent entertainment, do not require a sexual entertainment licence but will instead need an appropriate authorisation under the Licensing Act 2003. For example, to cover the performance of dance.

8.3 Operators are encouraged to maintain written records of any relevant entertainment that falls within the exemption. This will assist the Licensing Authority to prove or refute any allegation of unlicensed events and/or holding events in breach of the exemptions.

8.4 Any records should contain information of the date, times of the event and those persons who have participated in the relevant entertainment, which includes performers, security, management and bar staff. If tickets are sold then details of the number of tickets sold at each event.

9 Nudity

9.1 Schedule 3 sets out the definition of a display of nudity:

- In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and
- in the case of a man it means exposure of his pubic area, genitals or anus

10 Spontaneous Entertainment

10.1 Where activities that would otherwise be considered to involve the provision of Relevant Entertainment (as defined in section 7) take place, but are not provided for the financial gain of the organiser or entertainer, such as a spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser might be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly.

11 The Organiser

11.1 Any person who is responsible for the organisation or management of the relevant entertainment at a premises at which Relevant Entertainment is provided. In most circumstances, this will refer to the manager of the premises, but could also refer to someone who is responsible for organising the Relevant Entertainment on behalf of the persons responsible for the management of the premises.

11.2 The Organiser must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for one person to hold a sexual entertainment venue licence for premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.

12 Planning

12.1 The Licensing Authority will not normally undertake action where another, more appropriate, regime exists to resolve matters. Failure to obtain planning permission is not a ground for refusal of the grant of an application under the Local Government (Miscellaneous Provisions) Act 1982 and such a failure to obtain planning permission will normally be dealt with as part of the normal planning process.

12.2 Applicants are advised to seek independent professional advice in relation to both planning and licensing prior to making any application under Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

13 European Convention on Human Rights

13.1 The Licensing Authority fully supports the European Convention on Human Rights. When determining applications for licences under this policy the Licensing Authority will have consideration to any rights an existing operator may have under Article 1, Protocol 1 of the European Convention on Human Rights (ECHR) which entitles every person to the peaceful enjoyment of their possessions and Article 10 (freedom of expression).

13.2 The Secretary of State has certified that the Policing and Crime Act 2009 is covered by Section 19, Human Rights Act 1998 as being in compliance with the ECHR.

13.3 Whilst the rights under Article 1 and 10 may be activated the weight to be accorded to these rights in this context is low level. The right of freedom of expression to participate in the activities of sex shops, sex cinemas and sexual entertainment venues is not prohibited but may be controlled by licensing. Similarly the right to possession of an existing licence is proportionally protected subject to a fair balance of the rights of the holder and the public interest.

14 Locality, Character and Layout

14.1 Paragraphs 12 (3) (c) and 12 (3) (d) of Schedule 3 allows the Licensing Authority to refuse applications on grounds related to an assessment of the relevant locality. A licence can be refused if either, 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.

14.2 Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 does not define 'relevant locality' further than to say that:

- In relation to premises, it is the locality where they are situated
 - In relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.
- 14.3 Once the Licensing Authority has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality. The Licensing Authority may consider a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.
- 14.4 Case law has indicated however that in defining the relevant locality the local authority should not seek to specify wide areas.
- 14.5 Although a ward area could be considered as a relevant locality it is determined that certain wards are substantial in size and would cover a wide area. It could also raise a problem with borders of other wards where there could be a cluster of sex establishments.
- 14.6 In licensing sex entertainment venues the Licensing Authority will consider the impact of such premises and their operation on the vicinity. This would include: -
- The likely effects of any increased footfall or vehicular traffic
 - Any advertising or displays of an erotic or pseudo-erotic nature
 - The type of location (residential, commercial, industrial)
 - The vicinity of establishments whose patrons are likely to be effected by the operation of the premises
 - The proximity of residential premises, including any sheltered housing and accommodation for vulnerable people
 - The proximity of educational establishments to the premises
 - The proximity of places of worship to the premises
 - Access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises
 - The proximity to shopping centres
 - The proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive)
 - The proximity to historic buildings and tourist attractions
 - Localities where the cumulative impact of the venue, taken with other licensed premises or commercial interests, is likely to have an adverse effect on crime and disorder and public nuisance
 - The nature and concerns of any objections received from residents or businesses
 - Any evidence of complaints about noise and/or disturbance caused by the premises
 - The proximity of other sex establishments
- 14.7 When considering an application for the grant, renewal, variation or transfer of a licence the Licensing Authority will also take into account the following

- The type of activity to which the application relates
- The duration of the proposed licence
- The days and hours of operation of the activity
- The layout and condition of the premises
- The use to which other premises in the vicinity are put
- The levels of crime and disorder in the area.

14.8 Organisers are advised that the layout of the premises should be such as to ensure that at no time will any of the activities be visible to passers by on retail thoroughfares. In more sensitive locations applicants may consider it more appropriate to locate such premises at basement level or locate entrances away from retail thoroughfares or busy pedestrian routes.

15 Waivers

15.1 The amendments to Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 allow for the Licensing Authority to waive the need for a Sex Establishment licence under certain circumstances.

15.2 An applicant can apply for a waiver either as part of the application for a licence or separately. The Licensing Authority can grant a waiver if it considers that to require a licence would be unreasonable or inappropriate. Where a waiver is granted the Licensing Authority should inform the applicant that a waiver has been granted. The waiver may last for such a period that the Licensing Authority think fit, but can be terminated by the Licensing Authority at any time with 28 days notice.

15.3 The Licensing Authority will consider applications for such waiving of the need for licences on an individual basis. However, it is felt that unless clear and unambiguous evidence can be produced to support such a waiving of licence, the default position will be that a licence will be required.

16 Application Process

16.1 In determining any application the Licensing Authority is aware of its ability to impose restrictions on the licence or to place conditions on the licence. Where such restrictions or conditions are applied, the Licensing Authority will ensure that they are necessary, reasonable and proportionate to achieve the objectives of any primary legislation, in particular the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and any subsequent, relevant legislation.

16.2 The Licensing Authority will consider all of the following factors especially but not exclusively,

- The locality, character and layout of the premises
- The times of operation
- The suitability of the applicant
- The cumulative impact of the premises when taken together with other licensed premises in the locality.
- The management procedure in place to ensure the premises is operated in a way conducive to the area.

16.3 Applications for licences for Sex Establishments must be made on the prescribed form and accompanied by the relevant fee Applications will not be accepted unless accompanied by full payment.

Information relating to forms and fees may be obtained from the Licensing Authority.

- 16.4 A site plan of a radius of $\frac{1}{4}$ of a mile (scale 1:500) clearly outlining where the sex establishment is to be situated must be included in the application. The plan should clearly identify the proposed sex establishment marking the site/premises boundary with a red line and define other types of businesses and residential properties around the site as listed at 14.6.
- 16.5 A plan of the premises (scale 1:100) showing the part(s) of the premises that it is proposed to licence as a Sex Establishment. All areas requiring to be licensed should be outlined in red on the plan. If a part of the premises is within a licensed premises under the licensing act 2003 which will have a dual purpose then the plan should show the site where facilities for the public are shared such as toilets and bar.
- 16.6 The plan of the premises submitted must show the position of all existing and/or proposed CCTV cameras following discussions by the applicant with the Police and be in accordance with the CCTV code of practice.
- 16.7 Plans may be considered in other scales with prior agreement with the Licensing Authority.
- 16.8 Applicants must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than 7 days after the date the application is made.
- 16.9 Applicants must display a notice of the application on or near the premises in a place where members of the public can conveniently read it. The notice should be displayed for a period of 21 days beginning with the date the application was made.
- 16.10 All notices should be in the form prescribed and identify the premises or, if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment.
- 16.11 The applicant must serve the application on Chief Officer of Police at Medway Police Station no later than seven days after the date of application.
- 16.12 On determining an application the Licensing Authority shall have regard to all relevant considerations, including any comments made by:
 - Police
 - Fire Authority
 - Medway Council Development Control (Planning and Building Control)
 - Medway Safeguarding Children Board
 - UK Border Agency
 - Medway Council Environmental Health (Environmental Protection and Food and Safety)
 - Ward Councillors
 - Interested Parties (local residents/businesses)(Or their successors in title).

16.13 Officers from any of the(se) authorities may inspect the premises to ensure that the required technical standards are met under a variety of legislation.

16.14 The Licensing Authority will not determine an application for the grant of a licence, unless, the applicant allows an authorised officer a reasonable opportunity to enter the proposed Sex Establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

17 Objections / Representations to an application

17.1 Any person can object to an application. This includes residents/tenants, associations, community associations and trade associations. Councillors and MPs may also raise objections. Elected councillors may represent interested parties, providing they do not also sit on the panel/ committee hearing the application.

17.2 The Licensing Authority will not consider objections that are frivolous or vexatious, or which relate to moral/religious grounds or values. Any objections on this basis will be rejected or disregarded in part. Where objections are rejected or disregarded the objector will be informed in writing indicating the general grounds and what part of the objection is rejected or disregarded.

17.3 A vexatious objection is generally taken to be one that is repetitive, without foundation or made for some other reason such as malice. A frivolous objection is generally taken to be one that is lacking in seriousness.

17.4 Objections to the application must be made in writing and be received by the Licensing Authority within 28 days of the application being made. The objection must contain:-

- The name and address of the person or organisation making the objection
- The premises to which the objection relates
- The proximity of the premises to the person making the objection
- The general terms of the objection.

The Licensing Authority may only consider petitions that include the following: -

- An outline of the main issues of concern at the top of each page
- Each persons name, address, signature, date and personal concerns/reason for objection.
- One person on the petition to be the nominated contact.

17.5 The general terms of any objection must be provided to the applicant prior to the determination of the application.

17.6 The report to the relevant panel/committee may have full details of the objectors and their objection, it will include any actions/undertaking proposed by the applicant to address the matters raised in the objections.

18 Conditions

18.1 The Local Government (Miscellaneous Provisions) Act 1982 allows the Licensing Authority to attach conditions to a licence. The Licensing Authority has formulated a pool of conditions in respect of each type of licensed premises. The latest version

of which is available from the Licensing Authority. These conditions form the basis for promoting the efficient operation of premises or sex establishments.

- 18.2 Some of the conditions will be placed on the particular type of establishment as mandatory conditions and others may be applied only where a perceived necessity exists. This would be done in a manner that is both proportionate and reasonable to promote a safe and well-managed venue. Each case will be dealt with on its individual merits.
- 18.3 Whilst conditions may be prescribed on any licence it is likely that the following considerations will attract the attachment of conditions:
- Hours of opening and closing
 - Visibility of the interior of the premises
 - Displays or advertisements
 - Any change to the type of premises
 - Nature of performance (between audience and performers)
 - The control of access to changing room facilities
 - The control of private viewings
- 18.4 The Licensing Authority may impose other conditions specific to individual premises dependant on the type of activity undertaken. The Licensing Authority is not limited to those listed in the pool of conditions.

19 Hearings / Decision making process

- 19.1 Under paragraph 10 (19) of Schedule 3, before refusing an application, renewal or application to transfer a licence all applicants will be given the opportunity to appear before and be heard by the relevant panel/committee that is responsible for determining the application.
- 19.2 Whilst Schedule 3 does not make explicit provision for objectors to be heard, this Licensing Authority would normally permit this. Although a local authority is under a duty to consider any objection made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.
- 19.3 Persons making written objections will also be informed of the date and time of the panel/committee hearing where they will be invited to address the committee and ask questions relating to the application.
- 19.4 All objectors and applicants are reminded that they can if they wish be legally represented at their own expense at the hearing. Alternatively they may if they wish ask a Councillor to represent them.
- 19.5 In determining an application the panel/committee will consider the applicants presentation, the Licensing Authority's authorised officer report and representation/objections.
- 19.6 All parties may use witnesses and supporting documentation however, copies of documents and details of witnesses must be submitted to the Licensing Manager a minimum of one working day prior to the hearing. In special circumstances, with approval of all parties, this may be done at the hearing.

- 19.7 If one of the parties wishes to show video/dvd evidence at the hearing they must inform the Licensing Authority 14 days prior to the hearing taking place and where possible provide copies to the Licensing Authority a minimum of 7 days prior to the hearing to avoid any unnecessary delays
- 19.8 Officers may view the evidence prior to the hearing and advise the chairman of any sensitive images and will establish whether any party objects to the video/dvd being shown. If an objection is raised then the parties concerned should give their reasons for and against the proposed showing.
- 19.9 The Licensing Authority will consider all the evidence presented to it during the hearing and members may ask questions of officers, applicant and objectors. After the evidence has been presented, all parties will be asked to leave the room to allow for the Licensing Authority to come to a decision on the application.
- 19.20 When a decision is reached the Licensing Authority will at the Hearing inform the applicant and relevant parties of their decision and the reasons for coming to that particular decision.
- 19.21 The decision of the Licensing Authority will be confirmed, in writing, to the applicant and objectors attending the Hearing within five working days of the meeting at which the application was considered, giving reasons for the decision.

20 Refusal of a Licence

- 20.1 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence. A licence must not be granted:
- To a person under the age of 18
 - To a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the Licensing Authority within the last 12 months
 - To a person other than a body corporate who is not resident in an European Economic Area (EEA) State or was not so resident throughout the period of six months immediately preceding the date when the application was made or
 - To a body corporate which is not incorporated in an EEA State or
 - To a person who has within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.
- 20.2 A licence may be refused where
- The applicant is unsuitable to hold the licence
 - If the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself
 - The number of sex establishments or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority considers is appropriate for that locality

- That the grant or renewal of the licence would be inappropriate, having regard to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character of the premises, vehicle, vessel or stall in respect of which the application is made.

20.3 In making any determination to refuse an application, renewal or transfer the Licensing Authority will give consideration to:

a) Unsuitability of applicant

In determining the suitability or otherwise of an applicant the Licensing Authority will consider

- previous knowledge and experience of the applicant
- any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area
- any report about the applicant and management of the premises received from objectors and officers.
- any previous convictions and in particular those that have been imposed in respect of offences involving violence, dishonesty, or a breach of the requirements of the legislation covering the type of establishment in respect of which the application is made.

b) Business carried out on behalf of a person who would be refused

The Licensing Authority takes a serious view of any application that seeks to subvert the underlying principles of the Act. Where it is considered that the applicant is effectively operating the business on behalf of a person who would, for whatever reason be refused or disqualified from the grant of a licence due to the mandatory or discretionary grounds for refusal there will be a presumption towards refusal unless overwhelming reasons are accepted for the contrary decision to be made.

c) The application exceeds the limit set on the number of the specific type sex establishment in an area

The Licensing Authority has not set a limit as to the number of establishments of a specific type.

d) The grant of the licence would be inappropriate

In deciding whether the granting of a licence is appropriate the Licensing Authority will consider the type of area in which it is intended to site the premises and the hours during which it is intended to operate.

The authority is also likely to consider:

- The proximity as per the list at 14.9
- Whether the area is predominantly residential rather than commercial in nature and premises may cause disturbance to local community.
- Management systems are not suitable to take into account the safety of its performers, customers and staff.
- Any nuisance associated with the premises or the activities undertaken thereon
- The possibility of children or other vulnerable persons being harmed or exploited by the provision of sexual entertainment or the operation of sex shops or sex cinemas

- The potential of the activities associated with the operation of the premises being a source of crime and disorder, being associated with crime or being used to support crime.
- Any other reason including the existence of a police caution, representations from the police or by other enforcement agencies in relation to crime and disorder.

21 Duration of Licences

21.1 Licences for sex establishments will be granted for up to one year.

22 Renewal of Licence

22.1 It will be the applicant's responsibility to apply for the renewal of the licence 6 weeks prior to the expiry of the existing licence. Failure to apply prior to the expiry will result in the applicant applying for a new licence and/or the need to stop the activity until a licence is granted.

23 Appeals Process

23.1 The Local Government (Miscellaneous Provisions) Act 1982, Paragraph 27, Schedule 3 permits appeals against the decision of the Council in relation to Sex Establishments. The Magistrates Court will hear appeals in the first instance. An appeal must be made within 21 days of the decision of the Licensing Authority to the Magistrates Court.

23.2 An appeal can be made in the following circumstances:-

- Refusal of an application for grant, renewal or transfer of a licence
- Refusal of an application to vary terms, conditions or restrictions on or subject to which any licence is held
- A grievance relating to any term, condition or restriction on or subject to which a licence is held
- Revocation of a licence

23.3 A person wishing to appeal against the Licensing Authorities decision is advised to seek independent legal advice.

24 Enforcement

24.1 The Licensing Authority delivers a wide range of enforcement services in accordance with various policies, 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 Licensing Authority fully supports the principles of the Government's Enforcement Concordat designed to ensure effective and efficient public protection services. Specifically, the Licensing Authority is committed to accord with the principles of good enforcement practice by carrying out its regulatory functions in a fair, open and consistent manner.

24.2 The Enforcement Concordat is based on the principles that businesses should:

- Receive clear explanations from enforcers of what they need to do and by when
- Have opportunities to resolve differences before enforcement action is taken, unless immediate action is needed; and
- Receive an explanation of their rights of appeal

- 24.3 The Licensing Authority recognises the interests of both individual citizens and the requirements of businesses and will work closely with partners to assist licence holders to comply with the law. However, proportionate but firm action will be taken against those who commit serious offences or persistently break the law.
- 24.4 The Licensing Authority has established protocols with a number of enforcement agencies. These protocols provide for the targeting of resources towards premises and activities that require greater attention, while providing a lighter touch in respect of premises that are well operated.
- 24.5 Authorised officers may make regular visits to premises to check that conditions are being complied with and that the premises is operating as stated in their application.
- 24.6 Any breaches found in existing licensed premises may affect the renewal of the licence.
- 24.7 Authorised officers may make visits to premises advertising relevant entertainment to determine if they fall within the exemptions, hold a waiver issued by the council to determine that no breaches of the legislation is taking place.
- 24.8 Any breaches found in relation to holding activities that require a licence may have enforcement action taken, which may include prosecution.

25 Exchange of Information

- 25.1 The Licensing Authority may from time to time exercise its power under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the police and other partners to fulfil its statutory objective of reducing crime in the area.

Proposed amendments to the terms of reference of the Licensing and Safety Committee

Licensing and Safety Committee

- Functions relating to licensing and registration as set out in schedule 1 to the Functions Regulations, the Licensing Act 2003, Gambling Act 2005, Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009, and other licensing functions reserved by law to the Council's Licensing and Safety Committee and its Sub-Committees;
- To act in a quasi-judicial capacity to consider appeals that may require determination upon receipt of representation from an aggrieved party where a licence has either been refused, amended or revoked by officers and make decisions related thereto;
- To act in a quasi-judicial capacity to determine application of licences where there is substantial objection by other parties to the grant of a licence or where in the officer's opinion the issue is of a sensitive nature and make decisions related thereto;
- To consider objectively other ad hoc matters relating to the licensing process which officers or the Council deems appropriate;
- ~~To determine new applications for sex establishment licences and to impose such terms, conditions and/or restrictions as may be lawful and are deemed necessary;~~
- To recommend to Council to determine a policy not to permit casinos, in accordance with section 166 of the Gambling Act 2005;
- To recommend to Council final approval of the Statement of Gambling Act Policy;
- To recommend to Council approval of the Statement of Licensing Policy, in accordance with the Council's policy framework rules;
- To recommend to Council approval of the Statement of Policy in respect of Sex Establishments and Sexual Entertainment Venues;
- To determine matters relating to health and safety under any 'relevant statutory provision' within the meaning of Part 1 of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the Council's capacity as employer.

Note: for the purpose of these terms of reference the term "licence" or "licensing" includes any such controlling measure such as permit, certificate or registration.

Proposed amendment to Employee Delegation Scheme

Note: this is the relevant extract from the Scheme relating to the Assistant Director, Housing and Corporate Services

Assistant Director, Housing and Corporate Services	
<p>6.6 Licensing:</p> <ul style="list-style-type: none"> • Except where a specific Council side responsibility, to manage all licensing and registration functions of the Council including the licensing and registration of pleasure boats, hackney carriage and private hire, sex establishments, street and house to house collections, motor scilage, scrap metal dealers, street trading consents and such other services as may be authorised. • With regard to Licensing Act 2003 matters, to determine: <ul style="list-style-type: none"> (i) An application for a personal licence, if no objection made; (ii) An application for a premises licence/club premises certificate, if no relevant representation made; (iii) An application for a provisional statement, if no relevant representation made; (iv) An application to vary a premises licence/club premises certificate, if no relevant representation made; (v) An application to vary a designated premises supervisor in all cases other than where there is a police objection; (vi) A request to be removed as a designated premises supervisor; (vii) An application for transfer of premises licence in all cases other than where there is a police objection; (viii) Applications for interim authorities in all cases other than where there is a police objection; (ix) A decision on whether a complaint is irrelevant, frivolous, vexatious, etc. <p>Note: A relevant representation is one which relates to the likely effect of the grant of the licence on the promotion of at least one of the four licensing objectives specified in the Licensing Act 2003 (Council 9 December 2004 and 22 November 2007).</p> • With regard to the Gambling Act 2005, to determine: <ul style="list-style-type: none"> (i) Fee setting (when appropriate); (ii) An application for a premises licence, where no representations received/representations have been withdrawn; (iii) An application for a variation to a licence, where no representations received/representations have been withdrawn; (iv) An application for a transfer of a licence, where no representations received from the Commission; (v) An application for a provisional statement, where no representations received/representations have been withdrawn; (vi) An application for club gaming/club machine permits, 	<p>Council</p>

where no objections made/objections have been withdrawn;

(vii) Applications for other permits;

(viii) A cancellation of licensed premises gaming machine permits;

(ix) The consideration of a temporary use notice (Council 7 December 2006).

- With regard to the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009:
 - (i) To grant any applications for sex establishments and sexual entertainment venues whereby no representations have been received and the Assistant Director is able to agree suitable conditions with the applicant.

Appendix 4 - Diversity Impact Assessment: Screening Form



Directorate Business Support	Name of Function or Policy or Major Service Change Sex Establishments & Sexual Entertainment Venues Policy		
Officer responsible for assessment Lynsey Keen	Date of assessment 24 May 2010	New or existing New	
Defining what is being assessed			
1. Briefly describe the purpose and objectives	<ul style="list-style-type: none"> • Subject to a decision by the Council for the adoption of Section 27 Policing Crime Act 2009 and the introduction of a policy to outline all statutory requirements. • Set out Council approach to licensing venues and enforcement action. • Policy objective to control locality and number of venues providing adult entertainment with a view to protecting children, vulnerable adults and sensitive locations e.g. religious buildings. 		
2. Who is intended to benefit, and in what way?	<ul style="list-style-type: none"> • Residents and businesses situated near to venues. • Children and vulnerable people from gaining access to venues. • Dancers/Performers from being intimidated, exploited or victim of sexual harassment. 		
3. What outcomes are wanted?	<ul style="list-style-type: none"> • Compliance with statutory requirements • Ensure conditions are placed on licences to protect performers and young persons. • Control displays and advertising of eroticism. 		
4. What factors/forces could contribute/detract from the outcomes?	Contribute <ul style="list-style-type: none"> • Home office guidance allows Local Authorities to regulate lap dancing clubs and similar venues. • Allows for stringent conditions to be imposed on existing clubs. • Controls numbers of new applicants / venues applying in the area. 	Detract <ul style="list-style-type: none"> • Residents and businesses objecting to applications on grounds of morality, ideology, religious groups and feminist campaigners. • Changing demographics 	
5. Who are the main stakeholders?	<ul style="list-style-type: none"> • Existing licensed premises / New Applicants • Residents / Businesses / Visitors • Medway Council / Statutory Authorities 		

6. Who implements this and who is responsible?	<ul style="list-style-type: none"> Medway Council 	
Assessing impact		
7. Are there concerns that there <u>could</u> be a differential impact due to <i>racial groups</i> ?	YES	Brief statement of main issue
	NO	
What evidence exists for this?	This policy statement applies to all individuals and owners of premises regardless of race/ethnicity.	
8. Are there concerns that there <u>could</u> be a differential impact due to <i>disability</i> ?	YES	Brief statement of main issue
	NO	
What evidence exists for this?	This policy statement applies to all individuals and owners of premises regardless of race/ethnicity.	
9. Are there concerns that there <u>could</u> be a differential impact due to <i>gender</i> ?	YES	Brief statement of main issue
	NO	
What evidence exists for this?	This policy statement applies to all individuals and owners of premises regardless of race/ethnicity.	
10. Are there concerns there <u>could</u> be a differential impact due to <i>sexual orientation</i> ?	YES	Brief statement of main issue
	NO	
What evidence exists for this?	This policy statement applies to all individuals and owners of premises regardless of race/ethnicity.	
11. Are there concerns there <u>could</u> be a have a differential impact due to <i>religion or belief</i> ?	YES	Brief statement of main issue
	NO	
What evidence exists for this?	This policy statement applies to all individuals and owners of premises regardless of race/ethnicity.	
12. Are there concerns there <u>could</u> be a differential impact due to people's <i>age</i> ?	YES	Brief statement of main issue
	NO	
What evidence exists for this?	This policy statement applies to all individuals and owners of premises regardless of race/ethnicity.	
13. Are there concerns that there <u>could</u> be a differential impact due to <i>being trans-gendered or transsexual</i> ?	YES	Brief statement of main issue
	NO	

What evidence exists for this?	This policy statement applies to all individuals and owners of premises regardless of race/ethnicity.	
14. Are there any <i>other</i> groups that would find it difficult to access/make use of the function (e.g. young parents, commuters, people with caring responsibilities or dependants, young carers, or people living in rural areas)?	YES	If yes, which group(s)?
	NO	
What evidence exists for this?	This policy statement applies to all individuals and owners of premises regardless of race/ethnicity.	
15. Are there concerns there <u>could</u> have a differential impact due to <i>multiple discriminations</i> (e.g. disability <u>and</u> age)?	YES	Brief statement of main issue
	NO	
What evidence exists for this?	This policy statement applies to all individuals and owners of premises regardless of race/ethnicity.	

Conclusions & recommendation		
16. Could the differential impacts identified in questions 7-15 amount to there being the potential for adverse impact?	YES	Brief statement of main issue
	NO	
17. Can the adverse impact be justified on the grounds of promoting equality of opportunity for one group? Or another reason?	YES	Please explain
	NO	
Recommendation to proceed to a full impact assessment?		
NO	This function/ policy/ service change complies with the requirements of the legislation and there is evidence to show this is the case.	
NO, BUT ...	What is required to ensure this complies with the requirements of the legislation? (see DIA Guidance Notes)?	Minor modifications necessary (e.g. change of 'he' to 'he or she', re-analysis of way routine statistics are reported)
YES	Give details of key person responsible and target date for carrying out full impact assessment (see DIA Guidance Notes)	

Action plan to make Minor modifications		
Outcome	Actions (with date of completion)	Officer responsible
Publication of Statement	Publication of Statement on Council website and to be made available if and when required in line with Council Policy in other formats/ media.	Licensing Manager
Annual Stats to be compiled and assessed for change	Straw poll to be conducted on an annual basis	Licensing Manager

Planning ahead: Reminders for the next review		
Date of next review	November 2013	
Areas to check at next review (e.g. new census information, new legislation due)	<p>Include detailed breakdown of who/how many people have been consulted and the areas of medway they represent</p> <p>Checks to be made on the outcomes of annual straw poll of both applications and representations received</p>	
Is there <i>another</i> group (e.g. new communities) that is relevant and ought to be considered next time?		
Signed (completing officer/service manager)	Date	18 November 2010
		
Signed (service manager/Assistant Director)	Date	18 November 2010
		

Options

In respect of sexual entertainment venues, the options available for members to consider are listed below.

1.1 Options relating to adoption of the sexual entertainment venue policy: -

1.1.1 **Option 1** - To take no action and continue to enforce sexual entertainment through the provisions of the Licensing Act 2003. However the legislation would then require a consultation process being undertaken next year (i.e. after April 2011) to ascertain public opinion. The outcome of the consultation might then force adoption of the powers at a later stage.

1.1.2 **Option 2** - To be proactive and adopt Section 27 of the Policing and Crime Act 2009, which amends Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 in relation to sexual entertainment venues. This could be done either:

- **Option 2A** Without setting a licensing policy and determining each application on its own merits. With this option the operational date (1st appointed day) could follow fairly swiftly after the resolution. One month is the statutory minimum lead-in time.
- or, **Option 2B** with the intention of introducing of a licensing policy to ensure transparency and consistency and also to guide operators intending to make application/s for any type of sex establishment in the area of Medway. The lead in time will need to be much greater if a policy is to be developed and consulted upon prior to the first appointed day. A realistic timescale for this option would be to work towards approving and publishing a policy by the end of January 2011, with the first appointed day being set as say 1 April 2011.

1.1.3 **Option 3** - To adopt the provisions, but not until after a licensing policy has been drafted and consulted upon. Whilst the resolution would not be made until later (e.g. January 2011) the operational date could then follow on more quickly than with option 2B.

1.1.4 Members stated that they were minded to proceed with option 2B, hence the consultation being carried out and this report.

1.2 Options relating to decision-making and officer delegations: -

1.2.1 **Option 1** – All applications in respect of sex establishments to go to the Full Licensing and Safety Committee in line with the current process for sex shops.

1.2.2 **Option 2** - Applications in respect of sex establishments to go to the Full Licensing and Safety Committee where there have been relevant representations received in relation to an application or where conditions have been proposed by officers but not accepted by the

applicant and officer delegations to grant any applications whereby no representations have been received and the officer is able to agree suitable conditions with the applicant.

- 1.2.3 Officers are not able to accurately predict the number of applications expected under this legislation, as establishments may decide to limit “relevant entertainment” taking place to not more than one a month and no more than eleven in a twelve-month period under the Licensing Act 2003, but it is envisaged to be not more than 10 received during the first year.