

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Author: Licensing Manager

Wards: All

Locality Affected: All

Parishes Affected: All

1. Purpose and Reasons

- 1.1 To seek the agreement of the Licensing Committee to adopt a policy covering a licensing regime for sex establishments, and to commend the policy to Council for adoption.
- 1.2 Although the Council has a comprehensive adopted Statement of Licensing Policy, it does not include the licensing of sex establishments. These establishments typically include those providing sexual entertainment through performance and film and sex shops. To rectify this omission, and enable the Council as Licensing Authority to exert some control over these establishments to protect both those who work in and visit them, the Licensing Committee agreed to consult on a draft policy at its June 2016 meeting.
- 1.3 The Policy has strong links to the Council's objective of helping people help themselves. It also seeks to promote the four statutory licensing principles, which are:
 - Prevention of Crime and Disorder
 - Protection of Children from Harm
 - Prevention of public nuisance
 - Ensuring public safety

2. Recommendations

The Committee is recommended to:

- 2.1 Endorse the Policy in respect of Sex Establishments, attached at Appendix 1, and commend it to Council for adoption.

3. Detail

Background

- 3.1 The Local Government (Miscellaneous Provisions) Act, 1982 (as amended by Section 27 of the Policing and Crime Act, 2009) gives local authorities the power to make a resolution to regulate sex establishments through the licensing regime. Swindon now hosts four sex establishments, all in the Town Centre, but does not have a licensing policy in place to provide the full range of up to date protection

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

mechanisms that would be expected for existing or new establishments of this kind.

- 3.2 Of particular importance is the need to ensure that adequate protection is provided for those who work in such establishments and also those who visit them. It is also necessary to minimise impacts of this type of entertainment on the young and vulnerable. This is particularly so in view of the fact that they tend to be located in some of the most accessible parts of the Borough, where footfall is high.
- 3.3 At its meeting of 7th June 2016, the Licensing Committee endorsed a draft policy for consultation and resolved that the results of the consultation, along with any amendment to the policy be brought back to Committee for consideration.

Content

- 3.4 The draft Policy covers all aspects of licensing for sex establishments. This Policy applies to:
- sex shops
 - sex cinemas
 - sexual entertainment venues
- 3.5 Inevitably, licences that cover such a range of considerations will be complex and their compliance will require monitoring. As such the fee attached to these licences is set between £1200 and £2800 depending on the nature of the establishment and whether is a new application or renewal. This will place an additional burden on these venues but when benchmarked against other Licensing Authorities', this cost is relatively low.

Consultation

- 3.6 Consultation on the draft policy took place between 17th June 2016 and 29th July 2016.
- 3.7 Due to an administrative error on the initial consultation where the incorrect end date was advertised, it was determined to extend the consultation for a further six weeks to ensure fair and reasonable opportunity to for anyone to respond. The extended consultation commenced 3rd August 2016 and closed on 15th September 2016.
- 3.8 Despite letters going out to all affected premises and relevant consultees as well media awareness, just five responses were received. These are appended at Appendix 2.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

As a result of the consultation no amendments are proposed to the policy. However the full comments and responses can be seen at Appendix 2.

Final Policy for consideration

- 3.9 It is, therefore, proposed that the Sex Establishment policy is adopted so as to enable the Council to exert greater control over the licensable activities that take place at these venues. As such, Committee is requested to commend the policy attached at Appendix 1 to Council for adoption.
- 3.10 Once adopted the policy be considered in conjunction with the adopted Statement of Licensing Policy and will become a material consideration in determining licence applications for this type of entertainment.

4. Alternative Options

- 4.1 The Licensing Committee could choose not to proceed with the adoption of the policy, and continue to allow sex establishments to operate without regulation, if it considers that there is no benefit in doing so. However, evidence indicates that a strong and consistent set of licensing principles will provide the certainty required to ensure appropriate protection to health, welfare and amenity. All other licensed activities are covered by policies in the Statement of Licensing Policy. This policy brings sex establishments in line with all other licensable activities.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 There are no direct financial or procurement implications arising from this report, though licenses for Sex Establishments will attract a fee, which is considered to be reasonable in ensuring that there is no financial burden on the Council in dealing with, and enforcing licenses. If adopted, the policy will be made available on the Council's website.

Legal and Human Rights Implications

- 5.2 Legal and Human Rights considerations have been taken fully into account in compiling this report. The recommendations of this report are compatible with Convention Rights as they are fully in accord with the requirements of relevant legislation. The Council is required to comply with the statutory provisions referred to in the report, which the adoption of this policy will ensure it does. All other legal and human rights implications have been considered in the preparation of this report.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.3 Health and crime and disorder are drivers for the policy and taken into account in its drafting and designation. There are no staffing, sustainability or rural implications arising from this report.

Diversity Impact Assessment

- 5.4 A Diversity Impact Assessment was prepared for the Council's Statement of Licensing Policy, which the policy links with. This is available on request

Risk Management

- 5.5 An adopted policy will assist in enabling the Council to influence and where appropriate refuse applications that would result in the licensing principles not being upheld, reducing the risk of challenge. The implementation of the policy will reduce health and amenity risks to members of the community.

6. Consultees

- 6.1 The Board Director, Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 Local Government (Miscellaneous Provisions) Act, 1982, (as amended by section 27 of the Policing and Crime Act, 2009)

8. Appendices

- 8.1 Appendix 1 – Sex Establishment Policy for adoption
8.2 Appendix 2 – Responses to the consultation

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Appendix 1 – Sex Establishment Policy for adoption and incorporation into the Statement of Licensing Policy

Contents

Part 1 - Introduction

Part 2 General principles

Exchange of information

Applying for a licence

Grounds for refusal of applications or revocation of licences

Length of licence

Waivers

Fees

Part 3 Types of sex establishment

Sexual entertainment venues

Sex shops

Sex cinemas

Part 4 Consideration of applications

Part 5 Review of Policy

Part 6 Complaints

Appendix A - Standard conditions applying to sex establishment licences

Appendix B - Standard conditions applying to sexual entertainment venues

Appendix C - Standard conditions applying to sex shops

Appendix D - Standard conditions applying to sex cinemas

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

PART 1

1.0 Introduction

Background

1.1 Swindon Borough Council's Sex Establishments Policy ("the Policy") sets out the approach to the regulation of sex establishments and the procedure relating to applications for sex establishment licences.

This Policy applies to:

- sex shops
- sex cinemas
- sexual entertainment venues

1.2 All of the above are set out in the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009.

1.3 The Council is mindful of the possible concerns of the local community and that there may be conflict between the wishes of applicants for licences and those who object to such applications. This Policy will therefore guide the Council when considering applications for sex establishment licences in balancing the needs of the applicant, residents, communities, commercial interests, patrons and employees.

1.4 This Policy may be reviewed from time to time as the Council thinks fit and no longer than 3 year intervals. Any person can make representation to the Council for consideration of review of the Policy.

1.5 Swindon Borough Council did not adopt the provisions of the Local Government (Miscellaneous Provisions) Act 1982 to require sex shops and sex cinemas to operate under any licence issued. However, in 2014 the Council resolved to undergo a formal consultation process with a view to adopting the provisions of schedule 3 as amended by the Policing and Crime Act 2009 to enable licensing of sex entertainment venues within the Borough.

1.7 In licensing sex establishment venues the council makes no moral judgment on the activities provided and recognizes that legislation has made it lawful to operate sex establishments and that such businesses are part of the retail and leisure industries, the role of Swindon Borough Council as a licensing authority is to administer and ensure compliance with the licensing regime in accordance with the law.

Further information on the subject of this report can be obtained from Kathryn Ashton, Licensing Manager on (01793) 466113, or kashton@swindon.gov.uk.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

1.8 Swindon Borough Council as Licensing Authority, ('The Authority'), is committed to maintaining a safe, sustainable and thriving economy that can be enjoyed by persons of all ages and from all sections of the community.

Profile

1.9 Swindon is a large town and unitary authority located in the South West of England at its border with the South East. It is midway between Bristol, approximately 40 miles to the west and Reading, approximately 40 miles to the east. Swindon Railway Station is on the main line from London, Paddington to Bristol and South Wales, and sits between Junctions 15 and 16 of the M4. Swindon Borough Council has been a unitary authority independent of the rest of Wiltshire since 1997. Swindon was named an Expanded Town under the Town Development Act 1952 and this led to a major increase in its population. Current population estimates show the urban area to be 174,000 with around 206,000 in the Borough as a whole, including the satellite towns of Highworth and Wroughton and a number of villages (Bishopstone, Blunsdon St Andrew, Castle Eaton, Chiseldon, Hannington, Inglesham, Liddington, South Marston, Stanton Fitzwarren and Wanborough).

1.10 There are approximately 750 premises and clubs licensed by the Authority which include pubs, nightclubs, restaurants, cinemas, theatres, takeaways, off-licences/supermarkets and members clubs. The Authority welcomes and encourages new and existing businesses that bring a range of diverse activities into the borough, whilst ensuring public safety is paramount.

Equality Act 2010

1.11 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers, including licensing functions. The Council will be mindful of this duty when determining all licensing applications. In particular the Council will pay due regard to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Crime and Disorder Act 1998

1.12 The Council is obliged to exercise its sex licensing functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment). The Council has had regard to this duty in formulating this Policy.

Part 2 – General Principles

Exchange of information

2.0 The Council may from time to time exercise its powers 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. Data may also be released in accordance with statutory provisions under the Data Protection Act 1998, the Freedom of Information Act 2000, and associated legislation.

2.1 Details of applications and the anonymised contents of objections referred to the sub-committee for determination will be published in reports which will be made publicly available in accordance with the Local Government Act 1972.

Applying for a licence

2.2 Businesses operating premises, vehicles, vessels or stalls, as sex shops, sex cinemas, or sexual entertainment venues, must hold appropriate licences issued by the relevant local authority, or have had the licence requirement in respect of their business waived.

2.3 Application forms must contain such particulars as specified by the authority and applications must be made in accordance with the provisions of schedule 3 of the 1982 Act. Application forms and further information on the application process may be obtained from the Licensing team or via our website (www.swindon.gov.uk). Applications may also be made to the authority electronically, via our website.

2.4 Applicants must give public notice of their applications, both at the site of the premises (or stall, vehicle or vessel) and in a local newspaper, and templates for these notices are available from the Licensing team. Failure to give notice in accordance with the statutory provisions will invalidate an application.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

2.5 The Act allows for objections to be made against applications for sex establishment licences, and these may come from any person, regardless of whether they live or work near to the proposed sex establishment. This power also extends to every type of application for a licence, including renewals, transfers and variations in addition to new licences. Objections must be given to the Council no later than 28 days after the date of the application. In addition, the police are a statutory consultee for all applications, and must be given notice of all applications, by way of service by the applicant of a copy of the application form (unless the application was made via the Council's electronic application facility).

2.6 Any objections must:-

- Be made in writing to the local authority;
- Indicate the name and address of the author of the objection (which will not be revealed to the applicant without the objector's consent);
- Indicate the application to which the objection relates;
- Indicate the general grounds for making the objection.

2.7 Where a significant number of objections or particularly serious objections to an application are received, or other concerns in respect of the discretionary grounds for refusal arise, that application will be considered at a public hearing by a sub-committee under delegated powers.

2.8 We will take the following approach when making decisions on applications:

- Each case will be decided upon its merits. The Council will not apply a rigid rule to its decision making, although regard will be given to this document, and to the relevant legislation and case law, in reaching any decision;
- The absence of objections will not in itself constitute grounds for automatic approval of an application. If licensing officers believe that any of the grounds for refusal (as outlined later in this document) may be engaged, the Council may refer an application to its Sub-Committee for consideration, and for that application to be amended or refused if believed necessary. Similarly, the existence of objections will not lead to an application automatically being refused, but rather will start a process of examination of the issues that may arise if the licence were to be granted.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

- Persons making objections can include individuals, residents/tenants associations, community associations, businesses and trade associations. Councillors and MPs can also make objections. Ward councillors may represent objectors, where they have been requested to do so by that objector, at any hearing about the application, but may not also sit on the sub-committee determining the application in question;
- The Council will give clear reasons for its decisions.

2.9 Although the Council must consider all relevant objections given in respect of an application prior to making its decision, less weight will be attached to those objections which are considered to be frivolous or vexatious, or which relate to moral grounds (as these are outside the scope of the 1982 Act). In reaching any decision in this respect, we will rely upon the accepted dictionary definition of frivolous or vexatious.

2.9 The names and addresses of persons making objections will not be disclosed to the applicant without their consent. The information will, however, be shared with the Councillors sitting on the relevant sub-committee and their advisors.

Grounds for refusal of applications or revocation of licences

2.10 A number of grounds for refusing applications for sex establishment licences are set out in paragraph 12 of schedule 3 to the 1982 Act.

2.11 Applications for licences cannot lawfully be granted if:

- a) The applicant is under the age of 18 years;
- b) A licence held by the applicant has previously been revoked, which would disqualify him or her from obtaining or holding a licence in the area of that authority for 12 months from the date of revocation;
- c) The applicant, where this is an individual, is not resident in an EEA state or was not resident throughout the period of six months immediately preceding the date when the application was made;
- d) The applicant, where this is a body corporate, is not incorporated in an EEA state;
- e) The applicant 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.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

2.12 The authority may also decide to refuse applications for licences if:-

- a) The applicant is considered unsuitable to hold the licence, by reason of having been convicted of an offence or for any other reason;
- b) The business to which the licence 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;
- c) The number of sex establishments, either generally or of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the Council considers appropriate for that locality;
- d) The grant or renewal of the licence would be inappropriate having regard to:-
 - The character of the relevant locality, or
 - The use to which any premises in the vicinity are put, or
 - The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Length of licence

2.13 Unless there are exceptional reasons otherwise, licences will be granted for the maximum duration of one year at a time, in the interests of proportionality and to provide certainty to those operating lawful businesses.

Waivers

2.14 Any request for a waiver from the requirement to hold a sex establishment licence will be considered on its own merits and those merits will be taken fully into account prior to a decision being made.

2.15 The authority does not consider that it would generally be appropriate to grant a waiver from the requirement to hold a sex establishment licence in respect of a business that solely or primarily provides licensable, sex-related activities on a commercial basis (i.e. for consideration and with a view to profit).

2.16 Instead, the authority views the ability to seek a waiver as an option for businesses that provide the licensable activities as a minor, ancillary part of their overall trade, and will not make a profit directly from the provision of those activities. An example may be the use of pornographic materials as a stimulus for male subjects by a fertility clinic.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Fees

2.17 The authority will require payment of an application fee with every application for a licence. These fees will be reviewed and set ahead of every financial year, and fee levels will be made available from the Licensing team or via our website. In setting fees, we will have regard to any relevant guidance, and to the requirements of the EU Services directive and applicable case law.

Part 3 - Types of sex establishment

3.0 The Local Government (Miscellaneous Provisions) Act 1982 defines 'sex establishments as three different types: Sexual Entertainment Venues, Sex Shops and Sex Cinemas.

3.1 Each type has a specific definition, and provides a combination of particular activities. Sex establishments can be a premises, vehicle, vessel or stall, but not a private dwelling-house to which there is no public admission. The Council has set standard conditions that will apply to all sex establishment licences, and further conditions applying to each particular type of sex establishment. If an application is considered by a sub-committee, it may apply further specific conditions if it is deemed necessary.

Sexual entertainment venues

3.2 Sexual entertainment venues are considered to be "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer".

3.3. "Relevant entertainment" is defined in schedule 3 of the 1982 Act (as amended by section 27 of the 2009 Act) as: "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 the audience (whether by verbal or other means)". The audience can consist of just one person, e.g. in a private booth.

3.4 Each type of performance or display will be judged on its own merits, but the following entertainment will generally be deemed to be "relevant entertainment":-

- Lap dancing;
- Pole dancing;
- Table dancing;

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

- Nude or topless waitress service;
- Strip shows;
- Peep shows;
- Live sex shows.

3.5. Premises providing relevant entertainment on no more than 11 occasions per year, with each occasion lasting no more than 24 hours and separated from another occasion by at least a month, are exempt from the licensing requirement. For example, a pub that provided two events annually with strip-tease entertainment, on the 1st September and the 2nd October, would not require a licence. However, if the events were held on the 1st September and the 30th September, a licence would be required.

3.6. Entertainment which is not classed as “relevant entertainment” may still require licensing under the Licensing Act 2003.

Sex shops

3.7. Sex shops are used to a “significant degree” for the sale, hire, exchange, lending, display or demonstration of sex articles or other items intended for use in connection with or to stimulate or encourage sexual activity, or acts of force or restraint associated therewith. Articles containing reading matter or imagery, including printed material, sound recordings or video recordings (certified with an ‘R18’ rating, indicating pornographic content) which portray, stimulate or encourage sexual activity or associated acts of force or restraint, or depict genital organs, urinary or excretory functions, will also fall within the definition of a sex article.

3.8. The phrase “significant degree” is not defined in legislation, although the courts have previously considered its meaning. When considering whether or not a business is selling a significant degree of sex articles and needs a licence, the Council will consider:

- the ratio of sex articles to other aspects of the business;
- the absolute quantity of sales;
- the character of the remainder of the business;
- the nature of the displays in the business;
- turnover generated by sales of sex articles;
- the format of any literature, publicity or advertising materials;

Further information on the subject of this report can be obtained from Kathryn Ashton, Licensing Manager on (01793) 466113, or kashton@swindon.gov.uk.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

- Other factors which appear to be materially relevant.

3.9. For the purposes of the Act, it is immaterial as to whether the sex shop is open for customers to visit, or is used to supply goods to fulfil orders made by mail or via the internet. However, it should be noted that the supply of pornographic video recordings by remote order is an offence under the Video Recordings Act 1984.

3.10. Sex shops tend to be the most discrete type of sex establishment, and the Council has licensed one or more sex shops since adoption of the 1982 Act for that purpose in 1984.

Sex cinemas

3.11 Sex cinemas are those premises, vehicles vessels or stalls used to a significant degree for the exhibition of moving pictures which portray or are intended to stimulate or encourage sexual activity or associated acts of force or restraint, or which depict genital organs or urinary or excretory functions. These films will have been certified by the BBFC and rated 'R18', indicating hard-core pornographic content.

3.12 The showing of films rated as '18', which may contain limited (usually simulated) sexual activity will not in itself require a sex establishment licence. However, such films could only be publicly exhibited under an authorisation issued through the Licensing Act 2003, and would not be authorised by way of a sex establishment licence. Premises wishing to exhibit both R18-rated films and those with lower certificates would require both types of licence.

3.13 Films with sexual content which form exhibits (or parts thereof) in galleries and museums are also exempt from licensing, so long as they are organised by an exempted non-commercial society or similar, certified under section 6(6) of the Cinemas Act 1985.

3.14 Typically sex cinemas will exhibit films for the benefit of an audience, and for these purposes an audience may comprise a single person.

3.15 Exhibitions of films within a dwelling-house to which there is no public admission do not fall within the licensing requirements.

Part 4 – Consideration of applications

4.0 The Council considers that the suitability of the applicant and how he/she intends to operate his/her business is an important factor in the consideration of an application. As sex establishments cater for a particular adult audience, the use of the premises for

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

any of the purposes set out in section 2 of this Policy could impact on the area in which it is situated. For that reason we expect any applicants for sex establishment licences to demonstrate not only that they have taken steps to apply our conditions in preparing their operating procedures, but have also carefully considered the following when compiling their applications:-

a) The visual impact of the premises on the surrounding area: this may be due to its appearance, signage, promotional material, and the use of any visible smoking area by its staff and customers. Applications should clearly indicate how any operator aims to ensure that activities taking place in the premises are not visible outside.

b) What measures will be put in place to prevent access by persons who are under 18.

c) is the premises directly accessible, or is access or egress shared with another property?

d) The interior design and layout of the establishment, which would need to take into account the following factors:

- Are there enough operational members of staff to adequately oversee the welfare of both performers and customers:
- Is the whole of the area given over for use as a sex establishment visible, well lit, with no small or poorly lit alcoves or rooms which are not easily accessible;
- Is the premises on one level - premises over several floors could complicate operating procedures and make it more difficult to provide CCTV, which is a standard condition.

e) Setting 'House Rules' - in particular for sexual entertainment venues - to include health, safety and welfare provisions for both staff and customers. These should include the following:

- Providing a good 'physical environment' for performers, i.e. safe and secure changing facilities, adequate temperature regulation, rest areas and cooking facilities.
- Setting out clear information on any commission fees or fines, and keeping records and receipts of such.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

- Clearly displaying rules for customer behaviour and ensuring these are adhered to.
- Ensuring that performers are aware of any licensing conditions, Council policy and operating procedures and house rules of the venue.
- Providing a sufficient number of door staff to patrol the premises at all times that the premises is providing sexual entertainment.
- Putting measures in place to ensure the safety and welfare of both performers and customers in private booths; this could be by way of ensuring that booths are not fully enclosed, and the installation of panic buttons.
- Introducing a policy outlining safety measures for performers when they leave the premises at the end of a shift.

f) Ensuring that all performers are signed up to a Code of Conduct, that will incorporate details of the measures outlined above.

g) Ensuring that the opening hours of the premises do not cause a detrimental impact on the locality in which the premises is situated. For example ensuring customers leaving the premises late at night do not cause a disturbance to local residents - how would the operator ensure that disturbance was minimised.

h) How will incidents of anti-social behaviour linked to the operation of the premises be addressed and discouraged.

i) Evidence of overall good record keeping, including full details and evidence of age verification and UK employment entitlement of staff members and performers.

j) What provisions are to be provided for smokers - this could be operational staff, customers or performers.

k) The sourcing of products and goods for sale only from reputable suppliers.

l) Arrangements for the regular cleaning and upkeep of all areas of the premises.

4.1 Applicants will also be required to submit plans to accompany their applications. We expect plans to be drawn to an appropriate scale, to be clear and legible, and to include the following information:-

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

- The extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
- The location of points of access to and egress from the premises and, if different, the location of escape routes from the premises;
- The area(s) within the premises used for the relevant licensable activities (e.g. the locations in which sexual entertainment or exhibition of sex films will occur);
- Fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment.
- In a case where the premises includes a stage, podiums or raised areas, the location and height of each stage, podium or raised area relative to the floor;
- In the case where the premises includes any room(s) containing public conveniences, the location of the room(s);
- In the case of sexual entertainment venues, any changing or dressing facilities provided for the use of performers, and any areas in which other non-relevant entertainment is provided;
- The location of a kitchen, if any, on the premises. The above items may be shown on the plan through the use of symbols or colour-coding, in which case a legend should also be provided to indicate the meaning of each symbol and colour used. Applications for vehicles, vessels and stalls should be accompanied by a site plan drawn to an appropriate scale, showing the location at which the sex establishment would operate.

4.2 The Council may attach conditions to licences. Annex A sets out the standard conditions that will apply to all types of sex establishment licences, while additional conditions applying to each type of sex establishment are located at Annexes B, C and D, respectively.

4.3. Consideration may be given to the amendment or removal of certain conditions on a case by case basis, where the applicant can provide suitable evidence that inclusion of a particular condition would be disproportionate to the provision of the relevant activities.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

4.4 Where it would be reasonable to do so, a sub-committee determining an application for a licence can also impose additional proportionate conditions on licences.

Part 5 – Review of Policy

5.0 This policy will be kept under review and updated in light of any significant changes in legislation, case law or national guidance. We will also carry out periodic reviews of the policy to ensure that it remains appropriate to the current operating environment.

5.1. We will consider any viable and sensible recommendations made in respect of our policy (unless they are not in line with central or local government policy and legislation). If you wish to comment on the policy please email licensing@swindon.gov.uk and your comments will be considered during future policy reviews.

Part 6 – Complaints

6.0 If you wish to make a complaint about alleged unlicensed activity or breach of a licence then you can contact the Licensing team during normal office hours, using the contact details below. If you need to make a complaint outside of normal office hours then you can leave a message either by telephone or email which will be responded to when the office re-opens. Complaints made to the Licensing team will be investigated by a Licensing Enforcement Officer who will also inform you of any action taken as a result of your complaint.

Licensing department
Swindon Borough Council
Wat Tyler House West 5th Floor
Beckhampton Street
Swindon
SN1 2JH

Telephone: 01793 466331

Email: licensing@swindon.gov.uk

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Appendix A - Standard conditions applying to sex Establishment licences

The following conditions will attach to all sex establishment licences issued by the Council, pursuant to paragraph 13(1) of schedule 3 to the 1982 Act:

1. In these conditions, unless otherwise stated, the following expressions shall have the following meanings:
 - a. "Sex Establishment" and "Sexual Entertainment Venue" "Sex Shop" and "Sex Cinema" shall have the meanings ascribed to them in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009.
 - b. "Sex Shop" and "Sex Article" shall have the meanings ascribed to them in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
 - c. "Premises" means a building or part of a building and any forecourt, yard or place of storage used in connection with a building or part of a building which is the subject of a licence for a Sex Establishment granted under the said Schedule.
 - d. "Approval of the Council" or "Consent of the Council" means the approval or consent of the Council in writing and "Approve", "Approved" and "Approving" shall be construed accordingly.
 - e. "The Council" means Swindon Borough Council.
2. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a Sex Establishment, the special conditions shall prevail.
3. The granting of a licence for a Sex Establishment shall not be deemed to convey any approval or consent which may be required under any enactment by law, order or regulation other than Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

Conduct and Management of Sex Establishments

4. Where the Licensee is a body corporate or unincorporated body, any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

manager are to be furnished in writing within 14 days of a notice in writing from the Council.

5. The Licensee or a responsible person nominated by him or her in writing for the purpose of managing the Sex Establishment in his or her absence, and of whom details (including photographs) have been supplied to and approved by the Council, shall be personally responsible for, and present at the premises (or part of it), used as a Sex Establishment during the whole time it is open to the public.

6. The names of both the Licensee and the person nominated by him or her to be responsible for managing the Sex Establishment in his or her absence shall be prominently displayed within the Premises so as to be readily visible to any person visiting the Sex Establishment.

7. The Licensee or the person nominated by him or her to be responsible for managing the Sex Establishment in his or her absence shall maintain a daily register. It must record the name and address of the person who is to be responsible for managing the Sex Establishment that day and the names and addresses of those employed and present on that day in the premises. The register is to be completed each day within one hour of the Sex Establishment's opening for business and is to be available for inspection by the Police and by authorised officers of the Council.

8. The Licensee shall retain control over the part of Premises used as a Sex Establishment and shall not sell, let, sub-let, licence or otherwise part with possession or occupation of any part of the Premises and the Licensee shall ensure that the Council is notified immediately, in writing, in the event that any part of the Premises is affected by the termination of a lease or any other event affecting the Licensee's occupation or control of the premises.

9. The Licensee or the person nominated by him or her to be responsible for managing the Sex Establishment in his or her absence shall maintain good order in the Premises.

10. No person under the age of 18 years shall be admitted to the Sex Establishment and persons who appear to be under the age of 25 years shall be required to provide photographic proof of age prior to admission. A notice to this effect, of a size and in a form and position to be approved by the Council, shall be displayed at all times on the outside of the Premises.

11. The Licensee or the person nominated by him or her to be responsible for managing the Sex Establishment in his or her absence shall ensure that the public are

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

not admitted to any part or parts of the Premises other than those which have been approved for such access by the Council.

12. No part of the Premises shall be used by prostitutes (irrespective of gender) for the purposes of solicitation or of otherwise exercising their calling.

13. The Licensee shall ensure that neither he or she nor any other person shall seek to obtain custom for the Sex Establishment by means of personal solicitation anywhere in the Borough of Swindon.

14. The Licensee shall comply with all applicable statutory provisions and any regulations made thereunder.

15. The copy of the licence and the copy of these Regulations required to be exhibited in accordance with paragraph 14(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall be reproductions to the same scale as those issued by the Council. The copy of the licence and the copy of these Regulations shall be displayed in a manner and position approved by the Council.

16. No change of use of any part of the Premises from that approved by the Council shall be made without the Consent of the Council and, for the avoidance of any doubt; a change from one type of sex establishment to another shall not be effected without the Consent of the Council.

17. No display, advertisement, word, letter, model, sign, placard, board, notice, device, design, representation, decoration, pattern, picture, photograph, writing, symbol, object or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the Premises except:

a) Any notice of a size and in a form and position approved by the Council which is required to be displayed so as to be visible from outside the Premises by law, or by any condition or special condition of a licence granted by the Council.

b) Such display, advertisement, word, letter, model, sign, placard, board, notice, device, design, representation, decoration, pattern, picture, photograph, writing, symbol, object or any matter or thing (whether illuminated or not) as shall have been approved by the Council.

18. No external loudspeakers shall be used or installed at the Premises without the approval of the Council.

19. No exterior lighting shall be used or installed at the Premises without the approval of the Council.

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Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

20. The Premises shall be maintained in good repair and condition.
21. Bright lighting in all parts of the Premises, in positions and in a form and of a level of luminance approved by the Council, shall be in operation continuously during the whole of the time the Sex Establishment is open to the public.
22. The number, size and position of all doors or openings provided for the purpose of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements:
- a) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "EXIT".
 - b) Doors and openings which lead to parts of the Premises to which the public are not permitted to have access shall have notices placed over them marked "PRIVATE".
 - c) Save in the case of emergency, no access shall be permitted through the Premises to any unlicensed premises adjoining or adjacent to the Premises.
23. The Licensee shall make provision in the means of access both to and within the Sex Establishment for the needs of members of the public visiting the Sex Establishment who are disabled.
24. Alterations or additions, whether internal or external and whether permanent or temporary, to the structure, lighting or layout of the Premises shall not be made except with the prior approval of the Council.
25. All parts of the Premises' fixtures, fittings and displays shall be kept in a clean and seemly condition to the satisfaction of the Council.

Safety

26. The Licensee shall take all appropriate precautions for the safety of the public and employees.
27. The Licensee shall ensure that CCTV is installed and maintained in working order and in use at all times to the satisfaction of Wiltshire Constabulary, and that any images are both retained for a period of at least 31 days and made available on request to a police officer or authorised officer of the Council.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

28. The Licensee shall provide promptly copies of any documents required by a police officer or by an authorised officer of the Council in relation to compliance with this Licence.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Appendix B - Standard conditions applying to sexual Entertainment venues

The following conditions will attach to sex establishment licences issued by the Council in respect of sexual entertainment venues, pursuant to paragraph 13(1) of schedule 3 to the 1982 Act:

1. Any individual employed on the Premises to conduct activities of a security operative (within the meaning of Part 1 of Schedule 2 to the Private Security Industry Act 2001) must be licensed by the Security Industry Authority.
2. The Licensee shall ensure that a suitable number of trained staff are employed and present to supervise the interior of the Premises ("floor supervisors") at all times whilst performances are being given under this licence.
3. The Licensee shall ensure that, during the hours the Sexual Entertainment Venue is open for business, every floor supervisor wears a badge of a type approved by the Council indicating his or her name and that he or she is a floor supervisor.
4. Performers shall be aged not less than 18 years. The Licensee shall maintain adequate records of the names, addresses and dates of birth of performers, including adequate identity and age checks.
5. The Licensee shall ensure to the Council's satisfaction (including, where required, obtaining planning or building control consents) that the interior of the part of the Premises used as a Sexual Entertainment Venue is not visible from the outside of the Premises or from any other part of the Premises used for a purpose other than that of a Sexual Entertainment Venue. At no point may performers be visible from outside the Premises or from any other part of the Premises used for a purpose other than that of a Sexual Entertainment Venue.
6. Where the Council has specified a capacity figure in writing, the Licensee shall ensure that that figure is not exceeded at the premises at any time whilst sexual entertainment is taking place.
7. Performers shall only perform on the stage area, or in such other areas of the licensed Premises as may be approved in advance by the Council and shall only perform to seated customers.
8. Performers shall remain clothed in public areas and all other areas except while performing in areas specified by the Council as where sexual entertainment may be provided.
9. Performers shall dress fully at the end of each performance.

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Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

10. Performers shall not accept any telephone number, e-mail address, address or contact information from any customer, except in the form of a business card which must be surrendered to the Licensee or his or her representative before leaving the Premises.
11. A Performer is never to be alone in the company of a customer except in an area open to the public within the Premises.
12. The Licensee shall ensure a sufficient number of staff are employed inside the Premises whilst sexual entertainment is provided to supervise the Performers and manage customers.
13. No Performer shall perform nude or semi-nude dancing of any description unless in an approved area and with a floor supervisor present within five metres of the Performer.
14. Performers are never to be in the company of one or more customers except in an area open to the public within the Premises.
15. The Licensee shall ensure that during the performance of a table dance:-
 - a) Customers are seated in an upright position against the back of the booth or seat with their hands by their sides or on a table in front of them before a Performer can start a table dance;
 - b) Customers remain seated during the entire performance of the dance;
 - c) For the purpose of restraint only, Performers only touch a customer above the customer's chest with their hands only;
 - d) Performers do not sit next to, or on, or straddle, the customer;
 - e) Performers do not place their feet on the seats.
16. The Licensee shall ensure that during performances to which this licence relates:
-
 - a) Performers do not perform any act that clearly simulates any sexual act;
 - b) Performers do not intentionally touch a customer any time during the performance (any contact shall only be entirely accidental or entirely due to a third party);

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

c) Performers do not use inappropriate, suggestive or sexually graphic language at any time;

d) Performers do not intentionally touch the genitals or breasts of another performer or knowingly permit another Performer intentionally to touch their genitals or breasts;

e) Performers do not engage in communications that could be deemed as acts of prostitution or solicitation, even if the performer has no intention of carrying out the act;

17. The Licensee shall ensure that during performances to which this Licence relates:-

a) Customers do not dance at any time except in areas approved by the Council as being separate from areas for sexual entertainment;

b) Customers remain appropriately clothed at all times.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Appendix C - Standard conditions applying to sex shops

The following conditions will attach to sex establishment licences issued by the Council in respect of sex shops, pursuant to paragraph 13(1) of schedule 3 to the 1982 Act:

Goods available in Sex Shops

1. All Sex Articles and other things displayed for sale, hire, exchange or loan within the Sex Shop shall be clearly marked to show to persons who are inside the Sex Shop the respective prices to be charged.
2. All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to this effect is to be prominently displayed within the Sex Shop so as to be readily visible to any person visiting the Premises, provided that this condition does not require films or video films to be exhibited (played).
3. No film or video film shall be exhibited, sold, hired, exchanged or loaned unless it has been passed by the British Board of Film Censors and bears a certificate to that effect and is a reproduction authorised by the owner of the copyright of the film or video film so certified.
4. The licensee shall, without charge, display and make available in the Sex Shop such free literature on counselling on matters related to sexual problems, on AIDS and on sexually transmitted diseases as may be published by the Family Planning Association and/or by other similar organisations as may be specified by the Council. Such literature is to be displayed at all times in a prominent position adjacent to all payment points in the Sex Shop so as to be readily visible to any person at any such payment point.

External Appearance

5. A door control system shall be fitted and maintained in use at all times so as to prevent the external door and the internal (lobby) door from being opened at the same time. Guidance should be sought from the Fire Officer so as to ensure that suitable emergency access can be maintained. The entrance to the Premises shall be of a material, or covered with a material, which will render the interior of the Premises invisible to passers-by and a sample of such material shall be submitted to, and approved (which shall include approving the colour and design) by, the Council.
6. Suitable and sufficient vertical blinds shall be fitted to the interior aspect of the front windows of the Premises and shall be kept closed at all times so as to ensure that the interior of the Premises is permanently obscured from the view of passers-by.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Details of the positioning, material, colour and design of such blinds, with a sample, shall be submitted to, and approved by, the Council.

7. Any facility for previewing a film, video recording or similar material shall be physically separated from the display area of the Sex Shop in such a manner that no material being displayed by way of preview shall be visible or audible outside the preview area.

8. No fastenings of any description (other than any fastening necessary to secure the facility specifically referred to in the immediately preceding condition) shall be fitted upon any booth or cubicle within the Sex Shop, nor shall more than one person (including any employee) be present in any such booth or cubicle at any time.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Appendix D - Standard conditions applying to sex cinemas

The following conditions will attach to sex establishment licences issued by the Council in respect of sex cinemas, pursuant to paragraph 13(1) of schedule 3 to the 1982 Act:

1. No sex articles 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 shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.
2. The Licensee shall not supply or permit to be supplied to any person, other than a person employed to work on the premises, any article of food or drink whether for consumption on or off the premises.
3. No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Establishment, nor shall more than one person (including any employee) be present in any such booth or cubicle at any time.
4. No film or video film shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to that effect, and is a reproduction authorised by the owner of the copyright of the film or video film so certified. Any such film or video film shall comply with the Video Recordings Act 1984.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Appendix 2 - Summary of consultations received and officer responses

Q1 - Do you agree in principle with the content of the proposed policy?

Q2 - Do you feel any content should be removed from the proposed policy?

Q3 - Do you feel any content should be added to the proposed policy?

Q4 - Do you feel that there are any specific areas of Swindon where sex establishments and/or sex entertainment venues should be excluded?

Q5 - Do you have any other comments on any section of the proposed policy or on the document as a whole?

Consultee	Summary	Response	Action
C Gregory	Q1 with regards to section 3.5: Feel all Sex entertainment should be applied for. Different Fees could apply to cover small events.	Policy covers all sexual entertainment that falls within the legislation	No change
C Gregory	Q2 to Section 2.12: ADD - Visual advertising on premises, vehicle, vessel or stall, location of adverting are appropriate and follows guidelines for safeguarding. ADD - A application has to be made with photo evidence of the front of the premises advertising, vehicle, vessel or stalls, leaflet distribution, news paper articles, business card, or any form of advertising before release, website and Facebook or social media sites. ADD - The safety of the performers working to guidelines and procedures are followed to with recorded evidence.	The Licensing Authority having considered a number of other Licensing Authority policies and with regard to legislation and guidance; considers that the proposed policy provides adequate to the public, performers and users of the venues	No change

Further information on the subject of this report can be obtained from Kathryn Ashton, Licensing Manager on (01793) 466113, or kashton@swindon.gov.uk.

Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Consultee	Summary	Response	Action
C Gregory (Q2 cont)	Q2 (cont) ADD - Procedures and policies of Safeguarding performers (Local Girls) (Girls used for Advertising Local Events or leaflet flying...application to council?) (protection) (complaint procedures who to turn to) ADD - Procedures and policies of Security Staff (in monitoring, bad practice, reporting procedures) Security Position of camera, no blind spots, all in full functional working order, reordered and filed of a period of Longer 6 Month ? Event of disciplines, fines of performers to be logged. Evidence of Induction and Training updates logged and signed. Performers to produce proof of address and photo id (driving licence or passport) and proof to work in UK	The Licensing Authority having considered a number of other Licensing Authority policies and with regard to legislation and guidance; considers that the proposed policy provides adequate to the public, performers and users of the venues	No change
C Gregory	Q4 Yes within visual distance of areas were under 18 years were to be situated due to entertainment establishments examples cinema, theatre, family restaurants, shopping area. Due to Visual Logo advertising from sex entertainment venues. Risks to children - times of opening of club vs the entertainment establishments closure.	Consideration has already been given to locality of sensitive users and each application would be considered on own merit	No change
C Gregory	Q5 Distance of performers Training of the performers on performance Guidelines Performers working in same town	The whole method of operation taken into account as part of each application & its individual merits	No change

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Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Consultee	Summary	Response	Action
Amie Dream Lounge	Q2 In response to should any content be removed: People should be allowed To do what they want	The Licensing Authority has a duty of care to both users and performers at the venue as well as ensuring public safety is paramount	No change
E Webster Dream Lounge	Q1 I do not agree that a change in policy is necessary for the safety of the women in sex entertainment venues.	Comment – personal opinion	No change
E Webster Dream Lounge	Q2 Sections regarding performers not being allowed to sit on or next to customers. I work in Dream Lounge and I have never felt unsafe by sitting or straddling a customer. Moreover it makes it much harder for our job to be profitable and the venue may close. This would put many women out of work as well as irreversibly change the Swindon night life.	As above, the role of Licensing Authority is to ensure public safety and that of the performers. All applications will be considered on their individual merit	No change
E Webster Dream Lounge	Q5 Sex entertainment venues employ women from all walks of life from single mothers to women trying to start their own business. No dancer that I've spoken to has felt unsafe or been unhappy with the working conditions in Dream Lounge. It is a small local family run business that supports the local industries and our tourism in the area. I hope you consider our views before implementing these changes.	This policy is not to undermine or impact existing well run premises. It does however enable controls where the Licensing Authority considers necessary to ensure adequate protection	No Change
S Rogers Dream Lounge	Q1 It is unduly zealous. Contrary to the introduction that is does not penalise compliant premises. It does precisely that. Existing	(see below)	No change

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Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Consultee	Summary	Response	Action
S Rogers Dream Lounge (Q1 cont)	Q1 (cont) premises such as Dream Lounge have conditions attached to their Premises Licences which have operated well for many years without any complaints. The proposed policy seeks to place additional restrictions Lists existing Dream Lounge Conditions	Further conditions will only be recommended where considered necessary. Where appropriate controls are already in place the Authority would not seek to attach any onerous requirements	No change
S Rogers Dream Lounge	Q2 Part 4 4.d."well lit" This is not sufficiently defined. Entertainment venues such as these and night clubs are not and should not be required to operate under harsh lighting conditions which destroy the ambience and therefore do not attract customers. The essential point is that it should be possible to see what is going on in all relevant areas, and consequently the lighting should be adequate for surveillance and control purposes but no more. This should be the criteria set, otherwise it will contravene the overriding principle that the condition does not place additional unnecessary burden• on the establishment. goes well beyond what is necessary to control the activities in the premises. Not only will it deter customers it will also deter performers who should only be required to perform under subdued lighting. Appendix B 8. Clothed It is presumed that underwear is clothing and so would not be	Each application is considered on its own merits and the Licensing Authority shall normally expect the operator to demonstrate safe manner of working. All applications would be considered in accordance with the adopted policy.	No change

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Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Consultee	Summary	Response	Action
S Rogers Dream Lounge (Q2 cont)	<p>(Q2 cont) prohibited by such a condition. 9.. What is a performance? What is meant by dress fully? Surely they should be allowed to remain in underwear? It is the nature of these type of premises that the performers are allowed in public areas whilst dressed only in underwear. So why should they be required to dress fully at the end of each performance? It is also quite often the case that customers prefer to sit and talk to performers whilst they are undressed rather than watch a performance. This condition would apparently prevent that. Given the other conditions the apparent exclusion of performers talking to customers whilst undressed is unduly zealous 15. d. Performers do not sit next to, or on, or straddle, the customer. Certainly sitting on or straddling is an acceptable exclusion, but as stated above under the response to 9customers often prefer to sit next to and talk to performers whilst they are undressed rather than watch a performance. This condition would prevent that and is unnecessarily burdensome. 15. e. Performers do not place their feet on the seats. This is unnecessarily burdensome. The other conditions proposed are sufficient control to prevent contact between performers and customers.</p>	<p>Each application is considered on its own merits and the Licensing Authority shall normally expect the operator to demonstrate safe manner of working. All applications would be considered in accordance with the adopted policy.</p>	<p>No change</p>

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Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Consultee	Summary	Response	Action
S Rogers Dream Lounge	Q3 Yes, to the extent that the conditions adopted should reflect those Dream Lounge conditions attached to their Premises Licence as listed under the answer to question 1.	Each application is considered on its own merits and the Licensing Authority shall normally expect the operator to demonstrate safe manner of working. All applications would be considered in accordance with the adopted policy.	No change
S Rogers Dream Lounge	Q4 Yes. Mainly residential areas.	Considered in accordance with any adopted policy and right to a fair hearing	No change
S Rogers Dream Lounge	Q5 Raised point of administrative errors regarding consultation	Noted and agreed	Consultation extended for further six weeks, advertised and all formal consultees made aware
LPJ Dream Lounge	Q2 - Appendix A 21 - the lighting of the premises. This is outrageous! This should not be relevant to the policy by any means. In any late night venue such as a night club this would not stand relevant. Most night clubs and late night venues do not have bright lights, within a lap dancing venue the security and control measures are a lot higher and more sufficient than that of a night club therefore i think this should be disregarded completely.	Each application is considered on its own merits and the Licensing Authority shall normally expect the operator to demonstrate safe manner of working. All applications would be considered in accordance with the adopted policy.	No change

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Introduction of a Licensing Regime for Sex Establishments

Licensing Committee

Date: 8 November 2016

Consultee	Summary	Response	Action
LPJ Dream Lounge	Q2 - Appendix B 15 (e) - performers not being able to place their feet on seats; This is completely ridiculous. why would it make a difference to the safety of both the performer or the customer? Both parties are aware of the procedures put in place to ensure safety and the performer is able to implement this if felt un-safe or uncomfortable at any time.	Each application is considered on its own merits and the Licensing Authority shall normally expect the operator to demonstrate safe manner of working. All applications would be considered in accordance with the adopted policy.	No change
LPJ Dream Lounge	Q5 - I feel that some of the content that has been proposed in the policy is unfair and unnecessary. I work within the sex entertainment industry as a bar manager and i feel safe and comfortable with the current policy. As bar manager i receive alot of feedback from customers and performers of which is normally all possitive. Performers feel safe, comfortable and ultimately enjoy working in our establishment. Customers enjoy coming to our establishment not only for the performers but alot more for a relaxed late night beverage and social with staff and fellow customers. I feel that the content of the proposed policy is extreme and would unecassarily cause stress to the current relaxed (safe) atmosphere.	This policy is not to undermine or impact existing well run premises. It does however enable controls where the Licensing Authority considers necessary to ensure adequate protection. It is recognised that these venues provide an important part of the night time economy.	No change

Further information on the subject of this report can be obtained from Kathryn Ashton, Licensing Manager on (01793) 466113, or kashton@swindon.gov.uk.